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Part III

Department of Energy

10 CFR Part 431

Energy Conservation Program for Commercial and Industrial Equipment; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE–2006–BT–STD–0126]

RIN 1904–AB59

Energy Conservation Program for Commercial and Industrial Equipment: Energy Conservation Standards for Commercial Ice-Cream Freezers; Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers Without Doors; and Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting new energy conservation standards for commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. DOE has determined that energy conservation standards for these types of equipment would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is March 10, 2009. The standards established in today's final rule will be applicable starting January 1, 2012. Incorporation by reference of the material listed is approved by the Director of the Federal Register on March 10, 2009.

ADDRESSES: For access to the docket to read background documents, the technical support document, transcripts of the public meetings in this proceeding, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. (**Note:** DOE's Freedom of Information Reading Room no longer houses rulemaking materials.) You may also obtain copies of certain previous rulemaking documents in this proceeding (*i.e.*, framework document, advance notice of proposed rulemaking, notice of proposed rulemaking), draft analyses, public meeting materials, and related test procedure documents from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/commercial/refrigeration_equipment.html*.

FOR FURTHER INFORMATION CONTACT: Charles Llenza, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192, *Charles.Llenza@ee.doe.gov*.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507, *Francine.Pinto@hq.doe.gov*.

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I. Summary of the Final Rule and Its Benefits

A. The Standard Levels

The Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*; EPCA), directs the Department of Energy (DOE) to establish mandatory energy conservation standards for commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. (42 U.S.C. 6313(c)(4)(A)) These types of equipment are referred to collectively hereafter as ''commercial refrigeration equipment.'' Any such standard must be designed to ''achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) Furthermore, the new standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1)) The standards in today's final rule, which apply to all commercial refrigeration equipment, satisfy these requirements.[1]

Table I–1 shows the standard levels DOE is adopting today. These standards will apply to all commercial refrigeration equipment manufactured for sale in the United States, or imported to the United States, on or after January 1, 2012.

TABLE I–1—STANDARD LEVELS FOR COMMERCIAL REFRIGERATION EQUIPMENT

Equipment class [2]	Standard level * ** (kWh/day) ***	Equipment class	Standard level * ** (kWh/day)
VOP.RC.M	0.82 × TDA + 4.07	VCT.RC.I	0.66 × TDA + 3.05
SVO.RC.M	0.83 × TDA + 3.18	HCT.RC.M	0.16 × TDA + 0.13
HZO.RC.M	0.35 × TDA + 2.88	HCT.RC.L	0.34 × TDA + 0.26
VOP.RC.L	2.27 × TDA + 6.85	HCT.RC.I	0.4 × TDA + 0.31
HZO.RC.L	0.57 × TDA + 6.88	VCS.RC.M	0.11 × V + 0.26
VCT.RC.M	0.22 × TDA + 1.95	VCS.RC.L	0.23 × V + 0.54
VCT.RC.L	0.56 × TDA + 2.61	VCS.RC.I	0.27 × V + 0.63
SOC.RC.M	0.51 × TDA + 0.11	HCS.RC.M	0.11 × V + 0.26
VOP.SC.M	1.74 × TDA + 4.71	HCS.RC.L	0.23 × V + 0.54
SVO.SC.M	1.73 × TDA + 4.59	HCS.RC.I	0.27 × V + 0.63
HZO.SC.M	0.77 × TDA + 5.55	SOC.RC.L	1.08 × TDA + 0.22
HZO.SC.L	1.92 × TDA + 7.08	SOC.RC.I	1.26 × TDA + 0.26
VCT.SC.I	0.67 × TDA + 3.29	VOP.SC.L	4.37 × TDA + 11.82
VCS.SC.I	0.38 × V + 0.88	VOP.SC.I	5.55 × TDA + 15.02
HCT.SC.I	0.56 × TDA + 0.43	SVO.SC.L	4.34 × TDA + 11.51
SVO.RC.L	2.27 × TDA + 6.85	SVO.SC.I	5.52 × TDA + 14.63
VOP.RC.I	2.89 × TDA + 8.7	HZO.SC.I	2.44 × TDA + 9.
SVO.RC.I	2.89 × TDA + 8.7	SOC.SC.I	1.76 × TDA + 0.36
HZO.RC.I	0.72 × TDA + 8.74	HCS.SC.I	0.38 × V + 0.88

* TDA is the total display area of the case, as measured in the Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, Appendix D.
** V is the volume of the case, as measured in ARI Standard 1200–2006, Appendix C.
*** Kilowatt hours per day.
[2] For this rulemaking, equipment class designations consist of a combination (in sequential order separated by periods) of: (1) An equipment family code (VOP=vertical open, SVO=semivertical open, HZO=horizontal open, VCT=vertical transparent doors, VCS=vertical solid doors, HCT=horizontal transparent doors, HCS=horizontal solid doors, or SOC=service over counter); (2) an operating mode code (RC=remote condensing or SC=self contained); and (3) a rating temperature code (M=medium temperature (38 °F), L=low temperature (0 °F), or I=ice-cream temperature (−15 °F)). For example, ''VOP.RC.M'' refers to the ''vertical open, remote condensing, medium temperature'' equipment class. See discussion in section V.A.2 and chapter 3 of the TSD, market and technology assessment, for a more detailed explanation of the equipment class terminology. See Table IV–2 for a list of the equipment classes by category.

B. Benefits to Customers of Commercial Refrigeration Equipment

Table I–2 indicates the impacts on commercial customers of today's standards.

TABLE I–2—IMPLICATIONS OF NEW STANDARDS FOR COMMERCIAL CONSUMERS

Equipment class	Energy conservation standard	Total installed cost ($)	Total installed cost increase ($)	Life-cycle cost savings ($)	Payback period (years)
VOP.RC.M	0.82 × TDA + 4.07	8,065	536	1,788	2.0
VOP.RC.L	2.27 × TDA + 6.85	11,222	1,947	3,938	2.8
VOP.SC.M	1.74 × TDA + 4.71	4,381	633	1,549	2.4

[1] Currently, no mandatory Federal energy conservation standards exist for the commercial refrigeration equipment covered by this rulemaking.

TABLE I–2—IMPLICATIONS OF NEW STANDARDS FOR COMMERCIAL CONSUMERS—Continued

Equipment class	Energy conservation standard	Total installed cost ($)	Total installed cost increase ($)	Life-cycle cost savings ($)	Payback period (years)
VCT.RC.M	0.22 × TDA + 1.95	11,654	2,134	2,339	3.9
VCT.RC.L	0.56 × TDA + 2.61	12,584	2,513	5,419	2.6
VCT.SC.I	0.67 × TDA + 3.29	6,602	1,385	5,217	1.7
VCS.SC.I	0.38 × V + 0.88	4,227	326	1,757	1.3
SVO.RC.M	0.83 × TDA + 3.18	7,470	435	1,274	1.9
SVO.SC.M	1.73 × TDA + 4.59	3,719	439	1,136	2.3
SOC.RC.M	0.51 × TDA + 0.11	12,740	240	945	1.7
HZO.RC.M	0.35 × TDA + 2.88	8,133	248	1,040	1.6
HZO.RC.L	0.57 × TDA + 6.88	8,194	270	1,102	1.6
HZO.SC.M	0.77 × TDA + 5.55	3,398	313	826	2.3
HZO.SC.L	1.92 × TDA + 7.08	3,836	460	1,761	1.7
HCT.SC.I	0.56 × TDA + 0.43	2,478	238	785	1.9

The economic impacts on commercial consumers (*i.e.*, the average life-cycle cost (LCC) savings) are positive for all equipment classes. For example, currently available remote condensing vertical open equipment operating at medium temperatures, semivertical equipment with those same characteristics, and vertical closed equipment with transparent doors and operating at low temperatures—three of the most common types of commercial refrigeration equipment—typically have installed prices of $8,065, $7,470 and $12,584, and annual energy costs of $1,879, $1,413, and $2,249, respectively. To meet the new standards, DOE estimates that the installed prices of such equipment will be $8,601, $7,905, and $15,097, respectively, an increase of $536, $435, and $2,513. This price increase will be offset by annual energy savings of about $331, $234, and $977.

C. Impact on Manufacturers

Using a real corporate discount rate of 11.5 percent, DOE estimates the industry net present value (INPV) of the commercial refrigeration equipment industry to be $540 million in 2007$. DOE expects the impact of today's standards on the industry net present value (INPV) of manufacturers of commercial refrigeration equipment to be a loss of 7.29 to 27.35 percent (−$39 million to −$148 million). Based on DOE's interviews with manufacturers of commercial refrigeration equipment, DOE expects minimal plant closings or loss of employment as a result of the standards.

D. National Benefits

DOE estimates the standards will save approximately 1.035 quads (quadrillion (10^{15}) British thermal units (Btu)) of energy over 30 years (2012–2042). This is equivalent to all the energy consumed by more than 5 million American households in a single year.

By 2042, DOE expects the energy savings from the standards to eliminate the need for approximately 0.7 new 1,000-megawatt (MW) power plants. These energy savings will result in cumulative greenhouse gas emission reductions of approximately 52.6 million tons (Mt) of carbon dioxide (CO_2), or an amount equal to that produced by approximately 332,500 cars every year. Additionally, the standards will help alleviate air pollution by resulting in between approximately 3.64 and 89.97 kilotons (kt) of cumulative nitrogen oxide (NO_X) emission reductions and between approximately 0 and 1.38 tons of cumulative mercury emission reductions from 2012 through 2042. The estimated net present values of these emissions reductions are between $0 and $469 million for CO_2, between $394,000 and $9.7 million for NO_X, and between $0 and $284,000 for mercury at a 7-percent discount rate in 2007$, discounted to 2008. At a 3-percent discount rate, the estimated net present values of these emissions reductions are between $0 and $955 million for CO_2, between $0.8 million and $20.5 million for NO_X, and between $0 and $560,000 for mercury.

The national NPV of the standards is $1.414 billion using a 7-percent discount rate and $3.930 billion using a 3-percent discount rate, cumulative from 2012 to 2062 in 2007$. This is the estimated total value of future savings minus the estimated increased equipment costs, discounted to 2008.

The benefits and costs of today's final rule can also be expressed in terms of annualized [2007$] values between 2012 and 2042. Using a 7-percent discount rate for the annualized cost analysis, the cost of the standards established in today's final rule is $95 million per year in increased equipment and installation costs, while the annualized benefits are $229 million per year in reduced equipment operating costs. Using a 3-percent discount rate, the cost of the standards established in today's final rule is $81 million per year, while the benefits of today's standards are $253 million per year.

II. Introduction

A. Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other than Automobiles. Part A–1 of Title III (42 U.S.C. 6311–6317) establishes a similar program for ''Certain Industrial Equipment,'' including commercial refrigeration equipment, the subject of this rulemaking.[3] DOE publishes today's final rule pursuant to Part A–1 of Title III, which provides for test procedures, labeling, and energy conservation standards for commercial refrigeration equipment and certain other equipment; and authorizes DOE to require information and reports from manufacturers. The test procedure for commercial refrigeration equipment appears in Title 10 Code of Federal Regulations (CFR) part 431.64.

EPCA provides criteria for prescribing new or amended standards for commercial refrigeration equipment. As indicated above, any new or amended standard for this equipment must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and

[3] This part was originally titled Part C. However, it was redesignated Part A–1 after Part B of Title III of EPCA was repealed by Public Law 109–58.

economically justified. (42 U.S.C. 6295(o)(2)(A) and 6316(e)(1)) Additionally, EPCA provides specific prohibitions on prescribing such standards. DOE may not prescribe an amended or new standard for any equipment for which DOE has not established a test procedure. (42 U.S.C. 6295(o)(3)(A) and 6316(e)(1)) Further, DOE may not prescribe an amended or new standard if DOE determines by rule that such standard would not result in ''significant conservation of energy'' or ''is not technologically feasible or economically justified.'' (42 U.S.C. 6295(o)(3)(B) and 6316(e)(1))

EPCA also provides that in deciding whether such a standard is economically justified for equipment such as commercial refrigeration equipment, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
2. The savings in operating costs throughout the estimated average life of products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)–(ii) and 6316(e)(1))

In addition, EPCA, as amended (42 U.S.C. 6295(o)(2)(B)(iii) and 6316(e)(1)), establishes a rebuttable presumption that a standard for commercial refrigeration equipment is economically justified if the Secretary finds that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and as applicable, water) savings during the first year that the consumer will receive as a result of the standard,'' as calculated under the test procedure in place for that standard.

EPCA further provides that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is ''likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding.'' (42 U.S.C. 6295(o)(4) and 6316(e)(1))

Section 325(q)(1) of EPCA is applicable to promulgating standards for most types or classes of equipment, including commercial refrigeration equipment, that have two or more subcategories. (42 U.S.C. 6295(q)(1) and 42 U.S.C. 6316(e)(1)) Under this provision, DOE must specify a different standard level than that which applies generally to such type or class of equipment for any group of products ''which have the same function or intended use, if * * * products within such group—(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard'' than applies or will apply to the other products. (42 U.S.C. 6295(q)(1)(A) and (B)) In determining whether a performance-related feature justifies such a different standard for a group of products, DOE must consider ''such factors as the utility to the consumer of such a feature'' and other factors DOE deems appropriate. (42 U.S.C. 6295(q)(1)) Any rule prescribing such a standard must include an explanation of the basis on which DOE established such a higher or lower level. (See 42 U.S.C. 6295(q)(2))

Federal energy conservation standards for commercial equipment generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c); 42 U.S.C. 6316(e)(2)–(3)) DOE can, however, grant waivers of preemption for particular State laws or regulations, in accordance with the procedures and other provisions of section 327(d) of the Act. (42 U.S.C. 6297(d); 42 U.S.C. 6316(e)(2)–(3))

B. Background

1. History of Standards Rulemaking for Commercial Refrigeration Equipment

As discussed in the notice of proposed rulemaking, 73 FR 50072, 50076 (August 25, 2008) (the August 2008 NOPR), the EPACT 2005 amendments to EPCA require that DOE issue energy conservation standards for the equipment covered by this rulemaking. (42 U.S.C. 6313(c)(4)(A)) The amendments also include definitions for terms relevant to this equipment (42 U.S.C. 6311(9)). These definitions provide that commercial refrigeration equipment is connected to either a self-contained condensing unit or to a remote condensing unit (42 U.S.C. 6311(9)(A)(vii)), the two condenser configurations of equipment covered by this rulemaking, and include definitions of a remote condensing unit and self-contained condensing unit (42 U.S.C. 6311(9)(E)–(F)).

DOE commenced this rulemaking on April 25, 2006, by publishing a notice of a public meeting and of the availability of its framework document for the rulemaking. 71 FR 23876. The framework document described the approaches DOE anticipated using and issues to be resolved in the rulemaking. DOE held a public meeting on May 16, 2006, to present the contents of the framework document, describe the analyses DOE planned to conduct during the rulemaking, obtain public comment on these subjects, and facilitate the public's involvement in the rulemaking. DOE also allowed the submission of written statements, after the public meeting, in response to the framework document.

On July 26, 2007, DOE published an advance notice of proposed rulemaking (ANOPR) in this proceeding. 72 FR 41161 (the July 2007 ANOPR). In the July 2007 ANOPR, DOE sought comment on its proposed equipment classes for the rulemaking, and on the analytical framework, models, and tools that DOE used to analyze the impacts of energy conservation standards for commercial refrigeration equipment. In conjunction with the July 2007 ANOPR, DOE published on its Web site the complete ANOPR TSD, which included the results of DOE's various preliminary analyses in this rulemaking. In the July 2007 ANOPR, DOE requested oral and written comments on these results and on a range of other issues. DOE held a public meeting in Washington, DC, on August 23, 2007, to present the methodology and results of the ANOPR analyses and to receive oral comments from those who attended. The oral and written comments DOE received focused on DOE's assumptions, approach, and equipment class breakdown, and were addressed in detail in the August 2008 NOPR.

In the August 2008 NOPR, DOE proposed new energy conservation

standards for commercial refrigeration equipment. 73 FR 50072. In conjunction with the August 2008 NOPR, DOE also published on its Web site the complete technical support document (TSD) for the proposed rule, which incorporated the final analyses DOE conducted and technical documentation for each analysis. The TSD included the engineering analysis spreadsheets, the LCC spreadsheet, and the national impact analysis spreadsheet. The standards DOE proposed for commercial refrigeration equipment are shown in Table II–1.

TABLE II–1—AUGUST 2008 PROPOSED STANDARD LEVELS FOR COMMERCIAL REFRIGERATION EQUIPMENT

Equipment class	Standard level* ** (kWh/day)	Equipment class	Standard level* ** (kWh/day)
VOP.RC.M	0.82 × TDA + 4.07	VCT.RC.I	0.71 × TDA + 3.05
SVO.RC.M	0.83 × TDA + 3.18	HCT.RC.M	0.16 × TDA + 0.13
HZO.RC.M	0.35 × TDA + 2.88	HCT.RC.L	0.34 × TDA + 0.26
VOP.RC.L	2.28 × TDA + 6.85	HCT.RC.I	0.4 × TDA + 0.31
HZO.RC.L	0.57 × TDA + 6.88	VCS.RC.M	0.11 × V + 0.26
VCT.RC.M	0.25 × TDA + 1.95	VCS.RC.L	0.23 × V + 0.54
VCT.RC.L	0.6 × TDA + 2.61	VCS.RC.I	0.27 × V + 0.63
SOC.RC.M	0.51 × TDA + 0.11	HCS.RC.M	0.11 × V + 0.26
VOP.SC.M	1.74 × TDA + 4.71	HCS.RC.L	0.23 × V + 0.54
SVO.SC.M	1.73 × TDA + 4.59	HCS.RC.I	0.27 × V + 0.63
HZO.SC.M	0.77 × TDA + 5.55	SOC.RC.L	1.08 × TDA + 0.22
HZO.SC.L	1.92 × TDA + 7.08	SOC.RC.I	1.26 × TDA + 0.26
VCT.SC.I	0.73 × TDA + 3.29	VOP.SC.L	4.37 × TDA + 11.82
VCS.SC.I	0.38 × V + 0.88	VOP.SC.I	5.55 × TDA + 15.02
HCT.SC.I	0.56 × TDA + 0.43	SVO.SC.L	4.34 × TDA + 11.51
SVO.RC.L	2.28 × TDA + 6.85	SVO.SC.I	5.52 × TDA + 14.63
VOP.RC.I	2.9 × TDA + 8.7	HZO.SC.I	2.44 × TDA + 9
SVO.RC.I	2.9 × TDA + 8.7	SOC.SC.I	1.76 × TDA + 0.36
HZO.RC.I	0.72 × TDA + 8.74	HCS.SC.I	0.38 × V + 0.88

* TDA is the total display area of the case, as measured in the ARI Standard 1200–2006, Appendix D.
** V is the volume of the case, as measured in ARI Standard 1200–2006, Appendix C.

In the August 2008 NOPR, DOE identified seven issues on which is was particularly interested in receiving comments and views of interested parties: Light-emitting diode (LED) price projections, base case efficiency trends, operating temperature ranges, offset factors for smaller equipment, extension of standards developed for the 15 primary classes to the remaining 23 secondary classes, standards for hybrid cases and wedges, and standard levels. 73 FR 50134. After the publication of the August 2008 NOPR, DOE received written comments on these and other issues. DOE also held a public meeting in Washington, DC, on September 23, 2008, to hear oral comments on and solicit information relevant to the proposed rule. The August 2008 NOPR included additional background information on the history of this rulemaking. 73 FR 50076–77.

III. General Discussion

A. Test Procedures

On December 8, 2006, DOE published a final rule (the December 2006 final rule) in which it adopted American National Standards Institute (ANSI)/Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets,'' as the DOE test procedure for this equipment.[4] 71 FR 71340, 71369–70; 10 CFR 431.63–431.64. ARI Standard 1200–2006 contains rating temperature specifications of 38 °F (±2 °F) for commercial refrigerators and refrigerator compartments, 0 °F (±2 °F) for commercial freezers and freezer compartments, and −5 °F (±2 °F) for commercial ice-cream freezers. The standard also requires performance tests to be conducted according to the ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 72–2005, ''Method of Testing Commercial Refrigerators and Freezers.'' In the test procedure final rule, DOE also adopted a −15 °F (±2 °F) rating temperature for commercial ice-cream freezers. 71 FR 71370. In addition, DOE adopted ANSI/Association of Home Appliance Manufacturers (AHAM) Standard HRF–1–2004, ''Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers,'' for determining compartment volumes for this equipment. 71 FR 71369–70.

[4] The Air-Conditioning and Refrigeration Institute (ARI) and the Gas Appliance Manufacturers Association (GAMA) announced on December 17, 2007, that their members voted to approve the merger of two trade associations to represent the interests of cooling, heating, and commercial refrigeration equipment manufacturers. The merged association became AHRI on January 1, 2008.

B. Technological Feasibility

1. General

As stated above, any standards that DOE establishes for commercial refrigeration equipment must be technologically feasible. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B); 42 U.S.C. 6316(e)(1)) DOE considers a design option to be technologically feasible if it is in use by the respective industry or if research has progressed to the development of a working prototype. ''Technologies incorporated in commercial products or in working prototypes will be considered technologically feasible.'' 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

This final rule considers the same design options as those evaluated in the August 2008 NOPR. (See chapter 4 of the final rule TSD accompanying this notice.) All the evaluated technologies have been used (or are being used) in commercially available products or working prototypes. Therefore, DOE has determined that all of the efficiency levels evaluated in this notice are technologically feasible.

2. Maximum Technologically Feasible Levels

As required by EPCA (42 U.S.C. 6295(p)(2) and 42 U.S.C. 6316(e)(1)) in developing the August 2008 NOPR, DOE identified the energy use levels that

would achieve the maximum reductions in energy use that are technologically feasible (max-tech levels) for commercial refrigeration equipment. 73 FR at 50077–78. (*See* NOPR TSD chapter 5.) DOE received comments indicating that LED efficacy had improved since the August 2008 NOPR. DOE also received comments regarding the LED lighting configurations assumed in the engineering analysis for various equipment types. This caused the max-tech levels proposed in the August 2008 NOPR to change for equipment classes with lighting. In general, the max-tech levels for open equipment classes decreased and the max-tech levels for closed cases increased from the max-tech levels proposed in the August 2008 NOPR. For today's final rule, the max-tech levels for all classes are the levels provided in Table III–1.

TABLE III–1—"MAX-TECH" ENERGY USE LEVELS

Equipment class	"Max-tech" level (kWh/day)	Equipment class	"Max-tech" level (kWh/day)
VOP.RC.M	0.74 × TDA + 4.07	VCT.RC.I	0.66 × TDA + 3.05
SVO.RC.M	0.76 × TDA + 3.18	HCT.RC.M	0.16 × TDA + 0.13
HZO.RC.M	0.35 × TDA + 2.88	HCT.RC.L	0.34 × TDA + 0.26
VOP.RC.L	2.27 × TDA + 6.85	HCT.RC.I	0.4 × TDA + 0.31
HZO.RC.L	0.57 × TDA + 6.88	VCS.RC.M	0.11 × V + 0.26
VCT.RC.M	0.22 × TDA + 1.95	VCS.RC.L	0.23 × V + 0.54
VCT.RC.L	0.56 × TDA + 2.61	VCS.RC.I	0.27 × V + 0.63
SOC.RC.M	0.4 × TDA + 0.11	HCS.RC.M	0.11 × V + 0.26
VOP.SC.M	1.65 × TDA + 4.71	HCS.RC.L	0.23 × V + 0.54
SVO.SC.M	1.65 × TDA + 4.59	HCS.RC.I	0.27 × V + 0.63
HZO.SC.M	0.77 × TDA + 5.55	SOC.RC.L	0.84 × TDA + 0.22
HZO.SC.L	1.92 × TDA + 7.08	SOC.RC.I	0.99 × TDA + 0.26
VCT.SC.I	0.67 × TDA + 3.29	VOP.SC.L	4.14 × TDA + 11.82
VCS.SC.I	0.38 × V + 0.88	VOP.SC.I	5.26 × TDA + 15.02
HCT.SC.I	0.56 × TDA + 0.43	SVO.SC.L	4.15 × TDA + 11.51
SVO.RC.L	2.27 × TDA + 6.85	SVO.SC.I	5.27 × TDA + 14.63
VOP.RC.I	2.89 × TDA + 8.7	HZO.SC.I	2.44 × TDA + 9.
SVO.RC.I	2.89 × TDA + 8.7	SOC.SC.I	1.38 × TDA + 0.36
HZO.RC.I	0.72 × TDA + 8.74	HCS.SC.I	0.38 × V + 0.88

C. Energy Savings

DOE forecasted energy savings in its national energy savings (NES) analysis, through the use of an NES spreadsheet tool, as discussed in the August 2008 NOPR. 73 FR at 50078, 50101–04, 50121.

One of the criteria that governs DOE's adoption of standards for commercial refrigeration equipment is that the standard must result in "significant conservation of energy." (42 U.S.C. 6295(o)(3)(B) and 42 U.S.C. 6316(e)(1)) While EPCA does not define the term "significant," a U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (DC Cir. 1985), indicated that Congress intended "significant" energy savings in this context to be savings that were not "genuinely trivial." DOE's estimates of the energy savings for energy conservation standards at each of the trial standard levels (TSLs) in today's rule indicate that the energy savings each would achieve are nontrivial. Therefore, DOE considers these savings "significant" within the meaning of section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

As noted earlier, EPCA provides seven factors to evaluate in determining whether an energy conservation standard for commercial refrigeration equipment is economically justified. (42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Commercial Customers and Manufacturers

DOE considered the economic impact of the new commercial refrigeration equipment standards on commercial customers and manufacturers. For customers, DOE measured the economic impact as the change in installed cost and life-cycle operating costs, *i.e.*, the LCC. (*See* sections IV.E and VI.C.1.a, and chapter 8 of the TSD accompanying this notice.) DOE investigated the impacts on manufacturers through the manufacturer impact analysis (MIA). (*See* sections IV.I and VI.C.2, and chapter 13 of the TSD accompanying this notice.) The economic impact on commercial customers and manufacturers is discussed in detail in the August 2008 NOPR. 73 FR at 50078–79, 50095–50100, 50104–07, 50013–16, 50117–21, 50130–31.

b. Life-Cycle Costs

DOE considered life-cycle costs of commercial refrigeration equipment, as discussed in the August 2008 NOPR. 73 FR at 50078–79, 50095–50100, 50104, 50013–16, 50117–18. DOE calculated the sum of the purchase price and the operating expense—discounted over the lifetime of the equipment—to estimate the range in LCC benefits that commercial consumers would expect to achieve due to the standards.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA also requires DOE, in determining the economic justification of a proposed standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III) and 42 U.S.C. 6316(e)(1)) As in the August 2008 NOPR, 73 FR at 50078, 50101–04, 50121, for today's final rule DOE used the NES spreadsheet results in its consideration of total projected savings that are directly attributable to the standard levels DOE considered.

d. Lessening of Utility or Performance of Equipment

In selecting today's standard levels, DOE sought to avoid new standards for commercial refrigeration equipment that would lessen the utility or performance of that equipment. (42 U.S.C. 6295(o)(2)(B)(i)(IV) and 42 U.S.C. 6316(e)(1)) 73 FR at 50079, 50088–89, 50123.

e. Impact of Any Lessening of Competition

DOE considers any lessening of competition that is likely to result from standards. Accordingly, as discussed in the August 2008 NOPR, 73 FR at 50079, 50123, DOE requested that the Attorney General transmit to the Secretary a written determination of the impact, if any, of any lessening of competition likely to result from the proposed standards, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii) and 42 U.S.C. 6316(e)(1))

To assist the Attorney General in making such a determination, DOE provided the Department of Justice (DOJ) with copies of the August 2008 proposed rule and the TSD for review. (DOJ, No. 37 at pp. 1–2) The Attorney General's response is discussed in section VI.C.5 below, and is reprinted at the end of this rule.[5]

f. Need of the Nation To Conserve Energy

In considering standards for commercial refrigeration equipment, the Secretary must consider the need of the Nation to conserve energy. (42 U.S.C. 6295(o)(2)(B)(i)(VI) and 42 U.S.C. 6316(e)(1)) The Secretary recognizes that energy conservation benefits the Nation in several important ways. The non-monetary benefits of the standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Today's standards also will likely result in environmental benefits. As discussed in the proposed rule, DOE has considered these factors in adopting today's standards. 73 FR 50074, 50079, 50108, 50123–26, 50132.

g. Other Factors

EPCA directs the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 42 U.S.C. 6316(e)(1)) In adopting today's standard, DOE considered the LCC impacts on the commercial refrigeration equipment of independent, small grocery/convenience store businesses. Compared to the impact of standards on the overall market for commercial refrigeration equipment, the impact of standards on these businesses might be disproportionate because these businesses experience both higher discount rates and lack of access to national account equipment purchases. 73 FR 50079, 50104, 50117–18.

2. Rebuttable Presumption

Section 325(o)(2)(B)(iii) of EPCA states that there is a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard level is less than three times the value of the first-year energy (and as applicable water) savings resulting from the standard, as calculated under the applicable DOE test procedure. (42 U.S.C. 6295(o)(2)(B)(iii) and 42 U.S.C. 6316(e)(1)) DOE's LCC and payback period (PBP) analyses generate values that calculate the payback period for consumers of potential energy conservation standards, which includes, but is not limited to, the three-year payback period contemplated under the rebuttable presumption test discussed above. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the consumer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

IV. Methodology and Discussion of Comments on Methodology

DOE used several analytical tools that it developed previously and adapted for use in this rulemaking. One is a spreadsheet that calculates LCC and PBP. Another tool calculates national energy savings and national NPV. DOE also used the Government Regulatory Impact Model (GRIM), along with other methods, in its MIA. Finally, DOE developed an approach using the National Energy Modeling System (NEMS) to estimate impacts of energy efficiency standards for commercial refrigeration equipment on electric utilities and the environment. The TSD appendices discuss each of these analytical tools in detail. 73 FR 50079–108.

As a basis for this final rule, DOE has continued to use the spreadsheets and approaches explained in the August 2008 NOPR. DOE used the same general methodology as applied in the August 2008 NOPR, but revised some of the assumptions and inputs for the final rule in response to stakeholder comments. The following paragraphs discuss these revisions.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the equipment concerned, including the purpose of the equipment, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. DOE presented various subjects in the market and technology assessment for this rulemaking. (*See* the August 2008 NOPR and chapter 3 of the NOPR TSD.) These include equipment definitions, equipment classes, manufacturers, quantities and types of equipment sold and offered for sale, retail market trends, and regulatory and nonregulatory programs.

1. Definitions Related to Commercial Refrigeration Equipment

a. Air-Curtain Angle Definition

For equipment without doors, an air curtain divides the refrigerated compartment from the ambient space. DOE proposed the following definition of air-curtain angle in the August 2008 NOPR that is consistent with the industry-approved standards: ''Air-curtain angle means: (1) For equipment without doors and without a discharge air grille or discharge air honeycomb, the angle between a vertical line extended down from the highest point on the manufacturer's recommended load limit line and the load limit line itself, when the equipment is viewed in cross-section; and (2) For all other equipment without doors, the angle formed between a vertical line and the straight line drawn by connecting the point at the inside edge of the discharge air opening with the point at the inside edge of the return air opening, when the equipment is viewed in cross-section.'' 73 FR 50080; 50135. DOE did not receive any additional comments on the definition of air-curtain angle in response to the August 2008 NOPR; thus, DOE is adopting these definitions as proposed.

b. Door Angle Definition

The door orientation affects the energy consumption of equipment with doors. This equipment can be broadly categorized by the angle of the door. In the August 2008 NOPR, DOE proposed the following definition of door angle: ''(1) For equipment with flat doors, the angle between a vertical line and the

[5] A notation in the form ''DOJ, No. 37 at pp. 1–2'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to (1) a comment submitted by the Department of Justice (DOJ), (2) in document number 37 in the docket of this rulemaking, and (3) appearing on pages 1 and 2 of document number 37.

line formed by the plane of the door, when the equipment is viewed in cross-section; and (2) For equipment with curved doors, the angle formed between a vertical line and the straight line drawn by connecting the top and bottom points where the display area glass joins the cabinet, when the equipment is viewed in cross-section.'' 73 FR 50080; 50135. DOE did not receive any additional comments on the definition of door angle in response to the August 2008 NOPR; thus, DOE is adopting the definition as proposed.

c. Ice-Cream Freezer Definition

During the NOPR public meeting, interested parties expressed concern about the definition of an ''ice-cream freezer'' as used in this rulemaking. Hussman stated that using the term ''ice cream'' to refer to a temperature range might be confusing because ice cream is also a product. (Hussman, Public Meeting Transcript, No. 27 at p. 15) [6] Southern Store Fixtures expressed a similar concern, adding that other types of frozen items, such as frozen juice, may be displayed in ice-cream type cases. (Southern Store Fixtures, Public Meeting Transcript, No. 27 at p. 18)

As described in the July 2007 ANOPR, the EPCA provision that required this rulemaking identifies specifically the categories ''ice-cream freezers,'' ''self-contained commercial refrigerators, freezers, and refrigerator-freezers without doors,'' and ''remote condensing commercial refrigerators, freezers, and refrigerator-freezers.'' (42 U.S.C. 6313(c)(4)(A), added by EPACT 2005, section 136(c)) Because the term ''ice-cream freezers'' was specified in EPCA, the term ''ice cream'' is appropriate to describe that specific equipment category in this rulemaking, and DOE is therefore maintaining the use of that term in the rulemaking. Also, see section IV.A.2 of this final rule.

d. Equipment Configuration Definitions

The configuration of commercial refrigeration equipment affects its energy consumption and the equipment classes into which this equipment is divided. In the August 2008 NOPR, DOE proposed five definitions of equipment configurations, shown in Table IV–1. 73 FR 50081; 50135.

TABLE IV–1—EQUIPMENT CONFIGURATION DEFINITIONS

Equipment family	Description
Vertical Open (VOP)	Equipment without doors and an air-curtain angle ≥0 degrees and <10 degrees from the vertical.
Semivertical Open (SVO)	Equipment without doors and an air-curtain angle ≥10 degrees and <80 degrees from the vertical.
Horizontal Open (HZO)	Equipment without doors and an air-curtain angle ≥80 degrees from the vertical.
Vertical Closed (VC)	Equipment with hinged or sliding doors and a door angle <45 degrees.
Horizontal Closed (HC)	Equipment with hinged or sliding doors and a door angle ≥45 degrees.

DOE did not receive any additional comments on the definitions of the five configurations; thus, DOE is adopting these definitions as proposed.

e. Hybrid and Wedge Case Definitions

As stated in the August 2008 NOPR, certain types of equipment meet the definition of ''commercial refrigeration equipment'' (Section 136(a)(3) of EPACT 2005), but do not fall directly into any of the 38 equipment classes defined in the market and technology assessment. Among these types are hybrid cases and wedge cases; DOE proposed definitions for these in the August 2008 NOPR. Because DOE did not receive any additional comments on the definitions of ''commercial hybrid refrigerators, freezers, and refrigerator-freezers'' or on the definition of ''wedge case,'' DOE is adopting these definitions as proposed in section 431.62.

2. Equipment Classes

Commercial refrigerators, commercial freezers, and commercial refrigerator-freezers can be divided into various equipment classes categorized largely by physical characteristics that affect energy efficiency. Some of these characteristics delineate the categories of equipment covered by this rulemaking.[7] Most affect the merchandise that the equipment can be used to display and how the customer can access that merchandise. Key physical characteristics that affect energy efficiency are the operating temperature, the presence or absence of doors (*i.e.*, closed cases or open cases), the type of doors used (*i.e.*, transparent or solid), the angle of the door or air-curtain (*i.e.*, horizontal, semivertical, or vertical), and the type of condensing unit (*i.e.*, remote or self-contained). As discussed in the August 2008 NOPR, 73 FR 50080–83, DOE is adopting equipment classes in this rulemaking by: (1) Dividing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers into equipment families; (2) subdividing these families based on condensing unit configurations and rating temperature designations; and (3) identifying the resulting classes that are within each of the three equipment categories covered by this rulemaking. Because DOE did not receive any comments in response to the presentation of equipment classes in the August 2008 NOPR, DOE is adopting the equipment classes as proposed without further modification. Table IV–2 presents the equipment classes covered under this rulemaking, organized by the three equipment categories.

[6] A notation in the form ''Hussman, Public Meeting Transcript, No. 27 at p. 15'' identifies an oral comment that DOE received during the September 23, 2008, NOPR public meeting. This comment was recorded in the public meeting transcript in the docket for this rulemaking (Docket No. EE–2006–STD–0126), maintained in the Resource Room of the Building Technologies Program. This particular notation refers to a comment (1) made during the public meeting by Hussman; (2) recorded in document number 27, which is the public meeting transcript filed in the docket of this rulemaking; and (3) appearing on page 15 of document number 27.

[7] ''Commercial refrigerators, commercial freezers, and commercial refrigerator-freezers'' is a type of covered commercial equipment. For purposes of discussion only in this proceeding, DOE uses the term ''categories'' to designate groupings of ''commercial refrigeration equipment.'' The categories of equipment are: Self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers; and commercial ice-cream freezers. DOE will analyze specific equipment classes that fall within these general categories and set appropriate standards.

TABLE IV–2—COMMERCIAL REFRIGERATION EQUIPMENT CLASSES BY CATEGORY

Equipment category	Condensing unit configuration	Equipment family	Operating temperature (°F)	Equipment class designation
Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers.	Remote	Vertical Open	≥32	VOP.RC.M
			<32	VOP.RC.L
		Semivertical Open	≥32	SVO.RC.M
			<32	SVO.RC.L
		Horizontal Open	≥32	HZO.RC.M
			<32	HZO.RC.L
		Vertical Closed Transparent	≥32	VCT.RC.M
			<32	VCT.RC.L
		Horizontal Closed Transparent	≥32	HCT.RC.M
			<32	HCT.RC.L
		Vertical Closed Solid	≥32	VCS.RC.M
			<32	VCS.RC.L
		Horizontal Closed Solid	≥32	HCS.RC.M
			<32	HCS.RC.L
		Service Over Counter	≥32	SOC.RC.M
			<32	SOC.RC.L
Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers without Doors.	Self-Contained	Vertical Open	≥32	VOP.SC.M
			<32	VOP.SC.L
		Semivertical Open	≥32	SVO.SC.M
			<32	SVO.SC.L
		Horizontal Open	≥32	HZO.SC.M
			<32	HZO.SC.L
Commercial Ice-Cream Freezers	Remote	Vertical Open	*≤−5	VOP.RC.I
		Semivertical Open		SVO.RC.I
		Horizontal Open		HZO.RC.I
		Vertical Closed Transparent		VCT.RC.I
		Horizontal Closed Transparent		HCT.RC.I
		Vertical Closed Solid		VCS.RC.I
		Horizontal Closed Solid		HCS.RC.I
		Service Over Counter		SOC.RC.I
	Self-Contained	Vertical Open		VOP.SC.I
		Semivertical Open		SVO.SC.I
		Horizontal Open		HZO.SC.I
		Vertical Closed Transparent		VCT.SC.I
		Horizontal Closed Transparent		HCT.SC.I
		Vertical Closed Solid		VCS.SC.I
		Horizontal Closed Solid		HCS.SC.I
		Service Over Counter		SOC.SC.I

* Ice-cream freezer is defined in 10 CFR 431.62 as a commercial freezer designed to operate at or below −5 °F (−21 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.

B. Engineering Analysis

The engineering analysis develops cost-efficiency relationships to show the manufacturing costs of achieving increased efficiency. As discussed in the August 2008 NOPR, DOE used the design-option approach, involving consultation with outside experts, review of publicly available cost and performance information, and modeling of equipment cost and energy consumption. 73 FR 50083–50093. Chapter 5 of the NOPR TSD contained detailed discussion of the engineering analysis methodology. In response to the August 2008 NOPR, DOE received a number of comments on the engineering analysis methodology. These comments, and DOE's response, are detailed in the following paragraphs.

1. Approach

For the NOPR, DOE adopted a design-options approach for the engineering analysis. The methodology DOE used to perform the design-option analysis is described in detail in chapter 5 of the TSD. DOE used industry-supplied data, which were developed using an efficiency-level approach, to validate DOE data. DOE received no further comments on the design-options approach and, as a result, made no changes to this methodology for the final rule.

2. Analytical Models

a. Cost Model

In the engineering analysis, DOE establishes the relationship between manufacturer production cost and energy consumption for the commercial refrigeration equipment covered in this rulemaking. In determining this relationship, DOE estimated the incremental manufacturer production costs associated with technological changes that reduce the energy consumption of the baseline models (*i.e.*, design options).

During the NOPR public meeting, the American Council for an Energy-Efficient Economy (ACEEE) stated that DOE's method of estimating manufacturer production costs based on a snapshot analysis of available engineering options is flawed, because historical data for other building technologies show that incremental costs of complying with standards have been much lower than DOE estimated. ACEEE attributed this to manufacturers

redesigning their processes to meet new energy conservation standards. (ACEEE, Public Meeting Transcript, No. 27 at p. 28) AHRI disagreed with ACEEE and cited the residential central air-conditioner rulemaking as an example of where the actual cost of equipment was much higher than DOE estimated. (AHRI, Public Meeting Transcript, No. 27 at p. 29) However, ACEEE responded that this was because commodity prices increased dramatically for that equipment and that once this was accounted for, the observed price increase in baseline residential air-conditioner units was 2 percent lower than DOE's estimate. (ACEEE, Public Meeting Transcript, No. 27 at p. 30) Appliance Standards Awareness Project (ASAP) added that a retrospective analysis would be useful for helping DOE evaluate its model for predicting costs. (ASAP, Public Meeting Transcript, No. 27 at p. 31) ACEEE also commented that DOE's model for assessing the cost and value of energy conservation standards is flawed, because the model fails to account for manufacturer learning curves. Over time, the price of most equipment drops as more units are produced, regardless of the efficiency standards placed on them. Therefore, DOE's assumption that greater efficiency standards will cause equipment prices to increase is not valid. (ACEEE, No. 31 at p. 1) A comment submitted by representatives of ACEEE, Appliance Standards Awareness Project, Alliance to Save Energy, California Energy Commission, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Power and Conservation Council, Pacific Gas and Electric Company, Sempra Energy Utilities, and Southern California Edison (hereafter referred to as the Joint Comment) agreed with ACEEE that DOE's engineering analysis methodology should take manufacturer learning curves into account. (Joint Comment, No. 34 at p. 6)

The cost-efficiency curves that DOE presented in the NOPR TSD showed incremental costs of implementing design option changes above the baseline. The cost-efficiency curves are not intended to capture future economies of scale, or other related cost reductions that may or may not result from increased cumulative production over time. DOE acknowledges that manufacturing efficiency evolves over time, but notes that earlier trends do not necessarily reflect future trends. DOE has insufficient data to project final minimized unit costs of newer technologies. DOE believes that thorough and rigorous manufacturing cost analysis based on actual equipment at all efficiency levels represents the most effective and appropriate way to estimate current and near-term incremental manufacturing costs. Therefore, DOE has used available information on existing design options in the cost-efficiency analysis.

i. LED Price Projections

DOE estimates the economic impacts of the proposed standards based on current costs of technologically feasible energy saving design options used in commercial refrigeration equipment. One such technology, which has been a focal point in this rulemaking, is solid-state lighting (*i.e.*, LEDs). For the ANOPR, DOE based LED lighting costs on a retrofit case study, but revised its assumptions for the NOPR after gathering information from LED chip and fixture manufacturers. These changes caused the original equipment manufacturer (OEM) cost (*i.e.*, the cost to commercial refrigeration equipment manufacturers) of LED fixtures to increase for both open refrigeration cases and refrigeration cases with transparent doors. Based on these revised costs, DOE tentatively rejected TSL 5 (*i.e.*, the efficiency level where LEDs were first implemented for most equipment classes) because it was not economically feasible.

However, DOE conducted a sensitivity analysis for the NOPR to gauge the effect of expected LED price reductions. That analysis estimated NPV and LCC values for equipment classes if projected LED prices were used in DOE's analysis. DOE's Multi-Year Program Plan was used to estimate the reduction in LED chip price by 2012.[8] The sensitivity analysis used an estimated reduction in LED chip price of 80 percent by 2012, which represented a 50-percent reduction in overall LED system cost, assuming the costs of the power supply and LED fixtures did not change significantly from the values used in the engineering analysis. DOE recognized that if these projected reductions were to be realized or exceeded, the economic impacts of this standard could change significantly, possibly making higher TSLs economically justified. Therefore, in the NOPR, DOE requested comment on all aspects of the LED issue, specifically soliciting any information or data that could increase confidence in the price projections.

DOE received several comments. ASAP, Natural Resources Defense Council (NRDC), Earthjustice, and the Joint Comment all expressed support for the use of DOE LED price projections. They stated that the projections are sufficiently justified and would be a more adequate basis for the standard than the assumption that LED prices will remain constant at 2007 levels. (ASAP, No. 27 at p. 100; NRDC, Public Meeting Transcript, No. 27 at p. 105; Earthjustice, Public Meeting Transcript, No. 27 at p. 106; Joint Comment, No. 34 at p. 2) Pacific Gas and Electric Company, Southern California Edison, and Sempra Energy Utilities (Southern California Gas and San Diego Gas and Electric Company) (hereafter the California Utilities Joint Comment) suggested that the DOE projections might be too conservative. (California Utilities Joint Comment, No. 41 at p. 3) ACEEE agreed, attributing this underestimation to the exclusion of scale-dependent factors. ACEEE stated that as LED production scales up, there will be greater price reductions and increased quality in terms of reproducibility. (ACEEE, No. 31 at p. 7 and Public Meeting Transcript, No. 27 at p. 111) As evidence of the validity of DOE LED cost projections, the California Utilities Joint Comment stated that LED prices have already dropped rapidly, rendering DOE analyses based on 2007 prices obsolete. It suggested that the price of LED lighting for use in refrigeration has already fallen by roughly 10 percent since 2007. (California Utilities Joint Comment, No. 41 at p. 13) The California Utilities Joint Comment also stated that LED prices will continue to drop after 2012, a fact that should be considered in the NPV analyses. (California Utilities Joint Comment, No. 41 at p. 8)

For today's final rule, DOE updated the LED costs to represent the current cost of LEDs. DOE did not receive any data providing a greater level of confidence that LED price reductions would occur. However, LED costs have decreased and the costs used in the NOPR engineering analysis no longer represent the current cost of LEDs. While considerable information is available that suggests LED prices are likely to decline by at least as much as DOE's sensitivity analysis assumed, DOE is not using this information as the basis of its analysis due to a lack of certainty about the timing and success of LED research and product development. See section V.A.2. a for more detail on the updated LED lighting assumptions.

[8] U.S. Department of Energy, Solid-State Lighting Research and Development, Multi-Year Program Plan FY'09–FY'14. This document was prepared under the direction of a Technical Committee from the Next Generation Lighting Initiative Alliance (NGLIA). Information about NGLIA and its members is available at *http://www.nglia.org.*

ii. Material Price Projections

As discussed in the August 2008 NOPR, DOE performed a sensitivity analysis to explore the effects of future LED fixture prices on commercial refrigeration equipment prices in the engineering analysis. During the NOPR public meeting, AHRI commented that if DOE were to include LED price projections in the technical analyses, equivalent actions should be taken for other materials that also have shown recent price variability (*i.e.*, refrigerants). (AHRI, Public Meeting Transcript, No. 27 at p. 102) AHRI believes commodity prices are likely to change significantly, which would affect equipment costs and change efficiency trends. AHRI cited the potential change in costs of hydrofluorocarbon refrigerants (HFCs) if pending legislation capping those refrigerants is passed. (AHRI, No. 33 at p. 3) True Manufacturing Company (True) added that the industry is already using cheaper, less efficient substitute materials to produce heat transfer devices in response to rising copper prices. (True, Public Meeting Transcript, No. 27 at p. 104)

As stated above, DOE did not use LED price projections in the final rule due to a lack of certainty about the timing and extent to which the projections would be realized. Similarly, DOE also did not include material price projections in the final rule analysis.

b. Energy Consumption Model

The energy consumption model estimates the daily energy consumption of commercial refrigeration equipment at various performance levels using a design-options approach. The model is specific to the categories of equipment covered under this rulemaking, but is sufficiently generalized to model the energy consumption of all covered equipment classes. For a given equipment class, the model estimates the daily energy consumption for the baseline and the energy consumption of several levels of performance above the baseline. The model is used to calculate each performance level separately. For the NOPR, DOE updated its radiation load calculations by revising its assumptions for the view factor and changed its calculation method for infiltration load by replacing defrost melt-water with infiltrated air. 73 FR 50086. No comments were received in response to these changes. Therefore, DOE maintained these revised calculation methodologies for the final rule.

3. Equipment Classes Analyzed

For the final rule, DOE did not make any changes to the equipment classes directly analyzed in the NOPR engineering analysis. Table IV–3 shows the 15 equipment classes DOE directly analyzed.

TABLE IV—3 EQUIPMENT CLASSES DIRECTLY ANALYZED IN THE ENGINEERING ANALYSIS

Equipment class	Description
VOP.RC.M	Vertical Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
VOP.RC.L	Vertical Freezer without Doors with a Remote Condensing Unit, Low Temperature.
SVO.RC.M	Semivertical Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
HZO.RC.M	Horizontal Refrigerator without Doors with a Remote Condensing Unit, Medium Temperature.
HZO.RC.L	Horizontal Freezer without Doors with a Remote Condensing Unit, Low Temperature.
VCT.RC.M	Vertical Refrigerator with Transparent Doors with a Remote Condensing Unit, Medium Temperature.
VCT.RC.L	Vertical Freezer with Transparent Doors with a Remote Condensing Unit, Low Temperature.
SOC.RC.M	Service Over Counter Refrigerator with a Remote Condensing Unit, Medium Temperature.
VOP.SC.M	Vertical Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
SVO.SC.M	Semivertical Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
HZO.SC.M	Horizontal Refrigerator without Doors with a Self-Contained Condensing Unit, Medium Temperature.
HZO.SC.L	Horizontal Freezer without Doors with a Self-Contained Condensing Unit, Low Temperature.
VCT.SC.I	Vertical Ice-Cream Freezer with Transparent Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.
VCS.SC.I	Vertical Ice-Cream Freezer with Solid Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.
HCT.SC.I	Horizontal Ice-Cream Freezer with Transparent Doors with a Self-Contained Condensing Unit, Ice-Cream Temperature.

4. Wedge Cases

In the August 2008 NOPR, DOE considered remote condensing and self-contained wedge cases as covered equipment.[9] DOE proposed that the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) be measured according to the ANSI/ASHRAE Standard 72–2005 test procedure.[10] DOE also proposed that the maximum daily energy consumption (MDEC) for each model shall be the amount derived by incorporating into the standards equation for the appropriate equipment class a value for the TDA that is the product of: (1) The vertical height of the air curtain or glass (in a transparent door), and (2) the largest overall width of the case when viewed from the front. 73 FR 50113. In the NOPR, DOE sought comment regarding appropriate standard levels for wedge cases, but did not receive any comments on this specific proposal.

Hussman, Hill Phoenix, and AHRI commented that wedge cases should be excluded from this rulemaking because they are niche products that do not represent a significant part of the commercial refrigeration industry. (Hussman, No. 42 at p. 2; Hill Phoenix, No. 32 at p. 6; AHRI, No. 33 at p. 5) Hill Phoenix further states that most supermarkets and grocery stores do not use wedge cases at all, and those that do will only use a few within a store because they are much more expensive per linear foot than a standard case. (Hill Phoenix, Public Meeting Transcript, No. 27 at p. 18) Hussman further states that wedge cases use less than 0.5 percent of the total energy consumed by the supermarket industry and represent only 1.5 percent of the cases shipped. (Hussman, No. 42 at p. 2) DOE acknowledges that wedge cases are niche equipment and do not represent a significant market share in the commercial refrigeration equipment

[9] If a wedge case does not include a refrigeration component and simply serves as a miter transition piece between two other cases, then it does not meet the definition of commercial refrigeration equipment, and is not covered under this rulemaking.

[10] In the August 2008 NOPR, the test procedure cited was ANSI/ASHRAE Standard 72–2005. However, the test procedure DOE adopted into section 431.64 of 10 CFR Part 431 is ARI Standard 1200–2006, which specifically references ANSI/ASHRAE Standard 72–2005 as the method of testing commercial refrigeration equipment. 71 FR 71356 DOE notes that ARI Standard 1200–2006 would give identical test results for the measurement of energy consumption as ANSI/ASHRAE Standard 72–2005. Therefore, for today's final rule, DOE is referencing ARI Standard 1200–2006 for the measurement of CDEC and TDEC of wedge cases.

industry. However, market share is not a basis for rejecting an equipment category from consideration in the rulemaking. Therefore, DOE concludes that wedge cases are covered in this rulemaking.

Hill Phoenix and AHRI also commented that wedge cases should be excluded from this rulemaking because there are no test procedures in place to test wedges since ARI Standard 1200–2006 excludes wedges from its scope of coverage. (Hill Phoenix, No. 32 at p. 2; AHRI, No. 33 at p. 5) As stated in the July 2007 ANOPR, EPCA directs DOE to set standards for commercial refrigeration equipment (*i.e.*, the three categories of equipment identified above). Any equipment that meets the EPCA definition of a ''commercial refrigerator, freezer, or refrigerator-freezer'' and falls under one of these three categories will be covered by this rulemaking. In the December 2006 final rule, DOE incorporated by reference certain sections of ARI Standard 1200–2006 as the test procedure for commercial refrigeration equipment, but did not reference section 2.2, which provides exclusions for certain equipment such as wedge cases.[11] The equipment excluded in this section of ARI Standard 1200–2006 will only be excluded from this rulemaking if they do not meet the EPACT 2005 definition of a ''commercial refrigerator, freezer, or refrigerator-freezer.'' [12] 72 FR 41169 DOE believes that the EPACT 2005 definition of a ''commercial refrigerator, freezer, or refrigerator-freezer'' is sufficiently broad that it includes wedge cases. Therefore, DOE has concluded that wedge cases are properly covered in this rulemaking.

Hussman, Hill Phoenix, and AHRI also commented that wedge cases should be excluded from this rulemaking because they do not function effectively and cannot be tested as a stand-alone merchandiser since they require straight cases of the same model on either side. This configuration makes accurate performance testing of wedges nearly impossible and no specific testing guidelines for wedges exist within ANSI/ASHRAE Standard 72–2005 or ANSI/ARI Standard 1200–6006. (Hussman, No. 42 at p. 2; Hill Phoenix, No. 32 at p. 6; AHRI, No. 33 at p. 5) DOE acknowledges that there is no specific guidance in the ANSI/ASHRAE Standard 72–2005 or ARI Standard 1200–2006 test procedures that addresses the proper operation of wedge cases. However, DOE believes that wedge cases are not significantly different from normal display cases used in between other display cases (*i.e.*, cases within a display case line-up) in terms of operation and the ability to be tested. A wedge case and a normal case within a display case line-up both have display cases adjacent to them in normal operation and do not have end panels installed on their sides. DOE expects that wedge cases and cases within a display case line-up should be tested in the same manner under the test procedure.

Hussman and Hill Phoenix also commented that wedge cases should be excluded from this rulemaking because the TDA for inside wedges approaches zero. Therefore, standards for such cases are not meaningful because the TDA in the standards equation is zero. (Hussman, Public Meeting Transcript, No. 27 at p. 16; Hill Phoenix, Public Meeting Transcript, No. 27 at p. 19) As stated above, DOE proposed language in the August 2008 NOPR to specifically address the TDA issue of wedge cases. DOE proposed that for remote condensing and self-contained wedge cases, the CDEC or TDEC shall be measured according to the ANSI/ASHRAE Standard 72–2005 Test Procedure. DOE also proposed that the MDEC for each model shall be the amount derived by incorporating into the standards equation for the appropriate equipment class a value for the TDA that is the product of: (1) The vertical height of the air curtain or glass (in a transparent door), and (2) the largest overall width of the case, when viewed from the front.[10] 73 FR 50113. (See section VI.A.1.) This procedure is conservative because it allows for the widest horizontal dimension of the display case to be used in determining TDA. That is, using this procedure, the standards for a wedge case would be less stringent than a normal display case, in the same equipment class, of equal refrigerated volume.

If a manufacturer finds that meeting the standard for wedge cases would cause hardship, inequity, or unfair distribution of burdens, the manufacturer may petition OHA for exception relief or exemption from the standard pursuant to OHA's authority under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. OHA has the authority to grant such relief on a case-by-case basis if it determines that a manufacturer has demonstrated that meeting the standard would cause hardship, inequity, or unfair distribution of burdens.

5. Ice-Cream Freezers—Temperature Range

In the test procedure final rule for commercial refrigeration equipment, DOE established the definition of ice-cream freezer as ''a commercial freezer that is designed to operate at or below −5 °F (−21 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.'' 71 FR 71369–70. DOE incorporated the test procedure into its regulations in 10 CFR 431.62. Under this definition, unless equipment is designed, marketed, or intended specifically for the storage, display or dispensing of ice cream, it would not be considered an ice-cream freezer. For example, multi-purpose commercial freezers manufactured for storing and displaying frozen foods in addition to ice cream and designed to operate at or below −5 °F (−21 °C) would not meet this definition. Thus, DOE would not treat them as commercial ice-cream freezers in this rulemaking. However, any commercial freezer that is specifically manufactured for storing, displaying, or dispensing ice cream and is designed for normal operation at or below −5 °F would meet the definition. Other equipment that meet the definition include freezers designed to operate considerably below −5 °F and are specifically designed for ice cream storage (*e.g.*, ''hardening'' cabinets), as well as ice-cream dipping cabinets designed to operate below −5 °F. For the NOPR, DOE expanded the definition used to categorize a unit's rating temperature by including a specific operating temperature range for medium-temperature, low-temperature, and ice-cream temperature applications.

Hill Phoenix and AHRI commented on the proposed temperature ranges for low-temperature and ice-cream temperature freezers. Hill Phoenix, in agreement with AHRI, stated that the operating range for low-temperature

[11] ARI Standard 1200–2006 refers to wedge cases as ''miter transition display merchandisers used as a corner section between two refrigerated display merchandisers.''

[12] ''(9)(A) The term 'commercial refrigerator, freezer, and refrigerator-freezer' means refrigeration equipment that—

(i) Is not a consumer product (as defined in section 321of EPCA [42 U.S.C. 6291(1)]);

(ii) Is not designed and marketed exclusively for medical, scientific, or research purposes;

(iii) Operates at a chilled, frozen, combination chilled and frozen, or variable temperature;

(iv) Displays or stores merchandise and other perishable materials horizontally, semivertically, or vertically;

(v) Has transparent or solid doors, sliding or hinged doors, a combination of hinged, sliding, transparent, or solid doors, or no doors;

(vi) Is designed for pull-down temperature applications or holding temperature applications; and

(vii) Is connected to a self-contained condensing unit or to a remote condensing unit.'' (42 U.S.C. 6311(9)(A))

cases should be changed to less than 32 °F and greater than −15 °F, and the operating range for ice-cream temperature cases be changed to less than or equal to −15 °F. Hill Phoenix and AHRI stated that freezers that operate below −15 °F are constructed differently than cases that operate in the −5 °F to −10 °F range. Hill Phoenix stated that DOE's current temperature range designations would require freezers that operate in the −5 °F to −10 °F range to be rated at −15 °F. (Hill Phoenix, No. 32 at p. 4; AHRI, No. 33 at p. 4)

As previously stated, ice-cream freezers are defined by the test procedure, which states that an ice-cream freezer is ''a commercial freezer that is designed to operate at or below −5 °F (−21 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.'' 71 FR 71369; 10 CFR 431.62. Based on the comments from AHRI and Hill Phoenix discussed above, DOE is modifying the operating temperature ranges used to define each type of equipment from the temperature ranges that were used in the NOPR. For today's final rule, DOE is organizing equipment classes based on the three operating temperature ranges shown in Table IV–4. For today's final rule, DOE will continue to classify equipment as medium temperature (refrigerators), low temperature (freezers), or ice-cream temperature (ice-cream freezers). Furthermore, DOE maintains the required rating temperatures as specified in the test procedure final rule: 38 °F (±2 °F) for commercial refrigerators and refrigerator compartments, 0 °F (±2 °F) for commercial freezers and freezer compartments, and −15 °F (±2 °F) for commercial ice-cream freezers. 71 FR 71370.

TABLE IV–4—RATING TEMPERATURE DESIGNATIONS

Operating temperature (°F)	Rating temperature (°F)	Description
≥32 (M)	38	Medium temperature (refrigerators).
<32 (L)	0	Low temperature (freezers).
≤−5 (I)*	−15	Ice-cream temperature (ice-cream freezers).

* Ice-cream freezer is defined in 10 CFR 431.62 as a commercial freezer that is designed to operate at or below −5 °F (−21 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.

6. Special Application Temperature Cases

After the NOPR public meeting, DOE received comments on including ''application temperatures'' for commercial refrigeration equipment. These are rating temperatures other than the standard rating temperatures. Hill Phoenix stated that some refrigerated cases are designed for and operate at medium temperature and hold foods with temperature requirements that tend to range from 10 °F to 20 °F. These cases are not designed to operate at the rating temperature of 0 °F. Hill Phoenix also stated that the cases would have to be redesigned to operate at the rating temperature, which would cause them to consume more energy. Therefore, Hill Phoenix recommended that this type of product be tested using the application temperature at which the product is designed to perform, but be required to meet the low-temperature standard. (Hill Phoenix, No. 32 at p. 4) AHRI concurred with Hill Phoenix, recommending that any case designed specifically to hold products at temperatures higher than the rating temperature specified for that class be tested at its application temperature and must meet the energy standards of that class. (AHRI, No. 33 at p. 5) However, the Joint Comment cautioned that rating specialty cases at application temperatures could create loopholes allowing equipment to be tested at an application temperature different from the temperature at which the equipment is designed to operate in the field. (Joint Comment, No. 34 at p. 4)

In the test procedure final rule for commercial refrigeration equipment, DOE adopted ARI Standard 1200–2006 as the DOE test procedure for commercial refrigeration equipment. 71 FR 71340, 71369–70; 10 CFR 431.63–431.64. ANSI/ARI Standard 1200–2006 contains rating temperature specifications of 38 °F (±2 °F) for commercial refrigerators and refrigerator compartments, and 0 °F (±2 °F) for commercial freezers and freezer compartments. In the test procedure final rule, DOE also adopted a −15 °F (±2 °F) rating temperature for commercial ice-cream freezers. 71 FR 71370.

Requiring manufacturers to test special application cases at one of the three specified standard rating temperatures (38 °F, 0 °F, and − 15 °F) instead of at their corresponding application temperature could result in higher energy consumption for these cases if they have to be redesigned for testing at the standard rating temperature. However, DOE agrees with the Joint Comment that allowing such special application cases to be tested at an application temperature that is different from the temperature at which the equipment is designed to operate in the field could create loopholes. Therefore, DOE is maintaining the requirement that all equipment must be tested at one of the three specified standard rating temperatures adopted by DOE in the test procedure final rule. In the example from Hill Phoenix, the equipment is classified as a medium-temperature unit, but the equipment is designed to operate below 32 °F and above −5 °F, thus categorizing it as a low-temperature unit under today's final rule. Because it is a low-temperature unit, it is required to be tested at 0 °F (±2 °F).

Any manufacturer that is unable to test such equipment at its designated rating temperature must request a test procedure waiver from DOE under the provisions described in 10 CFR 431.401. If the manufacturer believes that meeting the standard would cause hardship, inequity, or unfair distribution of burdens, it may petition OHA for exception relief from the energy conservation standard pursuant to OHA's authority under section 504 of the DOE Organization Act (42 U.S.C. 7194), as implemented at subpart B of 10 CFR part 1003. However, the majority of equipment covered by this rulemaking can be tested using the three specified rating temperatures provided in the test procedure.

7. Coverage of Remote Condensing Units

In the framework document, ANOPR, and NOPR, DOE considered energy conservation standards that covered only the refrigerated cases of remote condensing commercial refrigeration equipment, and not the remote condensing unit. DOE cited language in EPACT 2005's definitions for ''self

contained condensing unit'' and ''remote condensing unit'' as a justification for this approach. DOE believes that, by definition, the remote condensing units that support remote condensing refrigeration equipment are not considered an ''integral part'' of the refrigeration equipment. (EPACT 2005, Section 136(a)(3)) As a result, DOE stated in the August 2008 NOPR that remote condensing units would not be considered in this rulemaking.

For the NOPR, the Joint Comment stated that the scope of this rulemaking should not be limited to the refrigerated cabinets or display cases of remote condensing systems. According to the Joint Comment, regulating the remote condensing units supporting these cabinets has a significant potential to save energy because these units account for 90 percent of the total capacity of commercial refrigeration equipment subject to this rulemaking. (Joint Comment, No. 34 at p. 7)

As stated in the framework document and the July 2007 ANOPR, DOE does not believe that the remote condensing units of remote condensing refrigeration equipment systems are considered part of the equipment to which they are connected. EPCA defines a ''self-contained condensing unit,'' in part, as an ''assembly of refrigerating components that is an integral part of the refrigerated equipment * * *'' (42 U.S.C. 6311(9)(F), added by EPACT 2005, section 136(a)(3)). EPCA also defines a ''remote condensing unit,'' in part, as an ''assembly of refrigerating components that is remotely located from the refrigerated equipment * * *'' (42 U.S.C. 6311(9)(E), added by EPACT 2005, section 136(a)(3)) The EPCA definition of remote condensing unit implies that the remote condensing unit is not part of the refrigeration equipment because it refers to the unit and the refrigeration equipment as separate entities. A remote condensing unit functions as a supplement to remote condensing refrigeration equipment, but is not an ''integral part.'' Therefore, energy conservation standards for remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers apply only to the refrigerated equipment (*i.e.*, storage cabinets and display cases), but not to the remote condensing units. For the final rule, DOE maintains that the energy conservation standards set for remote condensing commercial refrigeration equipment only apply to display cases, not to the remote condensing units.

However, DOE has the authority to classify industrial or commercial equipment as covered under EPCA section 341(a) and (b), if classification is ''necessary'' to improve the efficiency of industrial equipment (which includes commercial refrigeration equipment) in order to conserve energy. (42 U.S.C. 6312(a) and (b)) If DOE were to add remote condensing units as covered equipment, DOE would undertake a separate rulemaking process to consider standards for these products in accordance with EPCA section 341(a) and (b).

8. Regulating Secondary Cooling Applications

In the framework document, DOE decided to exclude equipment designed for secondary coolant applications. DOE's interpretation of the EPACT 2005 definitions of ''commercial refrigerator, freezer, and refrigerator-freezer'' was consistent with the ARI Standard 1200–2006, which explicitly excludes secondary coolant applications. Following the framework document, many interested parties, including ARI, Southern Company, and EEI, agreed with the exclusion of secondary coolant applications in this rule because of their insignificant presence in the market and the complexity of modifying the test procedure to accommodate them. ACEEE, on the other hand, commented that DOE should have a broad scope of coverage and should, in general, cover as much as possible in the rulemaking. 72 FR 41171.

After considering the framework comments, DOE decided to continue to exclude secondary coolant applications from this rulemaking in the July 2007 ANOPR. Following the ANOPR, commercial refrigeration manufacturers expressed concerns that the exclusion of secondary coolant systems could provide a loophole if customers purchased these lower efficiency systems instead of regulated direct expansion equipment. 73 FR 50106. For the NOPR, the Joint Comment restated that DOE should consider secondary coolant applications in its analysis. (Joint Comment, No. 34 at p. 8)

Section 340(9)(A)(vii) of EPCA (42 U.S.C. 6311(9)(A)(vii), added by EPACT 2005, section 136(a)(3)) states that the terms commercial refrigerator, freezer, and refrigerator-freezer refer to equipment that is connected to a self-contained condensing unit or to a remote condensing unit. DOE maintains that this language excludes secondary coolant applications from coverage in this rulemaking because such applications are not directly connected to self-contained or remote condensing units. 72 FR 41171. For this reason, DOE is excluding secondary coolant applications from this rule.

C. Markups To Determine Equipment Price

In the August 2008 NOPR, DOE explained how it developed the distribution channel markups it used. 73 FR 50093–95. DOE did not receive comments on these markups. However, DOE updated the distribution channel markups by including 2008 sales tax data, and updated the markups for commercial refrigeration equipment wholesalers using 2008 financial data. DOE used these markups, along with sales taxes, installation costs, and manufacturer selling prices (MSPs) developed in the engineering analysis, to arrive at the final installed equipment prices for baseline and higher efficiency commercial refrigeration equipment. As explained in the August 2008 NOPR, 73 FR 50093–95, DOE defined three distribution channels for commercial refrigeration equipment to describe how the equipment passes from the manufacturer to the customer. DOE developed market shares by distribution channel for remote condensing and self-contained equipment. DOE retained the same distribution channel market shares described in the August 2008 NOPR.

The new overall baseline and incremental markups for sales to supermarkets within each distribution channel are shown in Table IV–5, Table IV–6, Table IV–7, and Table IV–8. Chapter 6 of the TSD provides additional details on markups.

TABLE IV–5—BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SELF-CONTAINED EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.370	2.082	1.185	1.564
Sales Tax	1.069	1.069	1.069	1.069

TABLE IV–5—BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SELF-CONTAINED EQUIPMENT IN SUPERMARKETS—Continued

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Overall Markup	1.465	2.226	1.267	1.672

TABLE IV–6—BASELINE MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR REMOTE CONDENSING EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.370	2.082	1.185	1.347
Sales Tax	1.069	1.069	1.069	1.069
Overall Markup	1.465	2.226	1.267	1.440

TABLE IV–7—INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR SELF-CONTAINED EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.114	1.370	1.057	1.186
Sales Tax	1.069	1.069	1.069	1.069
Overall Markup	1.191	1.465	1.130	1.268

TABLE IV–8—INCREMENTAL MARKUPS BY DISTRIBUTION CHANNEL INCLUDING SALES TAX FOR REMOTE CONDENSING EQUIPMENT IN SUPERMARKETS

	Wholesaler	Mechanical contractor (includes wholesaler)	National account (manufacturer-direct)	Overall
Distributor(s) Markup	1.114	1.370	1.057	1.112
Sales Tax	1.069	1.069	1.069	1.069
Overall Markup	1.191	1.465	1.130	1.189

D. Energy Use Characterization

The energy use characterization estimates the annual energy consumption of commercial refrigeration equipment systems (including remote condensing units). This estimate is used in the subsequent LCC and PBP analyses (chapter 8 of the TSD) and NIA (chapter 11 of the TSD). For the August 2008 NOPR, DOE estimated the energy consumption of the 15 equipment classes analyzed in the engineering analysis (chapter 5 of the NOPR TSD) using the relevant test procedure. DOE then validated these energy consumption estimates with annual whole-building simulation modeling of selected equipment classes and efficiency levels. 73 FR 50095. For the final rule analyses, DOE used the same methodology to estimate the annual energy consumption of commercial refrigeration systems presented in the August 2008 NOPR. *See* chapter 7 of the TSD for additional detail on the energy use characterization.

DOE assumed for the energy analysis 24-hour operation of case lighting based on input received during the ANOPR. The California Utilities Joint Comment stated that while many grocers in California may shut down case lighting for 8 hours per day, national trends may be closer to 24-hour operation. (California Utilities Joint Comment, No. 41 at p. 12) The California Utilities Joint Comment also indicated that LED lighting may be more likely to be controlled on and off during the operational day or dimmed based on motion sensors, and that this can be done without the risk of moisture or startup problems common to fluorescent fixtures. They further speculated that retailers would take advantage of these LED characteristics through different operational scenarios. (California Utilities Joint Comment, No. 41 at p. 12) However, they provided no data to indicate the likelihood of a different LED usage profile, and did not provide costs to implement automatic or manual control to support this comment. While the potential for additional lighting controls exists and LEDs may offer additional controllability, the actual likelihood and costs of implementation are unknown. As a result, DOE did not change its default assumption of 24-hour operation based on these comments. Additional detail on the energy use characterization can be found in chapter 7 of the TSD.

E. Life-Cycle Cost and Payback Period Analyses

In response to the requirements of section 325(o)(2)(B)(i) of EPCA, DOE conducted LCC and PBP analyses to evaluate the economic impacts of possible new commercial refrigeration equipment standards on individual customers. DOE used the same spreadsheet models to evaluate the LCC

and PBP as it used for the NOPR; however, DOE updated certain specific inputs to the models. Details of the spreadsheet model and of all the inputs to the LCC and PBP analyses are in TSD chapter 8. DOE conducted the LCC and PBP analyses using a spreadsheet model developed in Microsoft Excel for Windows 2003.

The LCC is the total cost for a unit of commercial refrigeration equipment over the life of the equipment, including purchase and installation expense and operating costs (energy expenditures and maintenance). To compute the LCC, DOE summed the installed price of the equipment and its lifetime operating costs discounted to the time of purchase. The PBP is the change in purchase expense due to a given energy conservation standard divided by the change in first-year operating cost that results from the standard. DOE expresses PBP in years. DOE measures the changes in LCC and in PBP associated with a given energy use standard level relative to a base case equipment energy use. The base case forecast reflects the market in the absence of mandatory energy conservation standards.

The data inputs to the PBP calculation are the purchase expense (otherwise known as the total installed customer cost or first cost) and the annual operating costs for each selected design. The inputs to the equipment purchase expense were the equipment price and the installation cost, with appropriate markups. The inputs to the operating costs were the annual energy consumption, the electricity price, and the repair and maintenance costs. The PBP calculation uses the same inputs as the LCC analysis but, because it is a simple payback, the operating cost is for the year the standard takes effect, assumed to be 2012. For each efficiency level analyzed, the LCC analysis required input data for the total installed cost of the equipment, the operating cost, and the discount rate.

Table IV–9 summarizes the inputs and key assumptions DOE used to calculate the economic impacts of various energy consumption levels on customers. Equipment price, installation cost, and baseline and standard design selection affect the installed cost of the equipment. Annual energy use, electricity costs, electricity price trends, and repair and maintenance costs affect the operating cost. The effective date of the standard, the discount rate, and the lifetime of equipment affect the calculation of the present value of annual operating cost savings from a proposed standard. Table IV–9 also shows how DOE modified these inputs and key assumptions for the final rule, relative to the August 2008 NOPR. The changes in the input data and the discussion of the overall approach to the LCC analysis are provided in chapter 8 of the TSD.

TABLE IV–9—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES

Input	NOPR description	Changes for final rule
Baseline Manufacturer Selling Price.	Price charged by manufacturer to either a wholesaler or large customer for baseline equipment. Developed by using industry-supplied efficiency level data and a design option analysis.	Data reflect updated engineering analysis.
Standard-Level Manufacturer Selling Price Increases.	Incremental change in manufacturer selling price for equipment at each of the higher efficiency standard levels. Developed by using a combination of energy consumption level and design option analyses.	Data reflect updated engineering analysis.
Markups and Sales Tax	Associated with converting the manufacturer selling price to a customer price (chapter 6 of TSD). Developed based on product distribution channels and sales taxes.	Markups updated based on revised data on sales tax and wholesaler financial data.
Installation Price	Cost to the customer of installing the equipment. This includes labor, overhead, and any miscellaneous materials and parts. The total installed cost equals the customer equipment price plus the installation price. Installation cost data provided by industry comment.	No change.
Equipment Energy Consumption.	Site energy use associated with the use of commercial refrigeration equipment, which includes only the use of electricity by the equipment itself. Taken from engineering analysis and validated in energy use characterization. (chapter 7 of the TSD).	Data reflect updated engineering analysis for each efficiency level.
Electricity Prices	Established average commercial electricity price ($/kWh) from EIA data for 2007, in 2007$. DOE then established scaling factors for commercial refrigeration equipment consumers based on the 2003 *Commercial Building Energy Consumption Survey*.	No change.
Electricity Price Trends	Used the *AEO2007* reference case to forecast future electricity prices and extrapolated prices to 2042.	Updated to *AEO2008*.
Maintenance Costs	Labor and material costs associated with maintaining the commercial refrigeration equipment (*e.g.*, cleaning heat exchanger coils, checking refrigerant charge levels, lamp replacement). Estimated from data in RS Means Facilities Maintenance and Repair Cost Data.[13] Also considered lighting types and configurations for the refrigeration equipment.	No change in methodology; however, LED fixture replacement costs reflect updated engineering analysis costs by equipment class.

[13] RS Means Company, Inc., 2006. Means Costworks 2006: Facility Maintenance & Repair Cost Data. Kingston, Massachusetts.

TABLE IV–9—SUMMARY OF INPUTS AND KEY ASSUMPTIONS USED IN THE LCC AND PBP ANALYSES—Continued

Input	NOPR description	Changes for final rule
Repair Costs	Labor and material costs associated with repairing or replacing components that have failed. Estimated based on replacement frequencies and costs for key components.	No change in methodology from NOPR. Repair costs reflect estimates of individual component life and cost to replace. Repair costs increase with increasing component costs.
Equipment Lifetime	Age at which the commercial refrigeration equipment is retired from service. Used an average lifetime of 10 years for large grocery and multi-line retailers and an average lifetime of 15 years for small grocers and convenience stores.	No change.
Discount Rate	Computed by estimating the cost of capital for companies that purchase refrigeration equipment using business financial data from the Damodaran Online database.	Updated based on data available in the 2008 version of the Damodaran Web site.
Rebound Effect	A rebound effect was not taken into account in the LCC analysis.	No change.

The changes in the input data and the discussion of the overall approach to the LCC analysis are provided in chapter 8 of the TSD.

In response to the NOPR, DOE received comments on two key issues affecting the LCC analysis: electricity price forecasts and lighting maintenance costs. Regarding electricity price forecasts, ACEEE asked DOE to confirm whether the Energy Information Administration (EIA) electricity price forecasts take into account well-documented regulatory-based changes in electricity prices and are not just based on responses to fuel cost forecasts. (ACEEE, Public Meeting Transcript, No. 27 at p. 82) In response, DOE notes that the EIA electricity price forecasts are developed through NEMS modeling and rely on a comprehensive series of supply- and demand-based modules integrated to capture the market dynamics for various energy sources, including oil, coal, and natural gas. These models also capture a wide range of consumption purposes, including such events as changes in the price and supplies of fossil fuels, developments in electricity markets, likely improvements in technology, and the impact of economic growth and various other regulatory impacts that affect market electricity prices. NEMS is regularly used to provide analyses to Congress and DOE. DOE believes that NEMS does attempt to capture many known regulatory changes.

The Joint Comment stated that DOE should use forecasts for electricity prices other than the Annual Energy Outlook (*AEO*), and that electricity price mitigation effects of the proposed standard must be documented. (Joint Comment, No. 34 at p. 6) This comment addresses both the LCC and NIA analyses. While DOE considers *AEO2008* reference case forecasts in its central case fuel price scenario, DOE reviewed LCC and PBP results based on both the *AEO2008* high price and low price electricity forecasts and discusses the resulting differences in the TSD. While the Joint Comment suggests that DOE consider other forecasts, it does not point to specific forecast sources or provide justification for the selection or weighting of one forecast over the other. The *AEO2008* high price forecast used in the commercial refrigeration equipment analysis provides sufficient insight into probable commercial electricity price variation based on existing data and current regulatory schemes.

DOE considered reporting electricity price impacts but found that the uncertainty of price projections, together with the fairly small impact of the standards relative to total electricity demand, makes these price changes highly uncertain. As a result, they should not be weighed heavily in the decision about the standard level. Given the current complexity of utility regulation in the United States (with significant variances among states), it does not seem appropriate to attempt to measure impacts on infrastructure costs and prices where there is likely to be significant overlap.

DOE develops estimates for repair and maintenance costs for commercial refrigeration equipment in the LCC analysis. In the August 2008 NOPR, DOE assumed that maintenance costs are constant and do not vary with time. AHRI commented that the costs of maintenance do not remain constant, as the cost of HFC refrigerants is expected to increase by 300 percent to 400 percent over the next decade. (AHRI, No. 33 at p. 6) DOE recognizes that refrigerant costs may increase. For remote condensing equipment, leakage during maintenance occurs throughout the entire refrigeration system, including store refrigeration piping and remote condensing units, and is expected to be approximately the same for all standard levels since little refrigerant is stored in the evaporator coils of remote-condensing commercial refrigeration equipment. The law also requires that any HFC refrigerant removed during maintenance must be captured (recovered), and in supermarkets it is often reused within the supermarket chain. 69 FR 11946. Any loss of refrigerant during maintenance is essentially the same at all standard levels analyzed, and therefore does not affect the results of DOE's LCC or NPV analysis. In self-contained equipment, the refrigeration system is sealed and little leakage is expected to occur over the life of the equipment. Consequently, DOE did not revise the maintenance costs from the NOPR to account for future changes in refrigerant costs.

DOE also included in the maintenance costs the cost of necessary lighting component replacements over the life of the commercial refrigeration equipment. DOE received comments on the lighting maintenance costs assumption for LED lamp fixtures. The California Utilities Joint Comment cited evidence from recent assessments, as well as the physical properties of LEDs, suggesting that 50,000 hours is likely a conservative estimate. Fixtures may actually be replaced less frequently than the 5.7 years assumed in the NOPR analysis. (California Utilities Joint Comment, No. 41 at pp. 10–11) The comment noted that the LED light output degrades over time and the amount of degradation is a function of the junction temperature of the LED. Reducing the junction temperature can result in increased time to failure.

While DOE agrees with this assessment, the brightness of a particular LED chip and the corresponding heat rejection and

junction temperature are largely a function of power supplied by the LED driver circuitry. As such, manufacturers of LED fixtures can trade off brightness, total fixture cost, and design life for LED fixtures designed for commercial refrigeration equipment applications. The LED manufacturer equipment specification sheets that DOE examined for the final rule provide for a 50,000-hour life for the known commercial refrigeration equipment applications. Due to the recent availability of LED fixtures for use with commercial refrigeration equipment, there are few instances of installed LED light fixtures in this equipment exceeding the 50,000-hour specification. Therefore, DOE did not modify its LED fixture replacement cycle assumptions beyond the manufacturers' estimated life.

DOE also received comments on using a rebuttable presumption payback period to establish the economic justification of an energy conservation standard level. Earthjustice commented that DOE does not provide any rationale for why it did not use or does not plan to use the rebuttable presumption payback period analysis to set the trial standard level for these products. Earthjustice stated that Congress specifically provided that once the rebuttable presumption payback period is satisfied for a trial standard level, no further economic justification would be necessary for DOE's selection of that TSL as the final standard. (Earthjustice, Public Meeting Transcript, No. 27 at p. 88) The Joint Comment also stated that DOE should give greater consideration to the rebuttable presumption payback period when selecting an appropriate standard level, reflecting the intent of Congress in 42 U.S.C. section 6295(o)(2)(B)(iii) that the highest standard level with a 3-year payback constitutes the presumptive lowest standard level that DOE must adopt. (Joint Comment, No. 34 at pp. 3–4)

DOE does consider both the rebuttable presumption payback criteria, as well as a full analysis including all seven relevant statutory criteria under 42 U.S.C. 6295(o)(2)(B)(i), when examining potential standard levels. DOE believes that the commenters may be misinterpreting the statutory provision in question. Earthjustice presents one possible reading of an ambiguous provision (*i.e.*, that DOE need not look beyond the results of the rebuttable presumption inquiry), but DOE believes that such an approach is neither required nor appropriate, because it could ask the agency to ignore other relevant information that would affect the selection of the most stringent standard level that meets all applicable statutory criteria. The commenter's interpretation would essentially restrict DOE from being able to rebut the findings of the preliminary presumptive analysis. However, the statute contains no such restriction, and such an approach would hinder DOE's efforts to base its regulations on the best available information.

Similarly, DOE believes that the Joint Comment misreads the statute in calling for a level that meets the rebuttable presumption test to serve as a minimum level when setting the final energy conservation standard. To do so would not only eliminate the ''rebuttable'' aspect of the presumption but would also lock in place a level that may not be economically justified based on the full complement of statutory criteria. DOE is already obligated under EPCA to select the most stringent standard level that meets the applicable statutory criteria, so there is no need to tie the same requirement to the rebuttable presumption.

DOE also received a comment supporting its selection of commercial refrigeration equipment lifetimes. For the NOPR, DOE determined the lifetime of commercial refrigeration equipment by consulting industry experts, other interested parties, and literature on equipment lifetimes. The Joint Comment stated that DOE's assumptions in the NOPR regarding product life are reasonable. (Joint Comment, No. 34 at p. 2) Therefore, DOE has maintained the NOPR assumptions regarding product life for the final rule.

F. Shipments Analysis

The shipments analysis develops future shipments for each class of commercial refrigeration equipment based on current shipments and equipment life assumptions, and takes into account the existing stock and expected growth of buildings using commercial refrigeration equipment. DOE received no comments on the shipments analysis or the resulting shipments during the NOPR. Therefore, DOE used the same shipments model for the final rule analysis as the NOPR.

G. National Impact Analysis

The national impact analysis (NIA) assesses future NES and the national economic impacts of different efficiency levels. The analysis measures economic impacts using the NPV metric (*i.e.*, future amounts discounted to the present) of total commercial customer costs, and savings expected to result from new standards at specific efficiency levels. For the final rule analysis, DOE used the same spreadsheet model used in the NOPR to calculate the energy savings and the national economic costs and savings from new standards, but with updates to specific input data. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. DOE examined sensitivities by applying different scenarios. DOE used the NES spreadsheet to perform calculations of national energy savings and NPV using the annual energy consumption and total installed cost data from the LCC analysis and estimates of national shipments for each of the 15 primary commercial refrigeration equipment classes. DOE forecasted the energy savings from each TSL from 2012 through 2042. DOE forecasted the energy cost savings, equipment costs, and NPV of benefits for all primary commercial refrigeration equipment classes from 2012 through 2062. The forecasts provided annual and cumulative values for all four output parameters.

DOE calculated the NES by subtracting energy use under a standards scenario from energy use in a base case (no new standards) scenario. Energy use is reduced when a unit of commercial refrigeration equipment in the base case efficiency distribution is replaced by a more efficient piece of equipment. Energy savings for each equipment class are the same national average values as calculated in the LCC and payback period spreadsheet. However, these results are normalized on a per-unit-length basis by equipment class and applied to the total annual estimated shipments in terms of line-up length of all equipment with the class. Table IV–10 summarizes key inputs to the NIA analysis and the changes DOE made in the analysis for the final rule. Chapter 11 of the TSD provides additional information about the NIA spreadsheet.

TABLE IV–10—SUMMARY OF NATIONAL ENERGY SAVINGS AND NET PRESENT VALUE INPUTS

Input data	Description of NOPR analysis	Changes for final rule
Shipments	Annual shipments from shipments model for 15 equipment classes. Shipments model based on projected growth in building stock using commercial refrigeration equipment (new stock) and annual replacements to stock based on an equipment life. Equipment lifetime distribution based on a 10-year average life in large grocery and multi-line retail, and a 15-year average life in small grocery and convenience stores (chapter 10, Shipments Analysis).	No change.
Effective Date of Standard.	2012	No change.
Base Case Efficiencies.	Distribution of base case shipments by efficiency level	No change in methodology to derive base case shipments by efficiency level.
Standards Case Efficiencies.	Distribution of shipments by efficiency level for each base case and each standards case. Annual market shares by efficiency level remain constant over time for the base case and each standards case.	No change in methodology to derive shipments by efficiency level in each standards case.
Annual Energy Consumption per Linear Foot.	Annual weighted-average values are a function of energy consumption level, which are established in the engineering analysis (chapter 5 of the TSD). Converted to a per linear foot basis.	No change in methodology. Energy consumption estimates reflect the updated final rule engineering analysis.
Total Installed Cost per Linear Foot.	Annual weighted-average values are a function of energy consumption level (chapter 8 of the TSD). Converted to a per linear foot basis.	No change in methodology. Installed costs reflect the updated final rule LCC.
Repair Cost per Linear Foot.	Annual weighted-average values are constant in real dollar terms for each energy consumption level (chapter 8 of the TSD). Converted to a per linear foot basis.	No change in methodology. Repair costs reflect the updated final rule LCC values.
Maintenance Cost per Linear Foot.	Annual weighted-average value equals $160 in 2007$ (chapter 8 of the TSD), plus lighting maintenance cost. Converted to a per linear foot basis.	No change.
Escalation of Electricity Prices.	EIA *AEO2007* forecasts (to 2030) and extrapolation for beyond 2030 (chapter 8 of the TSD).	EIA *AEO2008* forecasts (to 2030) and extrapolation for beyond 2030 (chapter 8 of the TSD).
Electricity Site-to-Source Conversion.	Conversion varies yearly and is generated by DOE/EIA's NEMS program (a time series conversion factor; includes electric generation, transmission, and distribution losses) based on *AEO2007*.	Conversion factor varies yearly and is generated by EIA's NEMS model. Includes the impact of electric generation, transmission, and distribution losses based on *AEO2008*.
Discount Rate	3 and 7 percent real	No change.
Present Year	Future costs are discounted to 2008	No change
Rebound Effect	A rebound effect (due to changes in shipments resulting from standards) was not considered in the NIA.	No change.

The modifications DOE made to the NES and NIA analyses for the final rule primarily reflect updates to the same data sources used in the NOPR, but not changes in methodology. In addition, the underlying input data on equipment costs and energy savings by TSL are based on the LCC analysis results as revised in the final rule.

For the final rule, DOE developed marginal site-source conversion factors that relate the national electrical energy savings at the point of use to the fuel savings at the power plant. These factors use the NEMS model and the examination of the corresponding energy savings from standards scenarios considered in DOE's utility analysis (chapter 14 of the TSD). The conversion factors vary over time, due to projected changes in electricity generation sources (*i.e.*, the power plant types projected to provide electricity to the country) and power plant dispatch scenarios. DOE revised the stream of conversion factors based on the final rule utility impacts analysis and using a version of NEMS consistent with *AEO2008*. DOE also updated the electricity price forecasts used in the NIA to reflect forecasts found in *AEO2008* compared to *AEO2007*.

DOE did not receive information to support revising the shipments analysis or the methodology used in the NIA to estimate future shipments by efficiency level. DOE requested input on this methodology or on additional data to estimate future shipments. True commented that because so many different features and options can degrade a product's efficiency, True cannot afford to test every permutation's efficiency. Traditionally, therefore, True tests the most severe case, which includes all the options, and makes sure it can exceed the standard. As a result, the units shipped out are often more efficient than the testing would indicate. (True, Public Meeting Transcript, No. 27 at p. 119) DOE acknowledges this comment, but did not receive sufficient detail to address this concern in the final rule analysis for individual commercial refrigeration equipment classes. Because the distribution of efficiencies of all TSLs as well as the baseline would be similarly affected by some customers removing specific energy consuming options (*e.g.*, shelf lighting) from their purchased products, the impact of this particular issue on the potential national energy savings of one TSL over another may be insignificant.

To discount future impacts, DOE used discount rates of both 7 percent and 3 percent, in accordance with the Office of Management and Budget (OMB)'s guidelines (OMB Circular A–4, section E, Regulatory Analysis (September 17, 2003)). ASAP commented that DOE leans too heavily on the 7-percent discount rate, and that OMB has DOE looking at both the 3-percent and 7-percent discount rates. ASAP stated that DOE should be giving primacy to the lower discount rate, which is the societal discount rate—the time value of the society as a whole. (ASAP, Public Meeting Transcript, No. 27 at pp. 20–21 and p. 128) PG&E stated that a 3-percent discount rate is used for the California Energy Commission workshops on efficiency, and that it supports the 3-

percent rate for the Federal rulemaking. (PG&E, Public Meeting Transcript, No. 27 at p. 131) The Joint Comment stated that DOE improperly weighs the 7-percent discount rate more than the 3-percent discount rate. The Joint Comment noted that DOE should use the 3-percent discount rate because it is the required social discount rate and because the actual weighted average cost of capital is lower than 7 percent. (Joint Comment, No. 34 at p. 6)

DOE reports and uses both 3-percent and 7-percent discount rates in its analysis of net present value. OMB's guidance to Federal agencies for developing regulatory analysis (OMB Circular A–4, September 17, 2003) [14] references OMB Circular A–94 [15] for the development of discount rates for regulatory analysis. OMB Circular A–94 states that, as a default position, constant-dollar benefit-cost analyses of proposed investments and regulations should report net present value and other outcomes determined using a real discount rate of 3 percent. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy. It is a broad measure that reflects the returns to real estate and small business capital as well as corporate capital. It approximates the opportunity cost of capital, and it is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector. OMB A–94 states that regulatory analyses should show the sensitivity of the discounted net present value and other outcomes to variations in the discount rate. The importance of these alternative calculations will depend on the specific economic characteristics of the program under analysis. OMB A–4 notes that the effects of regulation do not always fall exclusively or primarily on the allocation of capital. When regulation primarily and directly affects private consumption (*e.g.*, through higher consumer prices for goods and services), a lower discount rate is appropriate. The alternative most often used is sometimes called the social rate of time preference, or the rate at which society discounts future consumption flows to their present value. To represent these cases, OMB recommends using the rate the average saver uses to discount future consumption as the measure of the social rate of time preference, approximating this with the real rate of return on long-term Government debt (*e.g.*, the yield on Treasury notes minus the annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years. For the commercial refrigeration equipment rulemaking in particular, DOE notes that the purchasers of commercial refrigeration equipment are indeed commercial businesses and not ''savers.'' Regarding the comment that the average cost of capital calculated for businesses purchasing commercial refrigeration equipment was less than 7 percent, DOE notes that the average cost of capital calculated for the LCC analysis is the after-tax cost of capital. OMB A–4 specifically notes that pre-tax rates of return better measure society's gains from investment. This is because corporate capital, in particular, pays an additional layer of taxation: The corporate income tax. This tax requires corporate capital to earn a higher pre-tax rate of return in order to provide investors with similar after-tax rates of return compared with non-corporate investments. Based on the guidance provided in OMB A–4, DOE considers both 3-percent and 7-percent discount rates in the NIA analysis.

ASAP stated that discount rates should not be applied to quads because a discount rate is a financial instrument and a quad is a physical quantity. (ASAP, Public Meeting Transcript, No. 27 at p. 22) DOE understands ASAP's concern about discounting of physical quantities. Unlike economic factors that are discounted into the future, physical quantities are not discounted because they do not change over time. DOE reports the undiscounted energy savings in Table VI–31 of today's final rule.

H. Life-Cycle Cost Sub-Group Analysis

In analyzing the potential impact of new or amended standards on commercial customers, DOE evaluates the impact on identifiable groups (*i.e.*, sub-groups) of customers, such as different types of businesses that may be disproportionately affected by a National standard level. For this rulemaking, DOE identified independent small grocery and convenience stores as a commercial refrigeration equipment customer sub-group that could be disproportionately affected, and examined the impact of proposed standards on this group. DOE determined the impact on this commercial refrigeration equipment customer sub-group using the LCC spreadsheet model. DOE conducted the LCC and PBP analyses for commercial refrigeration equipment customers represented by the subgroup. DOE did not receive comments on its identification of this class of users as the key sub-group or on the assumptions applied to those sub-groups. DOE relied on the same methodology outlined in the NOPR for the final rule analysis. The results of DOE's LCC sub-group analysis are summarized in section VI.C.2.e and described in detail in chapter 12 of the TSD.

I. Manufacturer Impact Analysis

DOE performed a manufacturer impact analysis (MIA) to estimate the financial impact of energy conservation standards on manufacturers of commercial refrigeration equipment, and to assess the impact of such standards on employment and manufacturing capacity. DOE conducted the MIA for commercial refrigeration equipment in three phases. Phase 1, Industry Profile, consisted of preparing an industry characterization, including data on market share, sales volumes and trends, pricing, employment, and financial structure. Phase 2, Industry Cash Flow Analysis, focused on the industry as a whole. In this phase, DOE used the GRIM to prepare an industry cash-flow analysis. Using publicly available information developed in Phase 1, DOE adapted the GRIM's generic structure to perform an analysis of commercial refrigeration equipment energy conservation standards. In Phase 3, Sub-Group Impact Analysis, DOE conducted interviews with manufacturers representing the majority of domestic commercial refrigeration equipment sales. This group included large and small manufacturers, providing a representative cross-section of the industry. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company and obtained each manufacturer's view of the industry. The interviews provided valuable information DOE used to evaluate the impacts of an energy conservation standard on manufacturer cash flows, manufacturing capacities, and employment levels.

The GRIM inputs consist of the commercial refrigeration industry's cost structure, shipments, and revenues. This includes information from many of the analyses described above, such as manufacturing costs and selling prices from the engineering analysis and shipments forecasts from the NES.

The GRIM uses the manufacturer production costs in the engineering analysis to calculate the MSPs for each equipment class at each TSL. By multiplying the production costs by different sets of markups, DOE derives the MSPs used to calculate industry

[14] *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

[15] *http://www.whitehouse.gov/omb/circulars/a094/a094.html.*

revenues. Following the NOPR, DOE revised its engineering cost curves to derive new manufacturer production costs. DOE used these updated production costs in the GRIM for the final rule.

The GRIM estimates manufacturer revenues based on total-unit-shipment forecasts and the distribution of these shipments by efficiency. Changes in the efficiency mix at each standard level are a key driver of manufacturer finances. For the final rule analysis, DOE used the total shipments and efficiency distribution found in the final rule NES. For additional detail on the manufacturer impact analysis, refer to chapter 13 of the TSD.

J. Utility Impact Analysis

The utility impact analysis estimates the effects of reduced energy consumption due to improved equipment efficiency on the utility industry. This analysis compares forecast results for a case comparable to the *AEO2008* reference case and forecast results for policy cases incorporating each of the commercial refrigeration equipment TSLs.

DOE analyzed the effects of proposed standards on electric utility industry generation capacity and fuel consumption using a variant of EIA's NEMS. EIA uses NEMS to produce its *AEO*, a widely recognized baseline energy forecast for the United States. DOE used a variant known as NEMS–BT. The NEMS–BT is run similarly to the *AEO2008* NEMS, except that commercial refrigeration equipment energy usage is reduced by the amount of energy (by fuel type) saved due to the TSLs. DOE obtained the inputs of national energy savings from the NES spreadsheet model. In response to the August 2008 NOPR, DOE did not receive comments directly on the methodology used for the utility impact analysis. DOE revised the final rule inputs to use the NEMS–BT consistent with the *AEO2008* and to use the NES impacts developed in the commercial refrigeration equipment final rule analysis.

In the utility impact analysis, DOE reported the changes in installed capacity and generation by fuel type that result for each TSL, as well as changes in end-use electricity sales. Chapter 14 of the TSD provides details of the utility analysis methods and results.

K. Employment Impact Analysis

DOE considers direct and indirect employment impacts when developing a standard. In this case, direct employment impacts are any changes in the number of employees for, commercial refrigeration equipment manufacturers, their suppliers, and related service firms. Indirect impacts are those changes in employment in the larger economy that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient commercial refrigeration equipment. In this rulemaking, the MIA addresses direct impacts (chapter 13 of the TSD), and the employment impact analysis addresses indirect impacts (chapter 15 of the TSD).

Indirect employment impacts from commercial refrigeration equipment standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, as a consequence of: (1) Reduced spending by end users on electricity (offset to some degree by the increased spending on maintenance and repair), (2) reduced spending on new energy supply by the utility industry, (3) increased spending on the purchase price of new commercial refrigeration equipment, and (4) the effects of those three factors throughout the economy. DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor.

DOE used the same methodology described in the August 2008 NOPR to estimate indirect national employment impacts using an input/output model of the U.S. economy, called ImSET (Impact of Sector Energy Technologies), which was developed by DOE's Building Technologies Program. 73 FR 50072, 50107–108. The ImSET model estimates changes in employment, industry output, and wage income in the overall U.S. economy resulting from changes in expenditures in various economic sectors. DOE estimated changes in expenditures using the NES spreadsheet. ImSET then estimated the net national indirect employment impacts of potential commercial refrigeration equipment efficiency standards on employment by sector.

In response to the August 2008 NOPR, DOE received several comments on the employment impact analysis. ASAP commented that the discussion of the employment benefits resulting from the net increase in jobs follows a pattern of DOE trivializing these benefits in the rulemakings by stating that they are so small that they would be imperceptible in national labor statistics and might be offset by other unanticipated effects on employment. ASAP stated that it is important that DOE keep performing the employment analysis given the cumulative impact of possible DOE rulemakings over the next 4 years. (ASAP, Public Meeting Transcript, No. 27 at p. 161)

The Joint Comment also stated that TSL 5 would create more jobs than TSL 4, and that DOE cannot reject the difference as statistically insignificant because it must consider the combined effect of all rulemakings. (Joint Comment, No. 34 at p. 5) The Joint Comment further stated that DOE should consider indirect job creation as a serious factor weighing in favor of stronger standards. (Joint Comment, No. 34 at p. 5)

Earthjustice noted that both indirect and direct employment benefits are shown to provide positive employment in the respective employment and MIA analyses and that DOE should consider this in the final rule. (Earthjustice, Public Meeting Transcript, No. 27 at p. 166)

DOE considers the employment impacts without quantifying the net economic value of such impacts. DOE agrees that the indirect employment analysis indicates that new energy conservation standards for commercial refrigeration equipment could increase the demand for labor in the economy and result in additional employment, a net benefit to society that DOE considers in establishing standards for commercial refrigeration equipment. Chapter 15 of the TSD describes and provides results for the employment impact analysis.

L. Environmental Assessment

DOE has prepared an environmental assessment (EA) pursuant to the National Environmental Policy Act and the requirements under 42 U.S.C. 6295(o)(2)(B)(i)(VI) and 6316(a) to determine the environmental impacts of the standards being established in today's final rule. Specifically, DOE estimated the reduction in total emissions of CO_2 using the NEMS–BT computer model. DOE calculated a range of estimates for reduction in NO_X emissions and mercury (Hg) emissions using current power sector emission rates. However, the EA does not include the estimated reduction in power sector impacts of sulfur dioxide (SO_2), because DOE has determined that any such reduction resulting from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to the presence of national caps on SO_2 emissions as addressed below (see chapter 16 of the TSD).

The NEMS–BT is run similarly to the *AEO2008 NEMS,* except the energy use is reduced by the amount of energy

saved due to the TSLs. DOE obtained the inputs of national energy savings from the NIA spreadsheet model. For the EA, the output is the forecasted physical emissions. The net benefit of the standard is the difference between emissions estimated by NEMS–BT and the *AEO2008* reference case. The NEMS–BT tracks CO_2 emissions using a detailed module that provides results with a broad coverage of all sectors and inclusion of interactive effects.

The Clean Air Act Amendments of 1990 set an emissions cap on SO_2 for all power generation. Attaining this target, however, is flexible among generators and is enforced through emissions allowances and tradable permits. Because SO_2 emissions allowances have value, generators will almost certainly use them, although not necessarily immediately or in the same year with and without a standard in place. In other words, with or without a standard, total cumulative SO_2 emissions will always be at or near the ceiling, while there may be some timing differences between yearly forecasts. Thus, it is unlikely that there will be an SO_2 environmental benefit from electricity savings as long as there is enforcement of the emissions ceilings.

Although there may not be an actual reduction in SO_2 emissions from electricity savings, there still may be an economic benefit from reduced demand for SO_2 emission allowances. Electricity savings decrease the generation of SO_2 emissions from power production, which can decrease the need to purchase or generate SO_2 emissions allowance credits, and decrease the costs of complying with regulatory caps on emissions.

Like SO_2, future emissions of NO_X and Hg would have been subject to emissions caps under the Clean Air Interstate Act (CAIR) and Clean Air Mercury Rule (CAMR). However, as discussed in section VI.C.6, a Federal court has vacated these rules. The NEMS–BT model used for today's final rule assumed that both NO_X and Hg emissions would be subject to CAIR and CAMR emissions caps. In the case of NO_X emissions, CAIR would have permanently capped emissions in 28 eastern states and the District of Columbia. Because the NEMS–BT modeling assumed NO_X emissions would be subject to CAIR, DOE established a range of NO_X reductions based on the use of a NO_X low and high emissions rates (in kt of NO_X emitted per terawatt-hours (TWh) of electricity generated) derived from the *AEO2008*. To estimate the reduction in NO_X emissions, DOE multiplied these emission rates by the reduction in electricity generation due to the standards considered. However, because the emissions caps specified by CAMR would have applied to the entire country, DOE was unable to use NEMS–BT model to estimate the physical quantity changes in mercury emissions due to energy conservation standards. To estimate mercury emission reductions due to standards, DOE used an Hg emission rate (in metric tons of Hg per energy produced) based on *AEO2008*. Because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the metric tons of mercury emitted per TWh of coal-generated electricity. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity associated with standards considered.

In comments on the August 2008 NOPR, ASAP stated that it was important for DOE to consider the economic impact calculations for carbon, noting that the economic savings are significant. In addition, until the CRE and packaged terminal air conditioner and heat pump (PTAC and PTHP) NOPRs, ASAP did not see that economic values for carbon emissions savings were factored into the analysis in a way that could affect decision making. (ASAP, Public Meeting Transcript, No. 27 at p. 172) On the other hand, AHRI believes DOE has no statutory obligation to monetize CO_2 benefits. (AHRI, Public Meeting Transcript, No. 27 at p. 173)

AHRI further commented that if DOE decides to monetize CO_2 benefits, then it should account for CO_2 emissions that will result from manufacturing more efficient products. For example, DOE should consider the CO_2 emissions resulting from additional copper to be mined and incorporated into the finished product. (AHRI, Public Meeting Transcript, No. 27 at p. 173) True also commented on types of manufacturing processes that should be considered in the emissions analysis. True stated that the most significant impact of commercial refrigeration equipment on the environment is from welding agents and refrigerants. True further explained with the global warming potentials (GWPs) of some of these substances at 1,300, 1,500, and 3,800, the impacts are astronomically greater than other impacts the industry faces. (True, Public Meeting Transcript, No. 27 at p. 174)

On the contrary, ASAP emphasized that the congressional deadline of December 31, 2008, means that ''paralysis by analysis'' is not an option at this point in this rulemaking and that it is incumbent upon AHRI to demonstrate that any proposed analysis changes would be significant. (ASAP, Public Meeting Transcript, No. 27 at p. 173) ACEEE commented that for buildings and the equipment used in them (not specific for this class of equipment), the energy use during the operating life is roughly 85 percent of the total lifecycle energy. Also, the incremental energy change from increased use of a largely recycled metals stock is likely have a small impact on this analysis. (ACEEE, Public Meeting Transcript, No. 27 at p. 173)

Several interested parties provided comments on the economic value of CO_2 used in DOE's monetization of carbon emissions for the August 2008 NOPR and the final rule for PTACs and PTHPs (73 FR 58772, October 7, 2008). ASAP stated that the low range for monetization of carbon emission reductions should not be zero. (ASAP, Public Meeting Transcript, No. 27 at p. 23) AHRI stated that DOE should not speculate on the value of CO_2 emissions because it has no statutory obligation to do so and that any value DOE used would be an estimate. There is no consensus on any single estimate of the value of CO_2 emissions. Therefore, DOE should not indulge in speculation to determine a value when it has no statutory obligation to do so. (AHRI, No. 33 at p. 6)

Earthjustice commented that the upper and lower bounds of the values DOE uses for its carbon emissions are arbitrarily low. (Earthjustice, No. 38 at pp. 7–14) Specifically, Earthjustice stated that by using the value of the social cost of carbon (SCC) estimated in Dr. Richard Tol's 2005 meta-analysis, DOE excluded critical damages and made optimistic assumptions that bias the damage cost downwards. (Earthjustice, No. 38 at p. 8) Earthjustice noted that Tol released an update of his 2005 meta-analysis in September 2007, which reports an increase in his peer-reviewed mean estimate of SCC from \$14 to \$20/ton CO_2 and from \$43 to \$71/ton carbon.[16] Earthjustice also asserted that the use of Tol's mean as an upper bound is inconsistent with sound risk analysis and distributions of climate damage functions, leading to systematic undervaluation of damages. (Earthjustice, No. 38 at p. 9) Lastly, Earthjustice noted that Tol's estimate relies primarily on estimates that did not use the currently accepted climate change discounting procedure of

[16] Tol, R.S.J. (2007) The social cost of carbon: trends, outliers, and catastrophes. *Research Unit Sustainability and Global Change, Working Paper FNU–144,* Hamburg University and Centre for Marine and Atmospheric Science, Hamburg, Germany.

declining discount rate over time, and it fails to recognize the distinction between the ways in which scarcity affects the value of normal goods and environmental goods. (Earthjustice, No. 38 at p. 11)

AHRI noted that Congress is now engaged in debating a possible cap and trade program for the United States. The size of the allowance cap first set by such legislation or by implementing regulations and the pace of reduction of the emission allowances will largely determine the unit price or value of CO_2 emissions reductions. AHRI stated that it would be an arbitrary decision on DOE's part to rely on valuations identified in the Intergovernmental Panel on Climate Change (IPCC) or valuations used in the European Union (EU) cap and trade program when the United States has not yet set an emissions cap itself. Further, AHRI stated that DOE should not allow evaluation of environmental impacts to negate or render moot what has always been, and should remain, the core analysis in appliance standards rulemakings, *i.e.*, consumer payback and life-cycle cost analyses. (AHRI, No. 33 at p. 6) NRDC also stated that the cost of carbon emissions will become an issue with California adopting a Climate Program and the Regional Greenhouse Gas Initiative in the Northeast. (NRDC, Public Meeting Transcript, No. 27 at p. 105)

Earthjustice's written comment states that DOE's monetization of CO_2 emissions should reflect the potential U.S. legislation that would put a national cap on CO_2 emissions. This includes examining the effect of the standard in reducing allowance prices and the benefit of reduced emissions in the NPV. This is Earthjustice's primary suggested consideration for DOE; otherwise, DOE should take into account existing regional CO_2 caps when monetizing CO_2. Finally, the most basic consideration DOE must make, according to Earthjustice, is to economically account for the avoided environmental harm from CO_2 emissions. (Earthjustice, No. 38 at pp. 2–6)

The Joint Comment stated that DOE should incorporate the monetization of carbon emission reductions in the life-cycle cost analysis and the national impact analysis. The Joint Comment further stated that DOE's exclusion of carbon monetization in the LCC and NIA results in a systematic underestimation of benefits of new energy conservation standards. (Joint Comment, No. 34 at p. 6) Earthjustice stated that DOE does not account for the economic value of CO_2 emissions reductions resulting from efficiency standards in any meaningful way. Although DOE has begun estimating a range of values for carbon emissions, it then ignores these values when choosing the new standard level. Earthjustice stated that DOE must address these issues by (1) accounting for the value of emissions reductions resulting from a standard in the economic analyses, the LCC, and NIA; and (2) using reasonable assumptions and sources when determining the value of carbon emission reductions because the current sources evaluated are inadequate. (Earthjustice, No. 38 at p. 1) Specifically, Earthjustice stated that DOE should quantify the effect of a CO_2 emission cap on energy prices in the LCC analysis. (Earthjustice, No. 38 at p. 2)

DOE has made several additions to its monetization of environmental emissions reductions in today's rule, which are discussed in section VI.C.6. DOE has chosen to continue to report these benefits separately from the net benefits of energy savings. Nothing in EPCA or in the National Environmental Policy Act (NEPA) requires that the economic value of emissions reduction be incorporated in the net present value analysis of energy savings. Unlike energy savings, the economic value of emissions reduction is not priced in the marketplace. However, DOE will consider both values when weighing the benefits and burdens of standards.

Although this rulemaking does not affect SO_2 emissions, there are markets for SO_2 emissions allowances. The market clearing price of SO_2 emissions is roughly the marginal cost of meeting the regulatory cap, not the marginal value of the cap itself. Further, because national SO_2 emissions are regulated by a cap and trade system, the need to meet these caps is already included in the price of energy or energy savings. With a cap on SO_2, the value of energy savings already includes the value of SO_2 control for those consumers experiencing energy savings. The economic cost savings associated with SO_2 emissions caps is approximately equal to the change in the price of traded allowances resulting from energy savings multiplied by the number of allowances that would be issued each year. That calculation is uncertain because the energy savings for commercial refrigeration equipment are so small relative to the entire electricity generation market that the resulting emissions savings would have almost no impact on price formation in the allowances market. These savings would most likely be outweighed by uncertainties in the marginal costs of compliance with SO_2 emissions caps.

For those emissions currently not priced (CO_2, Hg, and NO_X), only a range of estimated economic values based on environmental damage studies of varying quality and applicability is available. DOE is weighing these values separately and is not including them in the NPV analysis.

V. Discussion of Other Comments

Since DOE opened the docket for this rulemaking, it has received more than 100 comments from a diverse set of parties, including manufacturers and their representatives, trade associations, wholesalers and distributors, energy conservation advocates, and electric utilities. Section IV of this preamble discusses comments DOE received on the analytic methodologies it used. Additional comments DOE received in response to the August 2008 NOPR addressed the information DOE used in its analyses, results of and inferences drawn from the analyses, impacts of standards, the merits of the different TSLs and standards options DOE considered, and other issues affecting adoption of standards for commercial refrigeration equipment. DOE addresses these comments in this section.

A. Information and Assumptions Used in Analyses

1. Market and Technology Assessment

a. Data Sources

DOE summarized its analysis for energy consumption in chapter 3 of the NOPR TSD. Traulsen stated that there are problems with the use of energy consumption data reported to government agencies because of inaccurate data reporting. Traulsen cited several problems with U.S. Environmental Protection Agency's (EPA's) ENERGY STAR database for self-contained commercial solid-door food service refrigerators and freezers, including equipment listed in the database that does not conform to the ENERGY STAR specifications. Traulsen suggested that sources such as these not be used in the technical analyses because of the errors they contain. (Traulsen, No. 25 at p. 1)

The ENERGY STAR requirements for commercial solid door refrigerators and freezers cover self-contained commercial refrigerators, freezers, and refrigerator-freezers that have solid doors, which are not covered in this commercial refrigeration equipment rulemaking. In terms of equipment classes, there is no overlap between the ENERGY STAR program and DOE's rulemaking on commercial refrigeration

equipment, except for commercial ice-cream freezers. EPA's commercial ice-cream freezer equipment class does not coincide with DOE's commercial ice-cream freezer equipment class because they are defined differently and tested at different rating temperatures. In addition, DOE understands that Traulsen has a large market in the commercial refrigeration industry for self-contained commercial refrigerator and freezers with doors. However, these equipment classes are not covered in this rulemaking. Also, DOE did not use energy consumption databases from other government agencies such as EPA. Rather, DOE conducted its own evaluation of energy consumption data for existing equipment from major manufacturers and compiled a performance database. The primary source of information for the database was equipment data sheets that were publicly available on manufacturers' Web sites. From these data sheets, equipment information such as total refrigeration load, evaporator temperature, lighting power draw, defrost power draw, and motor power draw allowed determination of calculated daily energy consumption (CDEC) according to the DOE test procedure. See chapter 3 of the TSD for additional information on market performance data.

b. Beverage Merchandisers

In response to the NOPR, Coca-Cola submitted a comment questioning the market share and shipment data in DOE's analysis. Coca-Cola stated that its own purchases contradict DOE's figures. According to Coca-Cola, vertical closed transparent, self-contained, medium temperature (VCT.SC.M) equipment makes up the majority of Coca-Cola's purchases. DOE's exclusion of this class accounts for the differences between Coca-Cola's purchases and the number of units shipped that DOE reported in the engineering analysis. (Coca-Cola, No. 21 at p. 1)

As explained in the July 2007 ANOPR, VCT.SC.M equipment is currently covered by energy conservation standards established in EPCA. 72 FR 41176. Therefore, self-contained glass-front beverage merchandisers (beverage coolers), which are included in the VCT.SC.M equipment class, are not covered in this commercial refrigeration equipment rulemaking. As a result, all the shipment and market share data reported in the engineering analysis are valid for the classes of commercial refrigeration equipment covered in this rulemaking.

2. Engineering Analysis

a. Design Options

In the NOPR, DOE reevaluated the list of design options remaining after the ANOPR screening analysis. Based on public comments, DOE made the following design option changes in the NOPR and did not receive any further comment for the final rule: increasing insulation thickness as a design option; revising anti-sweat heater power values for certain equipment classes with glass doors; and revising assumptions made to estimate changes in cost and efficiency for high-efficiency, single-speed compressors used in self-contained equipment. 73 FR 50087. However, there were certain design options for which DOE did receive comments and that warranted changes for the final rule. Specifically, LED cost and efficiency assumptions were updated.

For the NOPR, DOE could only identify LED luminaires on the market for use in vertical refrigerated cases with transparent doors (*i.e.*, the VCT equipment family). DOE used these LED luminaires as the basis for LED lighting for open refrigerated cases, because DOE could not identify LED luminaires for use in open refrigerated cases. However, when DOE reexamined the current state of LED lighting for the final rule, DOE identified LED luminaries on the market for use in open refrigerated cases. DOE updated the LED lighting prices for open refrigerated cases using these newly identified LED luminaires.

For the final rule, DOE also updated the LED prices for lighting used in the VCT equipment families using the actual reduction in the lumen-based price of LED chips reported in DOE's Multi-Year Program Plan between 2007 and 2008. DOE's 2007 Multi-Year Program Plan reported that the latest available OEM device price for LED chips was $35/kilolumen.[17] DOE's 2008 Multi-Year Program Plan reported that the latest available OEM device price for LED chips was $25/kilolumen.[18] This equates to a 29-percent reduction in lumen-based LED chip costs from 2007–2008. For the final rule, DOE applied this 29-percent reduction in lumen-based LED chip costs to the LED lighting for the VCT equipment families, representing about a 9-percent reduction in LED system costs, assuming the costs of the power supply and LED fixtures did not change from the values used in the NOPR engineering analysis. For additional detail regarding LED costs, see section IV.B.2.a.

In addition to expected price reductions, DOE received comments on the unique performance advantages of LED systems following the NOPR. Philips stated that LED systems are virtually maintenance-free. Without maintenance costs, LED payback periods amount to roughly half of their life expectancy. (Philips, No. 29 at pp. 1–6) Philips also claimed that LED efficacy (lm/W) is expected to increase. Increases in efficacy effectively reduce the operational costs of the system by allowing for less energy consumption while maintaining output. (Philips, No. 29 at p. 1)

As mentioned above, for today's final rule, DOE reexamined the LED lighting assumptions that were used in the NOPR. DOE identified more efficacious LED lighting options for use in both vertical refrigerated cases with transparent doors and open refrigerated cases than the LED lighting identified in the NOPR analysis. Based on the new LED lighting options, DOE updated case lighting configurations for each equipment class specific to LED lighting in the engineering analysis. For more detail about the updated LED lighting performance assumptions, see chapter 5 and appendix B of the TSD.

In addition to the life-cycle benefits afforded by LEDs, the California Utilities Joint Comment stated that LED systems have a higher degree of controllability, which gives the systems dimming, cold start, and short cycling capabilities. (California Utilities Joint Comment, No. 41 at p. 3) ASAP added that these features allow LED systems to be turned off in situations in which fluorescents could not. This equates to improved energy efficiency for commercial refrigeration equipment that uses LED lighting. (ASAP, Public Meeting Transcript, No. 27 at p. 106)

The enhanced controllability of LED lighting can offer multiple benefits over fluorescent lighting. Specifically, the ability to reduce the operating time of LED lighting can lead to increased energy efficiency for commercial refrigeration equipment. Therefore, in the July 2007 ANOPR, DOE specifically requested public comment on using 24 hours as the case lighting operational hours. 72 FR 41187. In the August 2008 NOPR, based on public comment, DOE determined that 24 hours was an adequate assumption for case lighting operating hours regardless of lighting type. 73 FR 50095. In addition, the test procedure DOE adopted for commercial refrigeration equipment, ANSI/ARI Standard 1200–2006, is a steady-state

[17] U.S. Department of Energy, Solid-State Lighting Research and Development, Multi-Year Program Plan FY08–FY13.

[18] U.S. Department of Energy, Solid-State Lighting Research and Development, Multi-Year Program Plan FY09–FY14.

test procedure, which is unable to capture significant energy savings due to dimming controls or motion sensors. 71 FR 71370.

Following the NOPR, some manufacturers expressed concerns that implementing LED lighting would reduce the quality of their equipment. Specifically, they disagreed with the use of general white light LEDs to develop a price specifically for LED lighting used in commercial refrigeration equipment. True and Southern Store Fixtures stated that the grocery store market will be most affected by the use of LED lighting because certain food products, such as meat, dairy, deli, and produce, have to have a special display color. (True, Public Meeting Transcript, No. 27 at p. 111; Southern Store Fixtures, Public Meeting Transcript, No. 27 at p. 108) Continental Refrigerator added that in low-temperature applications, there is degradation in LED color quality, requiring the technology to be developed further. (Continental Refrigerator, No. 27 at p. 141) Southern Store Fixtures stated that LEDs used in commercial refrigeration equipment are more expensive because additional labor is required to test and sort the LEDs to meet the industry's color quality requirements. (Southern Store Fixture, Public Meeting Transcript, No. 27 at p. 108) Hill Phoenix agreed with Southern Store Fixtures and added that repeatability and minimizing the LED output variance also factors into this costly sorting process (*i.e.*, binning). (Hill Phoenix, Public Meeting Transcript, No. 27 at p. 109) PG&E estimated that this premium will remain constant independent of any future price reductions. (PG&E, Public Meeting Transcript, No. 27 at p. 110) AHRI and Hill Phoenix suggested that prices for LED systems used in commercial refrigeration equipment will not experience the same price reductions that the rest of the LED industry will. Both interested parties agreed that, because the commercial refrigeration market for LEDs is small, there will not be a great demand for high-quality LEDs, providing little incentive for LED suppliers to offer low-price, high-quality LEDs. (AHRI, No. 33 at p. 2 and Hill Phoenix, No. 32 at p. 2)

DOE acknowledges that a premium markup is applied to LED chips used in commercial refrigeration applications due to the binning process. This highly selective process requires LED chips to be chosen by hand to ensure the consistency in color, temperature and light quality demanded by commercial refrigeration equipment customers. As LED technology advances (*e.g.*, efficacy or price), the binning process for quality remains the same, resulting in a constant markup on the price of LED chips used for commercial refrigeration equipment. DOE accounted for this premium in the pricing used for the NOPR analysis. In the update of LED prices between 2007 and 2008 for the final rule, DOE maintained the markup associated with the higher level of quality needed for LEDs used in commercial refrigeration equipment.

DOE also received comments on the relative benefits of using LEDs in low-temperature cases versus medium-temperature cases and in closed cases versus open cases. The California Utilities Joint Comment stated that LED luminous output is 10 percent higher at 0 °F than at 25 °F. (California Utilities Joint Comment, No. 41 at p. 11) Southern Store Fixtures stated the heat from the LED fixture could be used to control condensate on closed case doors. It suggested using a remote power module for open cases. (Southern Store Fixtures, Public Meeting Transcript, No. 27 at p. 98) Hill Phoenix also stated that it is still a challenge for LED lighting in open cases to provide the quality and quantity of light required by the food marketing industry. (Hill Phoenix, No. 32 at p. 1)

As stated above, DOE was able to identify for the final rule LED luminaires currently available on the market for both open refrigerated cases and vertical refrigerated cases with transparent doors. The benefits of using LEDs vary depending on the type of commercial refrigerated equipment in which they are used. However, the luminaires DOE identified for use in the final rule analysis were specifically developed for individual types of commercial refrigeration equipment, and the luminaire manufacturers reported that the performance and quality of those luminaires were developed to meet the specific light output requirements of the commercial refrigeration equipment manufacturers that use them. Therefore, although the LED luminous output may be about 10 percent higher for low-temperature cases compared to medium-temperature cases, the luminaires chosen for the analysis were actual products that commercial refrigeration equipment manufacturers specified provide appropriate lighting levels. Likewise, the power configuration used in the analysis for LED fixtures was also based on actual products used in closed and open cases. However, DOE did modify the LED lighting configurations assumed in the engineering analysis based on comments received and lighting manufacturer specification sheets. Most notably, for the final rule, DOE doubled the shelf lighting for open cases compared to that assumed for the NOPR. This increase in shelf lighting is needed to meet the lighting requirements of open cases due to the directional nature of LED lighting. See appendix B for more detail regarding the lighting configurations assumed in the engineering analysis.

b. Baseline Models

DOE established baseline specifications for each equipment class modeled in the engineering analysis by reviewing available manufacturer data, selecting several representative units, and then aggregating the physical characteristics of those units. This process created a unit representative of commercial refrigeration equipment currently offered for sale in each equipment class, with average characteristics for physical parameters (*e.g.*, volume, TDA), and minimum performance of energy-consuming components (*e.g.*, fans, lighting). In the NOPR analysis, DOE made several revisions to the baseline specifications. These changes include updates to baseline lighting, TDA calculations, and baseline energy consumption. Appendix B of the NOPR TSD explained in detail the changes made to the baseline design specifications relative to the ANOPR analysis. DOE received no comments specific to these changes, and is therefore maintaining them for the final rule.

c. Consideration of Alternative Refrigerants

The framework document stated that due to the phaseout of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) in refrigeration equipment, the industry would likely use HFC refrigerants in their products. Following the framework document, AHRI stated that most of the data it provided to DOE was based on the use of HFC refrigerants. In the ANOPR TSD and NOPR, DOE assumed that HFC refrigerants were already in wide use in the refrigeration industry, and therefore used HFC refrigerants as the basis for the technical analysis conducted in the rulemaking.

The Joint Comment in response to the NOPR stated that DOE should consider alternative primary refrigerants such as hydrocarbons, ammonia, and CO_2 in its analysis because of their potential energy benefits, and because of the current phase-out of CFCs and HCFCs as refrigerants. The Joint Comment pointed out that alternative primary refrigerants are widely used in countries other than

the United States, principally in Europe. (Joint Comment, No. 34 at p. 8)

As stated in the ANOPR TSD and NOPR, DOE based its technical analysis on the use of HFC refrigerants. A Federal phaseout of CFC refrigerants has already occurred, and a Federal phaseout of HCFC refrigerants is pending in 2010. Thus, DOE did not consider CFCs and HCFCs in its analysis. Likewise, although alternative refrigerants such as hydrocarbons, ammonia, and CO_2 are used in Europe and elsewhere in the world, there is no evidence that they are widely used for commercial refrigeration applications in the United States. In addition, current state and local building codes would not allow the use of many alternative refrigerants (Safety Class A3—most hydrocarbon refrigerants) in remote condensing equipment covered by this rulemaking due to flammability concerns. These codes would also severely limit the use of ammonia due to toxicity concerns. Both could be considered for use with secondary loop refrigeration systems, but these are not the subject of this rulemaking. Hydrocarbon refrigerants could possibly be used for small self-contained commercial refrigeration equipment covered in this rulemaking if they contain less than 3 pounds of refrigerant and if they have been certified by Underwriters Laboratories or another product certification lab. However, DOE believes that no such equipment has been certified for the U.S. market, and it did not consider these refrigerants as a viable design option in the engineering analysis.

The majority of the U.S. commercial refrigeration industry uses HFC refrigerants in commercial refrigeration equipment. Since the analysis should be based on the refrigerant most widely used in commercial refrigeration equipment, it is unnecessary to consider alternative refrigerants. For these reasons, DOE has continued to use HFC refrigerants as the basis for its technical analysis. DOE used the HFC refrigerant R–404A for all remote condensing equipment and HFC refrigerant R–404A or refrigerant R–134A for all self-contained equipment.

d. Consideration of NSF 7 Type II Equipment

On December 8, 2006, DOE published a final rule in which it adopted ANSI/ARI Standard 1200–2006 as the DOE test procedure for commercial refrigeration equipment. 71 FR at 71340, 71369–70. DOE incorporated the test procedure into its regulations in 10 CFR 431.63–431.64. The standard also requires performance tests to be conducted according to ANSI/ASHRAE Standard 72–2005. Following the NOPR, DOE received comments from Southern Store Fixtures and Zero Zone stating that the DOE test procedure is insufficient because a subset of the equipment covered in this rulemaking is designed for and operates under harsher conditions than the 75.2 °F dry-bulb and 64.4 °F wet-bulb ambient temperature condition used in the DOE test procedure.

According to Southern Store Fixtures and Zero Zone, the hotter, more humid ambient condition requires additional energy consumption to power larger compressors and the anti-condensate capabilities necessary in this environment. These conditions make it more difficult to meet the standards proposed by this rulemaking. As a result, both Zero Zone and Southern Store Fixtures suggested that DOE should account for the difference between test procedure ambient conditions and operating ambient conditions for this subset of equipment by making a distinction similar to the one currently used in the National Sanitation Foundation Standard 7 (NSF 7) standard. (Zero Zone Public Meeting Transcript, No. 27 at p. 17 and Southern Store Fixtures No. 27 at p. 18) Under NSF 7, equipment intended for use in more severe environments is designated as ''Type II'' equipment and is tested at 80 °F dry-bulb and 68 °F wet-bulb ambient conditions. NSF ''Type I'' equipment is tested at the same ambient conditions as the DOE test procedure, namely the 75.2 °F dry-bulb and 64.4 °F wet-bulb temperature ambient condition.

To address this issue, AHRI suggested exempting Type II equipment from coverage or instructing manufacturers of Type II equipment to apply for waivers. (AHRI, Public Meeting Transcript, No. 27 at p. 50) If the waiver approach is pursued, Southern Store Fixtures suggested using available NSF Type II testing data to find the relationship among food temperature, the metric used in NSF testing, and energy consumption, the metric used in the DOE test procedure. This relationship would allow at least some Type II equipment to be considered fairly under this rule and mitigate a spike in waiver applications. (Southern Store Fixtures, Public Meeting Transcript, No. 27 at p. 54)

After consideration of these comments, DOE believes that instituting a distinction between Type I and Type II commercial refrigeration equipment, as defined by NSF 7, is unnecessary in this rulemaking. The DOE test procedure, ARI Standard 1200–2006, requires that energy consumption testing for all commercial refrigeration equipment covered in this rulemaking be conducted according to ANSI/ASHRAE Standard 72–2005, which prescribes specific ambient conditions. There is no requirement to address the ambient conditions specified in the NSF 7 standard. The two standards also serve different purposes. The ANSI/ASHRAE 72–2005 standard measures energy consumption for a specific ambient condition, whereas the NSF 7 standard measures food temperature at a specific ambient condition for food safety purposes. Although these test procedures have different purposes, including the NSF 7 Type II test procedure would have a minimal impact on the energy consumption of this equipment because the differences between the ANSI/ASHRAE 72–2005 and NSF 7 Type II ambient test conditions are marginal. NSF 7 Type II equipment is defined as a unit intended for use in an environment in which the ambient dry-bulb temperature does not exceed 80 °F. This is at most 5 °F higher than the 75 °F ambient dry bulb temperature used in the DOE test procedure. Therefore, the test procedure requires all commercial refrigeration equipment covered under this rulemaking to be tested for energy consumption according to the ambient conditions specified in ANSI/ASHRAE Standard 72–2005 and will not include any distinction between Type I and Type II equipment as defined by NSF 7.

e. Product Class Extension Factors

In the NOPR, DOE developed multipliers to extend standards from the 15 equipment classes it directly analyzed to the remaining 23 secondary equipment classes of commercial refrigeration equipment it did not directly analyze. DOE's approach involved a matched-pair analysis, which examined the relationship between several related pairs of equipment classes. Chapter 5 of the TSD discusses the development of the extension multipliers and the set of focused matched-pair analyses.

Following the NOPR, Southern Store Fixtures questioned the extension multiplier for self-contained equipment that was based on the analytical results for open remote condensing equipment. Southern Store Fixtures believed that the extension multiplier of 2.51 DOE developed to correlate remote medium-temperature equipment without doors to self-contained medium-temperature equipment without doors should be higher to adequately account for the more severe conditions in which self contained equipment are typically used,

but did not offer a recommendation for the value. (Southern Store Fixtures, Public Meeting Transcript, No. 27 at p. 37)

The DOE test procedure, ARI Standard 1200–2006, requires that energy consumption testing for all commercial refrigeration equipment covered in this rulemaking be conducted according to ANSI/ASHRAE Standard 72–2005, which prescribes specific ambient conditions. The ambient conditions specified by the DOE test procedure are the same regardless of the condensing unit configuration (*i.e.*, remote condensing or self-contained). In addition, the 2.51 extension multiplier was developed based on the relationship between the medium temperature VOP, SVO, and HZO equipment classes that DOE directly analyzed. Because neither an alternative value nor contradicting analysis was offered, for today's final rule, DOE will continue to use the 2.51 and other extension multipliers developed in the NOPR.

f. TSL Energy Limits

After the NOPR, Hussman submitted a comment expressing its concern about the technologies required for equipment to meet minimum energy consumption levels for TSL 4. In particular, Hussman is reluctant to use the no-heat door design option in humid climates, such as Houston, Texas. In its experience, no-heat doors in humid climates result in more condensation on store floors. According to Hussman, wet floors have led to accidents and costly law suits, indirectly linking increased energy efficiency with increased safety risks. (Hussman, No. 42 at p. 1)

Energy conservation standards for today's final rule set a maximum allowable energy conservation level for commercial refrigeration equipment. DOE does not limit the technologies manufacturers can use to achieve standards. Manufacturers are free to use any combination of technologies and design options to achieve a required level of energy consumption. Manufacturers also have the ability to design equipment for use in specific regions where certain design options may cause safety concerns. Certain anti-condensate design options consume no energy and could be used to achieve the energy consumption levels TSL 4 requires. Anti-condensate films can be applied to the inner surface of glass doors to prevent condensation and fog formation. By installing this film, some portion (and potentially all) of the glass and/or door mullion heaters can be removed and still maintain fog-free operation. In addition, DOE does not have the authority to set regional standards for commercial refrigeration equipment, and therefore cannot customize its analysis to exclude the use of design options in a specific climate region. Therefore, in developing the energy conservation standards for today's final rule, DOE did not make any modifications to accommodate concerns related to any particular climate regions.

g. Compressor Selection Oversize Factor

DOE's energy consumption model selects the most appropriate compressor by comparing each compressor's capacity to the total refrigeration load in the case multiplied by the compressor oversize factor. For the ANOPR analysis, DOE listed capacity at the standard rating conditions used in ANSI/ARI Standard 540–2004.[19] However, the standard rating conditions differed from the operating conditions used in the model, resulting in different capacity values. Because the standard conditions and modeled conditions differed, the model typically overestimated the capacity of the selected compressors. To compensate, DOE adjusted the compressor oversize factor to an unrealistic level (typically level 1) for the ANOPR model to select the correct compressor. In the NOPR analysis, DOE revised the capacity values used to select self-contained compressors in the energy consumption model. For the NOPR, DOE used capacities based on the same conditions used to calculate total refrigeration load and revised the oversize factor (typically 1.4 in the NOPR model) for all self-contained equipment classes to maintain the selection of the correct compressor size. See chapter 5 of the TSD for more detail.

Following the NOPR, Structural Concepts commented that the compressor selection criteria in the engineering analysis results in the selection of unreasonable compressors for the refrigeration load. Specifically, Structural Concepts stated that the refrigeration load is 6,990 Btu/h for the VOP.SC.M equipment class, and the compressor sizing value is 9,787 Btu/h. Using the oversize factor value of 1.4, the compressor selected in the engineering analysis has a capacity of 13,219 Btu/h. The selection of an unrealistically large compressor unfairly skews the energy efficiency ratio because the larger compressor has a higher efficiency rating than the next smallest compressor that has a rated capacity closer to the compressor sizing value. (Structural Concepts, No. 30 at p. 3)

The energy consumption model selects a compressor assuming that the rated capacity of the compressor must be at or above the compressor sizing value. This prevents the selection of a compressor that is unable to meet the refrigeration load. The example Structural Concepts selected highlights one of the more extreme cases of how this model can select a compressor that is larger than necessary. However, Structural Concepts did not provide a recommendation that would result in the selection of a more appropriate compressor, or a more appropriate compressor oversize factor value to use for all the self-contained equipment classes. Because manufacturers previously agreed that the compressor oversize factor of 1.4 was appropriate to use for all the self-contained equipment classes used in the analysis, DOE maintained its assumptions from the NOPR.

h. Offset Factors for Self-Contained Equipment

For the NOPR, DOE developed offset factors to adjust the energy consumption calculations to accommodate smaller equipment for the equipment classes it directly analyzed. These offset factors account for the components of the refrigeration load that remain constant even when equipment sizes vary (*i.e.*, the conduction end effects) and disproportionately affect smaller cases. In the equation that describes the relationship between energy consumption and the corresponding TDA or volume metric, the offset factors are intended to approximate these constant loads and provide a fixed end point that corresponds to a zero TDA or zero volume case. See chapter 5 of the TSD for further details on the development of these offset factors for each equipment class. Following the NOPR, Structural Concepts requested that DOE increase the offset factor for self-contained equipment because DOE's analysis selected compressors that were too large and had unrealistically high efficiencies. (Structural Concepts, No. 30 at p. 4)

The compressors suggested by Structural Concepts for DOE's model would, in some cases, be undersized for

[19] 18ANSI/ARI Standard 540–2004: Performance Rating of Positive Displacement Refrigerant Compressors and Compressor Units lists standard rating conditions for hermetic refrigeration compressors. For medium-temperature equipment, compressors are rated at 20 °F suction dewpoint, 120 °F discharge dewpoint, 40 °F return gas, and 0 °F subcooling. For low-temperature equipment, compressors are rated at −10 °F suction dewpoint, 120 °F discharge dewpoint, 40 °F return gas, and 0 °F subcooling. For ice-cream-temperature equipment, compressors are rated at −25 °F suction dewpoint, 105 °F discharge dewpoint, 40 °F return gas, and 0 °F subcooling.

the refrigeration load. As mentioned in section V.A.2.g, DOE maintained the methodology used to select compressors in the energy consumption model. Because DOE did not receive any comments on necessary improvements or data on which its analysis can be reevaluated, and because the compressor selections used to develop the offset factors have not changed, DOE maintained the offset factors developed in the NOPR.

i. Self-Contained Condensing Coils

Following the NOPR, Structural Concepts revealed a discrepancy about the running temperature for self-contained equipment using coil enhancements. (Structural Concepts, No. 30 at p. 1) Chapter 5, section 5.6.3.7 of the NOPR TSD stated that self-contained equipment condenser coil enhancements would allow the condenser to run at a saturated condenser temperature (SCT) 10 °F cooler than a standard coil. However, the engineering analysis spreadsheet showed a decrease of 14 °F for this design option. There was a typographical error in the NOPR TSD and the 14 °F decrease in the engineering analysis is correct. In chapter 5 of the final rule TSD, DOE updated its figure to reflect the correct SCT 14 °F cooler temperature for the coil enhancements design option for self-contained equipment.

Structural Concepts also questioned the validity of using 98 °F as the baseline SCT in the engineering analysis. According to Structural Concepts, this value is not representative of the current ''off the shelf'' self-contained condensing units available. It believes the baseline SCT value should be closer to 105 °F or 110 °F. (Structural Concepts, No. 30 at p. 2)

There are condensing coils available that operate at both higher and lower SCT than the standard coil used in its model. This discrepancy exists because the standard coil used in DOE's model is not an actual condensing coil. DOE reviewed a range of available manufacturer data, selected several representative units, and aggregated the physical characteristics of the selected units to create a representative unit for each equipment class. The 98 °F operating SCT is an average characteristic. DOE also conducted a sensitivity analysis to evaluate Structural Concept's claim that baseline SCT was too low. In this sensitivity analysis in which the SCT was raised to 105 °F, DOE observed only minor changes in the energy consumption of the self-contained units. For these reasons, DOE will continue to use 98 °F as the baseline SCT for self-contained equipment condensers for today's final rule.

For the NOPR, DOE used data from teardowns by Southern California Edison's Refrigeration and Thermal Test Center (RTTC) to model the enhanced condenser coil used in the engineering analysis. Based on this information, DOE considered both minimum and maximum technology levels for this design option. For each level, DOE specified an overall UA-value and a coil cost. The UA-value is normalized to the standard coil, and the coil cost is normalized to the heat removal capacity of the coil. This approach allowed DOE to apply the details of coil design across all self-contained equipment classes. In consultation with outside experts, DOE determined that applying the same coil improvements to different sized coils would result in similar performance improvements. *See* chapter 5 of the TSD for more detail on the development of the enhanced condenser coil specifications.

Following the NOPR, Structural Concepts stated that DOE overstates the magnitude of the UA-value increase achievable with an enhanced condenser coil. It claimed the enhanced condenser prototype DOE used as a model for this design option is too large for use in self-contained equipment and, because UA-value primarily depends on surface area, the use of a smaller, practical condenser would yield a lower UA-value. As a result, it requested that DOE base the UA-value on coils that are closer in size to the standard coil. (Structural Concepts, No. 30 at p. 2)

The specifications for the enhanced coil used in DOE's analysis are based on a model developed specifically for use in a self-contained refrigeration system. The details of the coil construction are based on data from teardowns by Southern California Edison's Refrigeration and Thermal Test Center (RTTC).[20] Therefore, DOE is confident that it modeled an appropriately sized high efficiency condenser coil. In addition to increased exterior dimensions, DOE's enhanced condenser coil also uses a higher fin pitch, rifled tubing, and different tube spacing to achieve a higher UA-value than the standard coil. Structural Concepts also did not provide costs for their suggested coil model. Because DOE did not receive additional information or data that would suggest that the UA-value is not representative of enhanced condenser coils, and the data that was provided were incomplete, DOE maintained its assumptions from the NOPR for the enhanced condenser coil.

3. Manufacturer Impact Analysis

The Joint Comment stated that DOE gives exclusive consideration to the preservation-of-gross-margin (absolute dollars) scenario. According to the Joint Comment, relying solely on this scenario only considers manufacturers' expectations about the manufacturing impacts at the proposed standard. (Joint Comment, No. 7 at p. 2) The Joint Comment stated the preservation-of-gross-margin-percentage markup scenario provides a more plausible representation of impacts on manufacturers due to new energy conservation standards. (Joint Comment, No. 7 at p. 3)

DOE developed two markup scenarios: The preservation-of-gross-margin-percentage and the preservation-of-gross-margin (absolute dollars). DOE used these scenarios to bound the potential impacts on the industry value as a result of new energy conservation standards and presented its findings in the August 2008 NOPR for public comment. 73 FR 50107. The preservation-of-gross-margin-percentage markup scenario is a lower bound estimate on manufacturer impacts because it assumes that manufacturers will be able to fully recover all the increases in production costs due to energy conservation standards requirements. The preservation-of-gross-margin (absolute dollars) markup scenario is an upper bound estimate on manufacturer impacts because it assumes that manufacturers will be able to only partially recover cost increases (to maintain an absolute dollar gross margin) due to energy conservation standards. The markup scenarios DOE modeled in the GRIM reflect both its interpretation of qualitative information learned during manufacturer interviews and the analysis of limited profit margin data provided under confidentiality agreements.

DOE notes the large uncertainty about the actual impacts on the industry due to standards. The commercial refrigeration equipment industry has never been regulated for energy efficiency and manufacturers do not have previous experience on how energy conservation standards affect their business. The seven manufacturers that DOE interviewed for the NOPR expressed a divergence of views on how prices would change after standards. Most manufacturers stated that they expect profit levels to decrease due to new energy conservation standards based on their recent inability to pass on

[20] Refrigeration and Thermal Test Center. *Personal communication.* Southern California Edison. March 29, 2007.

increases in material and component costs to their customers. The portion of production costs reflected in selling prices varied significantly from manufacturer to manufacturer. In general, companies with lower market shares face greater challenges in passing along costs and would suffer larger margin impacts due to new energy conservation standards. Manufacturers with relatively large market shares have been more successful passing through costs and they are more confident of maintaining profit levels over the long term. Because of the divergence of experience with cost pass-through and the implication for prices and profitability after standards, DOE considers the full range of potential impacts bounded by the markup scenarios and does not consider one scenario to be more likely.

In response to the NOPR, Earthjustice noted that the direct employment benefits are shown to provide positive employment in the MIA analysis. Earthjustice stated DOE should consider these benefits in the final rule. (Earthjustice, Public Meeting Transcript, No. 27 at p. 166)

For the MIA, DOE calculated the direct employment impacts on the commercial refrigeration industry. DOE calculated total labor expenditures for the industry using the production costs from the engineering analysis, labor information from U.S. Census Bureau's 2006 Annual Survey of Manufacturers, and the total industry shipments from the NES. DOE translated the total labor expenditures for the industry into the total number of domestic jobs using the domestic share of commercial refrigeration equipment manufacturing, the labor rate for the industry, and the annual hours per worker. DOE calculated its estimate of the domestic employment for the base case and each TSL. The direct employment results characterized by the MIA represent U.S. production and non-production workers that are affected by this rulemaking in the commercial refrigeration equipment manufacturing industry.

For the final rule, DOE examined the impacts of energy conservation standards on domestic manufacturing employment levels. The direct employment impact analysis conducted as part of the MIA estimates the number of domestic workers who are affected by this rulemaking in the commercial refrigeration equipment manufacturing industry, assuming that shipment levels and product availability remain at current levels. Because labor costs are assumed to be a fixed percentage of total manufacturing production costs, which increase with more efficient equipment, the GRIM predicts a gradual increase in employment after standards. DOE has considered all employment impacts in weighing the benefits and the burdens, including direct (as calculated by the MIA) and indirect (as calculated by the employment impact analysis). For further details on the direct employment impact analysis, see chapter 13 of the accompanying TSD.

VI. Analytical Results and Conclusions

A. Trial Standard Levels

DOE selected between four and eight energy consumption levels for each commercial refrigeration equipment class in the LCC analysis. Based on the results of the analysis, DOE selected five trial standard levels above the baseline level for each equipment class for the NOPR. The range of TSLs selected includes the most energy efficient combination of design options with a positive NPV at the 7-percent discount rate, and the combination of design options with the minimum LCC. TSLs also were selected that filled large gaps between the baseline and the level with the minimum LCC.

For the NOPR, DOE developed offset factors to adjust the energy efficiency requirements for smaller equipment in each equipment class analyzed. These offset factors account for certain components of the refrigeration load (such as the conduction end effects) that remain constant even when equipment sizes vary. These constant loads affect smaller cases disproportionately. The offset factors are intended to approximate these constant loads and provide a fixed end point, corresponding to a zero TDA or zero volume case, in an equation that describes the relationship between energy consumption and the corresponding TDA or volume metric. See chapter 5 of the TSD for further details on the development of these offset factors for each equipment class.

For the final rule, DOE preserved the general methodology it used for the selection of efficiency levels in the NOPR in establishing specific efficiency levels for equipment classes. These levels are based on the results of the updated LCC analysis and made up the TSLs used in the NOPR. Table VI–1 shows the TSL levels DOE selected for energy use for the equipment classes analyzed. TSL 5 is the max-tech level for each equipment class. TSL 4 is the maximum efficiency level with a positive NPV at the 7-percent discount rate, except for VOP.RC.M. In this class, the minimal difference in energy efficiency between the minimum life-cycle cost level as determined by the LCC analysis and the maximum efficiency level with positive NPV prompted DOE to select the minimum life-cycle cost level instead of the maximum level with positive NPV. TSL 4 is a combination of the efficiency levels selected for TSL 3 and TSL 5. For a given equipment class, the efficiency levels selected for TSL 4 are either equivalent to those of TSL 3 or TSL 5. TSL 3 is the efficiency level that provides the minimum life-cycle cost determined by the LCC analysis. TSL 2 and TSL 1 represent lower efficiency levels that fill in the gap between the current baseline and the levels determined to have the minimum LCC.

Table VI–1 shows the same TSL levels in terms of proposed equations that establish an MDEC limit through a linear equation of the form:

$MDEC = A \times TDA + B$ *(for equipment using TDA as a normalizing metric)*

or

$MDEC = A \times V + B$ *(for equipment using volume as a normalizing metric)*

Coefficients A and B are uniquely derived for each equipment class based on the calculated offset factor B (see chapter 5 of the TSD for offset factors) and the equation slope A. Equation slope A would be used to describe the efficiency requirements for equipment of different sizes within the same equipment class. Chapter 9 of the TSD explains the methodology DOE used for selecting TSLs and developing the coefficients shown in Table VI–2.

TABLE VI–1—TRIAL STANDARD LEVELS FOR ANALYZED EQUIPMENT EXPRESSED IN TERMS OF DAILY ENERGY CONSUMPTION

Equipment class	Normalization metric	Normalization value *	Test metric (kWh/day)	Trial standard levels for equipment analyzed expressed in terms of energy consumption (kWh/day)					
				Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	TDA [ft²] **	53.30	CDEC	57.90	51.99	50.68	47.69	47.69	43.75
VOP.RC.L	TDA [ft²]	44.66	CDEC	133.60	118.44	113.28	112.00	108.40	108.40
VOP.SC.M	TDA [ft²]	14.93	TDEC ††	39.60	35.95	33.38	30.70	30.70	29.33
VCT.RC.M	TDA [ft²]	65.00	CDEC	33.18	31.77	30.00	16.36	16.18	16.18
VCT.RC.L	TDA [ft²]	65.00	CDEC	69.31	65.73	46.90	39.60	39.18	39.18
VCT.SC.I	TDA [ft²]	26.00	TDEC	45.63	33.35	23.39	21.17	20.81	20.81
VCS.SC.I	V [ft³] †	48.00	TDEC	27.13	24.31	21.64	19.07	19.07	19.07
SVO.RC.M	TDA [ft²]	40.00	CDEC	43.56	39.58	38.59	36.34	36.34	33.61
SVO.SC.M	TDA [ft²]	12.80	TDEC	33.11	30.66	28.87	26.74	26.74	25.74
SOC.RC.M	TDA [ft²]	51.00	CDEC	31.70	30.01	27.93	26.24	26.24	20.62
HZO.RC.M	TDA [ft²]	33.00	CDEC	19.63	17.89	15.73	14.69	14.54	14.54
HZO.RC.L	TDA [ft²]	46.00	CDEC	38.38	35.30	33.41	32.97	32.97	32.97
HZO.SC.M	TDA [ft²]	12.00	TDEC	19.23	17.85	16.51	14.93	14.81	14.81
HZO.SC.L	TDA [ft²]	12.00	TDEC	38.69	36.02	33.52	30.31	30.14	30.14
HCT.SC.I	TDA [ft²]	5.12	TDEC	7.25	6.37	3.70	3.53	3.32	3.32

* This is the assumed baseline size for each equipment class used in DOE's analyses.
** TDA is total display area of the case.
† V is gross refrigerated volume of the case.
†† TDEC is total daily energy consumption of the case.

TABLE VI–2—TRIAL STANDARD LEVELS EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR EACH PRIMARY EQUIPMENT CLASS

Equipment class	Test metric (kWh/day)	Trial standard levels for primary equipment classes analyzed					
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	CDEC	1.01 × TDA + 4.07	0.9 × TDA + 4.07	0.87 × TDA + 4.07	0.82 × TDA + 4.07	0.82 × TDA + 4.07	0.74 × TDA + 4.07
VOP.RC.L	CDEC	2.84 × TDA + 6.85	2.5 × TDA + 6.85	2.38 × TDA + 6.85	2.35 × TDA + 6.85	2.27 × TDA + 6.85	2.27 × TDA + 6.85
VOP.SC.M	TDEC	2.34 × TDA + 4.71	2.09 ×TDA + 4.71	1.92 ×TDA + 4.71	1.74 × TDA + 4.71	1.74 × TDA + 4.71	1.65 × TDA + 4.71
VCT.RC.M	CDEC	0.48 × TDA + 1.95	0.46 × TDA + 1.95	0.43 × TDA + 1.95	0.22 × TDA + 1.95	0.22 × TDA + 1.95	0.22 × TDA + 1.95
VCT.RC.L	CDEC	1.03 × TDA + 2.61	0.97 × TDA + 2.61	0.68 × TDA + 2.61	0.57 × TDA + 2.61	0.56 × TDA +2.61	0.56 × TDA + 2.61
VCT.SC.I	TDEC	1.63 × TDA + 3.29	1.16 × TDA + 3.29	0.77 × TDA + 3.29	0.69 × TDA + 3.29	0.67 × TDA + 3.29	0.67 × TDA + 3.29
VCS.SC.I	TDEC	0.55 × V + 0.88	0.49 × V + 0.88	0.43 × V + 0.88	0.38 × V + 0.88	0.38 × V + 0.88	0.38 × V + 0.88
SVO.RC.M	CDEC	1.01 × TDA + 3.18	0.91 × TDA + 3.18	0.89 × TDA + 3.18	0.83 × TDA + 3.18	0.83 × TDA + 3.18	0.76 × TDA + 3.18
SVO.SC.M	TDEC	2.23 × TDA + 4.59	2.04 × TDA + 4.59	1.9 × TDA + 4.59	1.73 × TDA + 4.59	1.73 × TDA + 4.59	1.65 × TDA + 4.59
SOC.RC.M	CDEC	0.62 × TDA + 0.11	0.59 × TDA + 0.11	0.55 × TDA + 0.11	0.51 × TDA + 0.11	0.51 × TDA + 0.11	0.4 × TDA + 0.11
HZO.RC.M	CDEC	0.51 × TDA + 2.88	0.45 × TDA + 2.88	0.39 × TDA + 2.88	0.36 × TDA + 2.88	0.35 × TDA + 2.88	0.35 × TDA + 2.88
HZO.RC.L	CDEC	0.68 × TDA + 6.88	0.62 × TDA + 6.88	0.58 × TDA + 6.88	0.57 × TDA + 6.88	0.57 × TDA + 6.88	0.57 × TDA + 6.88
HZO.SC.M	TDEC	1.14 × TDA + 5.55	1.03 × TDA + 5.55	0.91 × TDA + 5.55	0.78 × TDA + 5.55	0.77 × TDA + 5.55	0.77 × TDA + 5.55
HZO.SC.L	TDEC	2.63 × TDA + 7.08	2.41 × TDA + 7.08	2.2 × TDA + 7.08	1.94 × TDA + 7.08	1.92 × TDA + 7.08	1.92 × TDA + 7.08
HCT.SC.I	TDEC	1.33 × TDA + 0.43	1.16 × TDA + 0.43	0.64 × TDA + 0.43	0.6 × TDA + 0.43	0.56 × TDA + 0.43	0.56 × TDA + 0.43

In addition to the standards for the 15 primary equipment classes DOE analyzed, DOE is adopting standards for the remaining 23 secondary equipment classes of commercial refrigeration equipment covered in this rulemaking that were not directly analyzed in the engineering analysis due to low annual shipments (less than 100 units per year). DOE's approach involved extension multipliers developed using both the 15 primary equipment classes analyzed and a set of focused matched-pair analyses. In addition, standards for certain primary equipment classes could be directly applied to other similar secondary equipment classes. Chapter 5 of the TSD discusses the development of the extension multipliers and the set of focused matched-pair analyses.

Using this approach, DOE developed an additional set of TSLs for these secondary equipment classes that corresponds to each of the equations shown in Table VI–2 at each TSL. Table VI–3 shows this additional set of corresponding TSL levels.

TABLE VI–3—TRIAL STANDARD LEVELS EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR EACH SECONDARY EQUIPMENT CLASS

Equipment class	Test metric (kWh/day)	Trial standard levels for secondary equipment classes analyzed					
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
SVO.RC.L	CDEC	2.84 × TDA + 6.85	2.5 × TDA + 6.85	2.38 × TDA + 6.85	2.35 × TDA + 6.85	2.27 × TDA + 6.85	2.27 × TDA + 6.85
VOP.RC.I	CDEC	3.6 × TDA + 8.7	3.17 × TDA + 8.7	3.03 × TDA + 8.7	2.99 × TDA + 8.7	2.89 × TDA + 8.7	2.89 × TDA + 8.7
SVO.RC.I	CDEC	3.6 × TDA + 8.7	3.17 × TDA + 8.7	3.03 × TDA + 8.7	2.99 × TDA + 8.7	2.89 × TDA + 8.7	2.89 × TDA + 8.7
HZO.RC.I	CDEC	0.87 × TDA + 8.74	0.78 × TDA + 8.74	0.73 × TDA + 8.74	0.72 × TDA + 8.74	0.72 × TDA + 8.74	0.72 × TDA + 8.74
VCT.RC.I	CDEC	1.2 × TDA + 3.05	1.14 × TDA + 3.05	0.8 × TDA + 3.05	0.67 × TDA + 3.05	0.66 × TDA + 3.05	0.66 × TDA + 3.05
HCT.RC.M	CDEC	0.39 × TDA + 0.13	0.34 × TDA + 0.13	0.19 × TDA + 0.13	0.18 × TDA + 0.13	0.16 × TDA + 0.13	0.16 × TDA + 0.13

TABLE VI–3—TRIAL STANDARD LEVELS EXPRESSED IN TERMS OF EQUATIONS AND COEFFICIENTS FOR EACH SECONDARY EQUIPMENT CLASS—Continued

Equipment class	Test metric (kWh/day)	Trial standard levels for secondary equipment classes analyzed					
		Baseline	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
HCT.RC.L	CDEC	0.81 × TDA + 0.26	0.71 × TDA + 0.26	0.39 × TDA + 0.26	0.37 × TDA + 0.26	0.34 × TDA + 0.26	0.34 × TDA + 0.26
HCT.RC.I	CDEC	0.95 × TDA + 0.31	0.83 × TDA + 0.31	0.46 × TDA + 0.31	0.43 × TDA + 0.31	0.4 × TDA + 0.31	0.4 × TDA + 0.31
VCS.RC.M	CDEC	0.16 × V + 0.26	0.14 × V + 0.26	0.13 × V + 0.26	0.11 × V + 0.26	0.11 × V + 0.26	0.11 × V + 0.26
VCS.RC.L	CDEC	0.33 × V + 0.54	0.3 × V + 0.54	0.26 × V + 0.54	0.23 × V + 0.54	0.23 × V + 0.54	0.23 × V + 0.54
VCS.RC.I	CDEC	0.39 × V + 0.63	0.35 × V + 0.63	0.31 × V + 0.63	0.27 × V + 0.63	0.27 × V + 0.63	0.27 × V + 0.63
HCS.RC.M	CDEC	0.16 × V + 0.26	0.14 × V + 0.26	0.13 × V + 0.26	0.11 × V + 0.26	0.11 × V + 0.26	0.11 × V + 0.26
HCS.RC.L	CDEC	0.33 × V + 0.54	0.3 × V + 0.54	0.26 × V + 0.54	0.23 × V + 0.54	0.23 × V + 0.54	0.23 × V + 0.54
HCS.RC.I	CDEC	0.39 × V + 0.63	0.35 × V + 0.63	0.31 × V + 0.63	0.27 × V + 0.63	0.27 × V + 0.63	0.27 × V + 0.63
SOC.RC.L	CDEC	1.3 × TDA + 0.22	1.23 × TDA + 0.22	1.15 × TDA + 0.22	1.08 × TDA + 0.22	1.08 × TDA + 0.22	0.84 × TDA + 0.22
SOC.RC.I	CDEC	1.52 × TDA + 0.26	1.44 × TDA + 0.26	1.34 × TDA + 0.26	1.26 × TDA + 0.26	1.26 × TDA + 0.26	0.99 × TDA + 0.26
VOP.SC.L	TDEC	5.87 × TDA + 11.82	5.25 × TDA + 11.82	4.82 × TDA + 11.82	4.37 × TDA + 11.82	4.37 × TDA + 11.82	4.14 × TDA + 11.82
VOP.SC.I	TDEC	7.45 × TDA + 15.02	6.67 × TDA + 15.02	6.13 × TDA + 15.02	5.55 × TDA + 15.02	5.55 × TDA + 15.02	5.26 × TDA + 15.02
SVO.SC.L	TDEC	5.59 × TDA + 11.51	5.11 × TDA + 11.51	4.76 × TDA + 11.51	4.34 × TDA + 11.51	4.34 × TDA + 11.51	4.15 × TDA + 11.51
SVO.SC.I	TDEC	7.11 × TDA + 14.63	6.5 × TDA + 14.63	6.05 × TDA + 14.63	5.52 × TDA + 14.63	5.52 × TDA + 14.63	5.27 × TDA + 14.63
HZO.SC.I	TDEC	3.35 × TDA + 9	3.06 × TDA + 9	2.8 × TDA + 9	2.46 × TDA + 9	2.44 × TDA + 9	2.44 × TDA + 9
SOC.SC.I	TDEC	2.13 × TDA + 0.36	2.02 × TDA + 0.36	1.88 × TDA + 0.36	1.76 × TDA + 0.36	1.76 × TDA + 0.36	1.38 × TDA + 0.36
HCS.SC.I	TDEC	0.55 × V + 0.88	0.49 × V + 0.88	0.43 × V + 0.88	0.38 × V + 0.88	0.38 × V + 0.88	0.38 × V + 0.88

1. Miscellaneous Equipment

As stated in the August 2008 NOPR, certain types of equipment meet the definition of ''commercial refrigeration equipment'' (Section 136(a)(3) of EPACT 2005), but do not fall directly into any of the 38 equipment classes defined in the market and technology assessment. One of these types is hybrid cases, in which two or more compartments are in different equipment families and are contained in one cabinet. Another is refrigerator-freezers, which have two compartments in the same equipment family but have different operating temperatures. Hybrid refrigerator-freezers, where two or more compartments are in different equipment families and have different operating temperatures, may also exist. Another is wedge cases, which form miter transitions (a corner section between two refrigerated display merchandisers) between standard display case lineups. DOE is using language that will allow manufacturers to determine appropriate standard levels for these types of equipment.

An example of a pure hybrid case (one with two or more compartments in different equipment families and operating at the same temperature) is a unit with one open and one closed medium-temperature compartment, such as those seen in coffee shops that sell baked goods and beverages. These hybrid cases may be either self-contained or remote condensing, and may be cooled by one or more condensing units. They may also have one evaporator cooling both compartments or one evaporator feeding each compartment separately.

An example of a refrigerator-freezer is a unit with doors where one compartment operates at medium temperature and one compartment operates at low temperature. Remote condensing commercial refrigerator-freezers (with and without doors) and self-contained commercial refrigerator-freezers without doors may operate in one of two ways. They may operate as separate chilled and frozen compartments with evaporators fed by two sets of refrigerant lines or two compressors. Alternatively, they may operate as separate chilled and frozen compartments fed by one set of low-temperature refrigerant lines (with evaporator pressure regulator (EPR) valves or similar devices used to raise the evaporator pressure) or one compressor.

An example of a hybrid refrigerator-freezer is a unit with one open compartment at medium temperature and one closed compartment at low temperature. As with pure hybrid cases, these cases may be either self-contained or remote condensing, and may be cooled by one or more condensing units. In the case of remote condensing equipment, they may operate as separate chilled and frozen compartments with evaporators fed by two sets of refrigerant lines or two compressors, or they may operate as separate chilled and frozen compartments fed by one set of low-temperature refrigerant lines (with EPR valves or similar devices used to raise the evaporator pressure of one compartment) or one compressor.

In the August 2008 NOPR, DOE proposed using the following language for requiring manufacturers to meet standards for hybrid cases, refrigerator-freezers, and hybrid refrigerator-freezers:

• For commercial refrigeration equipment with two or more compartments (*i.e.*, hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator freezers), the MDEC for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the appropriate equipment class based on that compartment's equipment family, condensing unit configuration, and designed operating temperature. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment's TDA or volume into the standard equation for that compartment's equipment class. Measure the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) for the entire case as follows:

○ For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more independent condensing units each separately cool only one compartment, measure the total refrigeration load of each compartment separately according to the ANSI/ASHRAE Standard 72–2005 test procedure. Calculate compressor energy consumption (CEC) for each compartment using Table 1 in ARI Standard 1200–2006 using the saturated evaporator temperature for that compartment. The calculated daily energy consumption (CDEC) for the entire case shall be the sum of the CEC for each compartment, fan energy consumption (FEC), lighting energy consumption (LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), and condensate evaporator pan energy consumption (PEC) (as measured in ARI Standard 1200–2006).

○ For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more compartments are cooled collectively by one condensing unit, measure the total refrigeration load of the entire case according to the ANSI/ASHRAE Standard 72–2005 test procedure. Calculate a weighted saturated evaporator temperature for the entire case by (i) multiplying the saturated evaporator temperature of each compartment by the volume of that compartment (as measured in ARI Standard 1200–2006), (ii) summing the resulting values for all compartments, and (iii) dividing the resulting total by the total volume of all compartments. Calculate the CEC for the entire case using Table 1 in ARI Standard 1200–2006, using the total refrigeration load and the weighted average saturated evaporator temperature. The CDEC for the entire case shall be the sum of the CEC, FEC, LEC, AEC, DEC, and PEC.

○ For self-contained commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, measure the total daily energy consumption (TDEC) for the entire case according to the ANSI/ASHRAE Standard 72–2005 test procedure.

In response to the NOPR, Traulsen suggested that DOE address commercial refrigerator-freezers by summing the maximum daily energy consumption values for all of its individual compartments. (Traulsen, No. 25 at p. 2)

DOE agrees with this suggestion and notes that it is in alignment with the proposal in the August 2008 NOPR for commercial refrigeration equipment with two or more compartments. Therefore, DOE is adopting the language above for hybrid cases, refrigerator-freezers, and hybrid refrigerator-freezers in its final rule.

Additionally, DOE is adopting the following language to address wedge cases: For remote condensing and self-contained wedge cases, measure the CDEC or TDEC according to the ANSI/ARI 1200–2006 test procedure. The MDEC for each model shall be the amount derived by incorporating into the standard equation for the appropriate equipment class a value for the TDA that is the product of: (1) The vertical height of the air curtain (or glass in a transparent door), and (2) the largest overall width of the case when viewed from the front.

B. Significance of Energy Savings

To estimate the energy savings through 2042 due to new standards, DOE compared the energy consumption of commercial refrigeration equipment under the base case (no standards) to energy consumption of this equipment under each TSL that DOE considered. Table VI–4 shows DOE's NES estimates, which it based on the *AEO2008* reference case, for each TSL. Chapter 11 of the TSD describes these estimates in more detail. DOE reports both undiscounted and discounted values of energy savings. Discounted energy savings represent a policy perspective where energy savings farther in the future are less significant than energy savings closer to the present. Each TSL considered in this rulemaking resulted in significant energy savings, and the amount of savings increased with higher energy conservation standards. Energy savings ranged from an estimated 0.168 quads to 1.298 quads for TSLs 1 through 5 (undiscounted).

TABLE VI–4—SUMMARY OF CUMULATIVE NATIONAL ENERGY SAVINGS FOR COMMERCIAL REFRIGERATION EQUIPMENT (ENERGY SAVINGS FOR UNITS SOLD FROM 2012 TO 2042)

Trial standard level	Primary national energy savings (quads) (sum of all equipment classes)		
	Undiscounted	3% Discounted	7% Discounted
1	0.168	0.088	0.041
2	0.645	0.339	0.159
3	1.013	0.532	0.250
4	1.035	0.544	0.256
5	1.298	0.683	0.321

C. Economic Justification

1. Economic Impact on Commercial Customers

a. Life-Cycle Costs and Payback Period

Commercial customers will be affected by the standards because they will experience higher purchase prices and lower operating costs. Generally, these impacts are best captured by changes in life-cycle costs and payback period. Therefore, DOE calculated the LCC and PBP for the standard levels considered in this rulemaking. DOE's LCC and PBP analyses provided five key outputs for each TSL, reported in Table VI–5 through Table VI–19. The first three outputs are the proportion of purchases of commercial refrigeration equipment where the purchase of a design that complies with the TSL would create: (1) A net life-cycle cost, (2) no impact, or (3) a net life-cycle savings for the consumer. The fourth output is the average net life-cycle savings from purchasing a complying design. The fifth output is the average PBP for the customer purchasing a design that complies with the TSL compared with purchasing baseline equipment. The PBP is the number of years it would take for the customer to recover the increased costs of higher-efficiency equipment through energy savings based on the operating cost savings from the first year of ownership. The PBP is an economic benefit-cost measure that uses benefits and costs without discounting.

TABLE VI–5—SUMMARY LCC AND PBP RESULTS FOR VOP.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	99
Equipment with No Change in LCC (%)	64	46	29	29	1
Equipment with Net LCC Savings (%)	36	54	71	71	0
Mean LCC Savings ($) *	1,344	1,308	1,788	1,788	(3,959)

TABLE VI–5—SUMMARY LCC AND PBP RESULTS FOR VOP.RC.M EQUIPMENT CLASS—Continued

	Trial standard level				
	1	2	3	4	5
Mean Payback Period (years)	0.8	1.3	2.0	2.0	138.1

* Numbers in parentheses indicate negative savings.

TABLE VI–6—SUMMARY LCC AND PBP RESULTS FOR VOP.RC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	69	52	23	8	8
Equipment with Net LCC Savings (%)	31	48	77	92	92
Mean LCC Savings ($)	3,501	4,500	4,610	3,938	3,938
Mean Payback Period (years)	0.7	1.1	1.2	2.8	2.8

TABLE VI–7—SUMMARY LCC AND PBP RESULTS FOR VOP.SC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	69
Equipment with No Change in LCC (%)	67	35	21	21	1
Equipment with Net LCC Savings (%)	33	65	79	79	30
Mean LCC Savings ($)	842	1,209	1,549	1,549	(451)
Mean Payback Period (years)	0.8	1.6	2.4	2.4	11.2

TABLE VI–8—SUMMARY LCC AND PBP RESULTS FOR VCT.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	80	60	17	8	8
Equipment with Net LCC Savings (%)	20	40	83	92	92
Mean LCC Savings ($)	320	657	2,375	2,339	2,339
Mean Payback Period (years)	0.8	1.3	3.8	3.9	3.9

TABLE VI–9—SUMMARY LCC AND PBP RESULTS FOR VCT.RC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	62	43	20	10	10
Equipment with Net LCC Savings (%)	38	57	80	90	90
Mean LCC Savings ($)	762	4,137	5,450	5,419	5,419
Mean Payback Period (years)	1.1	2.4	2.5	2.6	2.6

TABLE VI–10—SUMMARY LCC AND PBP RESULTS FOR VCT.SC.I EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	55	41	20	9	9
Equipment with Net LCC Savings (%)	45	59	80	91	91
Mean LCC Savings ($)	2,941	4,893	5,234	5,217	5,217
Mean Payback Period (years)	1.0	1.5	1.6	1.7	1.7

TABLE VI–11—SUMMARY LCC AND PBP RESULTS FOR VCS.SC.I EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	76	50	11	11	11
Equipment with Net LCC Savings (%)	24	50	89	89	89
Mean LCC Savings ($)	704	1,321	1,757	1,757	1,757
Mean Payback Period (years)	0.4	0.6	1.3	1.3	1.3

TABLE VI–12—SUMMARY LCC AND PBP RESULTS FOR SVO.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	99
Equipment with No Change in LCC (%)	65	47	30	30	1
Equipment with Net LCC Savings (%)	35	53	70	70	0
Mean LCC Savings ($)	907	896	1,274	1,274	(2,974)
Mean Payback Period (years)	0.8	1.3	1.9	1.9	196.8

TABLE VI–13—SUMMARY LCC AND PBP RESULTS FOR SVO.SC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	69
Equipment with No Change in LCC (%)	68	36	22	22	2
Equipment with Net LCC Savings (%)	32	64	78	78	29
Mean LCC Savings ($)	583	853	1,136	1,136	(355)
Mean Payback Period (years)	0.6	1.4	2.3	2.3	11.5

TABLE VI–14—SUMMARY LCC AND PBP RESULTS FOR SOC.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	92
Equipment with No Change in LCC (%)	82	64	29	29	3
Equipment with Net LCC Savings (%)	18	36	71	71	5
Mean LCC Savings ($)	405	851	945	945	(1,458)
Mean Payback Period (years)	0.5	0.8	1.7	1.7	19.4

TABLE VI–15—SUMMARY LCC AND PBP RESULTS FOR HZO.RC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	80	60	39	19	19
Equipment with Net LCC Savings (%)	20	40	61	81	81
Mean LCC Savings ($)	419	887	1,063	1,040	1,040
Mean Payback Period (years)	0.5	0.8	1.2	1.6	1.6

TABLE VI–16—SUMMARY LCC AND PBP RESULTS FOR HZO.RC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	59	39	19	19	19
Equipment with Net LCC Savings (%)	41	61	81	81	81
Mean LCC Savings ($)	668	1,047	1,102	1,102	1,102
Mean Payback Period (years)	1.0	1.4	1.6	1.6	1.6

TABLE VI–17—SUMMARY LCC AND PBP RESULTS FOR HZO.SC.M EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	73	45	21	10	10
Equipment with Net LCC Savings (%)	27	55	79	90	90
Mean LCC Savings ($)	344	615	861	826	826
Mean Payback Period (years)	0.4	1.0	1.8	2.3	2.3

TABLE VI–18—SUMMARY LCC AND PBP RESULTS FOR HZO.SC.L EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	73	46	21	10	10
Equipment with Net LCC Savings (%)	27	54	79	90	90
Mean LCC Savings ($)	670	1,215	1,784	1,761	1,761
Mean Payback Period (years)	0.3	0.8	1.5	1.7	1.7

TABLE VI–19—SUMMARY LCC AND PBP RESULTS FOR HCT.SC.I EQUIPMENT CLASS

	Trial standard level				
	1	2	3	4	5
Equipment with Net LCC Increase (%)	0	0	0	0	0
Equipment with No Change in LCC (%)	65	47	30	14	14
Equipment with Net LCC Savings (%)	35	53	70	86	86
Mean LCC Savings ($)	211	775	797	785	785
Mean Payback Period (years)	0.6	1.4	1.5	1.9	1.9

For five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M), TSL 5 resulted in negative LCC savings compared to the purchase of baseline equipment. For all other equipment classes, TSL 5 showed positive LCC savings. For equipment classes with lighting, including LED lighting at TSL 5 had a significant impact on the calculated LCC savings. For equipment classes without lighting (*i.e.*, VCS.SC.I, HZO.RC.L, HZO.SC.M, HZO.SC.L, and HCT.SC.I), the difference in LCC savings between TSL 3 and TSL 5 was small, between $0 and $35 less at TSL 5 than at TSL 3. For VCT.RC.L, VCT.RC.I, and VCT.SC.I, the difference in LCC savings between TSL 3 and TSL 5 was small as well (between $17 and $36 less savings at TSL 5 than at TSL 3). VOP.RC.L showed a more significant reduction in LCC savings at TSL 5 compared to TSL 3 at $672.

b. Commercial Customer Sub-Group Analysis

Using the LCC spreadsheet model, DOE estimated the impact of the TSLs on small businesses, a customer sub-group. DOE estimated the LCC and PBP for small food sales businesses defined by the Small Business Administration (SBA) by presuming that most small business customers could be represented by the analysis performed for small grocery and convenience store owners. DOE further assumed that the smaller, independent grocery and convenience store chains may not have access to national accounts, but would instead purchase equipment primarily through distributors and grocery wholesalers. DOE modified the distribution channels for remote condensing and self-contained equipment to these small businesses as follows:

• For remote condensing equipment, 15 percent of the sales were assumed to pass through a manufacturer-to-distributor-to-contractor-to-customer channel, and 85 percent were assumed to be purchased through a manufacturer-to-distributor-to-customer channel.

• For self-contained equipment, 35 percent of sales were assumed to pass through a manufacturer-to-distributor-to-contractor-to-customer channel, and 65 percent were assumed to be purchased through a manufacturer-to-distributor-to-customer channel.

In both cases, the distribution chain markups were calculated with these revised shipment weights. Table VI–20 shows the mean LCC savings from proposed energy conservation standards for the small business sub-group, and Table VI–21 shows the mean payback period (in years) for this sub-group. More detailed discussion on the LCC sub-group analysis and results can be found in chapter 12 of the TSD.

TABLE VI–20—MEAN LIFE-CYCLE COST SAVINGS FOR COMMERCIAL REFRIGERATION EQUIPMENT PURCHASED BY LCC SUB-GROUP (SMALL BUSINESS) (2007$)*

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	1,746	1,764	2,443	2,443	(3,463)
VOP.RC.L	4,534	5,882	6,064	5,549	5,549

TABLE VI–20—MEAN LIFE-CYCLE COST SAVINGS FOR COMMERCIAL REFRIGERATION EQUIPMENT PURCHASED BY LCC SUB-GROUP (SMALL BUSINESS) (2007$)*—Continued

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.SC.M	1,094	1,624	2,145	2,145	131
VCT.RC.M	416	868	3,484	3,458	3,458
VCT.RC.L	1,001	5,639	7,454	7,447	7,447
VCT.SC.I	3,811	6,451	6,944	6,949	6,949
VCS.SC.I	902	1,703	2,314	2,314	2,314
SVO.RC.M	1,177	1,209	1,738	1,738	(2,637)
SVO.SC.M	752	1,138	1,565	1,565	61
SOC.RC.M	521	1,106	1,290	1,290	(948)
HZO.RC.M	538	1,152	1,397	1,383	1,383
HZO.RC.L	875	1,383	1,466	1,466	1,466
HZO.SC.M	440	803	1,156	1,129	1,129
HZO.SC.L	857	1,574	2,364	2,352	2,352
HCT.SC.I	272	1,022	1,055	1,057	1,057

* Numbers in parentheses indicate negative savings.

TABLE VI–21—MEAN PAYBACK PERIOD FOR COMMERCIAL REFRIGERATION EQUIPMENT PURCHASED BY LCC SUB-GROUP (SMALL BUSINESS) (YEARS)

Equipment class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
VOP.RC.M	0.71	1.19	1.77	1.77	51.97
VOP.RC.L	0.64	0.99	1.10	2.53	2.53
VOP.SC.M	0.70	1.43	2.17	2.17	9.50
VCT.RC.M	0.73	1.14	3.54	3.64	3.64
VCT.RC.L	1.00	2.17	2.32	2.42	2.42
VCT.SC.I	0.90	1.32	1.47	1.57	1.57
VCS.SC.I	0.33	0.53	1.17	1.17	1.17
SVO.RC.M	0.70	1.19	1.73	1.73	106.71
SVO.SC.M	0.55	1.26	2.09	2.09	9.71
SOC.RC.M	0.48	0.75	1.55	1.55	15.62
HZO.RC.M	0.46	0.72	1.13	1.47	1.47
HZO.RC.L	0.93	1.26	1.50	1.50	1.50
HZO.SC.M	0.36	0.92	1.66	2.06	2.06
HZO.SC.L	0.29	0.71	1.35	1.55	1.55
HCT.SC.I	0.58	1.24	1.32	1.74	1.74

For commercial refrigeration equipment, the LCC and PBP impacts for small businesses are similar to those of all customers as a whole. While the discount rate for small grocery stores is higher than the rate for commercial refrigeration equipment customers as a whole and equipment prices are higher due to the higher markups, these small business customers appear to retain commercial refrigeration equipment over longer periods. Also, smaller stores generally tend to pay higher electric prices. The average LCC savings for the small business sub-group is slightly higher than that calculated for the average commercial refrigeration equipment customer, and the average PBP is slightly shorter than the national average. DOE concluded that the small food sales businesses defined by SBA will not experience economic impacts significantly different from or more negative than those impacts on food sales businesses as a whole.

2. Economic Impact on Manufacturers

DOE determined the economic impacts of today's standard on manufacturers, as described in the proposed rule. 73 FR 50118–21. For the final rule, DOE analyzed manufacturer impacts under two distinct markup scenarios: (1) The preservation-of-gross-margin-percentage markup scenario, and (2) the preservation-of-gross-margin (absolute dollars) markup scenario. 73 FR 50107. Under the first scenario, DOE applied a single uniform ''gross margin percentage'' markup that represents the current markup for manufacturers in the commercial refrigeration equipment industry. This markup scenario implies that as production costs increase with efficiency, the absolute dollar markup will also increase. DOE calculated that the non-production cost markup—which consists of selling, general, and administrative (SG&A) expenses; research and development (R&D) expenses; interest; and profit—is 1.32. This markup is consistent with the one DOE used in its engineering and GRIM analyses for the base case.

The implicit assumption behind the second scenario is that the industry can only maintain its gross margin from the baseline (in absolute dollars) after the standard. The industry would do so by passing its increased production costs on to customers without passing on its increased R&D and SG&A expenses so the gross profit per unit is the same in absolute dollars. DOE implemented this markup scenario in the GRIM by setting the production cost markups at each TSL to yield approximately the same gross margin in the standards cases in 2012 as they yielded in the base case.

Together, these two markup scenarios characterize the range of possible conditions the commercial refrigeration equipment market will experience as a result of new energy conservation standards. See chapter 13 of the TSD for additional details of the markup scenarios and analysis. DOE also examined both of these scenarios for this final rule.

a. Industry Cash-Flow Analysis Results

Using two different markup scenarios, 73 FR 50107, 50118–20, DOE estimated the impact of new standards for commercial refrigeration equipment on the INPV of the commercial refrigeration equipment industry. The impact consists of the difference between INPV in the base case and INPV in the standards case. INPV is the primary metric used in the MIA, and represents one measure of the fair value of the industry in today's dollars. DOE calculated the INPV by summing all of the net cash flows, discounted at the commercial refrigeration equipment industry's cost of capital or discount rate.

Table VI–22 and Table VI–23 show the changes in INPV that DOE estimates would result from the TSLs DOE considered for this final rule. The tables also present the equipment conversion expenses and capital investments that the industry would incur at each TSL. Product conversion expenses include engineering, prototyping, testing, and marketing expenses incurred by a manufacturer as it prepares to comply with a standard. Capital investments are the one-time outlays for tooling and plant changes required for the industry to comply (*i.e.*, conversion capital expenditures).

TABLE VI–22—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR COMMERCIAL REFRIGERATION EQUIPMENT UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO

[Preservation of gross margin percentage markup scenario with a rollup shipment scenario]

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2007$ millions	540	540	548	530	501	560
Change in INPV*	2007$ millions		0	8	(11)	(39)	20
	(%)		0.02	1.42	1.95	(7.29)	3.73
New Energy Conservation Standards Equipment Conversion Expenses.	2007$ millions		0.5	2.8	20.6	40.4	51.6
New Energy Conservation Standards Capital Investments.	2007$ millions		0.8	5.0	36.3	71.2	90.8
Total Investment Required	2007$ millions		1.3	7.8	57.0	111.6	142.4

*Values in Table VI–22 may not appear to sum due to rounding.

TABLE VI–23—MANUFACTURER IMPACT ANALYSIS RESULTS, INCLUDING INPV ESTIMATES, FOR COMMERCIAL REFRIGERATION EQUIPMENT UNDER THE PRESERVATION OF GROSS MARGIN (ABSOLUTE DOLLARS) MARKUP SCENARIO

[Preservation of gross margin absolute dollars markup scenario with a rollup shipment scenario]

	Units	Base case	Trial standard level				
			1	2	3	4	5
INPV	2007$ millions	540	533	502	442	392	200
Change in INPV*	2007$ millions		(7)	(39)	(99)	(148)	(340)
	(%)		(1.27)	(7.16)	(18.26)	(27.35)	(63.01)
New Energy Conservation Standards Equipment Conversion Expenses.	2007$ millions		0.5	2.8	20.6	40.4	51.6
New Energy Conservation Standards Capital Investments.	2007$ millions		0.8	5.0	36.3	71.2	90.8
Total Investment Required	2007$ millions		1.3	7.8	57.0	111.6	142.4

*Values in Table VI–23 may not appear to sum due to rounding.

The August 2008 NOPR discusses the estimated impact of new commercial refrigeration equipment standards on INPV for each equipment class. 73 FR 50118–20. See chapter 13 of the TSD for details.

b. Cumulative Regulatory Burden

DOE's assesses manufacturer burden through the cumulative impact of multiple DOE standards and other regulatory actions that affect manufacturers of the same covered equipment and other equipment produced by the same manufacturers or their parent companies. 73 FR 50120. For the August 2008 NOPR, DOE listed the EPA-mandated phaseout of HCFCs as refrigerants and blowing agents, and energy conservation standards for residential central air conditioners and heat pumps and room air conditioners as examples of other Federal regulations that could affect manufacturers of commercial refrigeration equipment. 73 FR 50120.

Following the August 2008 NOPR, public comments made DOE aware that commercial refrigeration equipment manufacturers must test equipment using the NSF 7 test procedure in addition to the DOE test procedure. As mentioned previously, NSF 7 measures product temperature for food safety requirements, while the DOE test procedure measures energy consumption for energy conservation standards. Although NSF 7 is not a Federal regulation, the commercial refrigeration equipment industry in general already tests its equipment using this procedure to meet food safety requirements.

For this final rule, DOE also identified the other DOE regulations commercial refrigeration equipment manufacturers are facing for other equipment. DOE identified several regulations that go into effect 3 years before and after the effective date of the new energy conservation standards for commercial refrigeration equipment. DOE recognizes that each regulation can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can quickly reduce manufacturers' profits and possibly cause an exit from the market.

DOE requested information about the cumulative regulatory burden during manufacturer interviews. Manufacturers indicated that they had already begun using other non-HCFC refrigerants and blowing agents. Manufacturers did not indicate that the DOE regulations on residential central air conditioners and heat pumps or room air conditioners were a great concern. DOE sought comment on these and other potential regulations affecting manufacturers for the final rule. From its own research, DOE learned that manufacturers of commercial refrigeration equipment or their parent companies could also be affected by rulemakings on PTACs and PTHPs, room air conditioners, residential furnaces, and walk-in freezers and coolers. DOE identified the costs of additional regulations when these estimates were available from other DOE rulemakings. For example, two commercial refrigeration equipment manufacturers (or their parent companies) also manufacture PTACs and PTHPs. DOE estimated that in the PTAC and PTHP industry, manufacturers may incur an estimated total conversion expense of $17.3 million (2007$). However, DOE has limited data on the importance of these other regulated products for manufacturers of commercial refrigeration equipment. Differences in market shares and manufacturing processes of other regulated products for each manufacturer could cause varying degrees of burdens on these manufacturers. See chapter 13 of the TSD for additional information regarding the cumulative regulatory burden analysis.

c. Impacts on Employment

As discussed in the August 2008 NOPR, DOE expects that employment by commercial refrigeration equipment manufacturers would increase under all of the TSLs considered for today's rule. However, this does not take into account any relocation of domestic jobs to countries with lower labor costs that might be influenced by the level of investment required by new standards. 73 FR 50120–21. Table VI–24 shows the direct employment impacts at each TSL. Further support for this conclusion is set forth in chapter 13 of the TSD.

TABLE VI–24—COMMERCIAL REFRIGERATION EQUIPMENT ESTIMATED EMPLOYMENT IMPACTS IN 2012

Trial standard level	Base case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Total Number of Domestic Production Employees in 2012	2,199	2,205	2,291	2,371	2,396	2,978
Change in Total Number of Domestic Production Employees in 2012 Due to Standards *	.....	6	92	172	197	779
Total Number of Domestic Non-Production Employees in 2012 *	681	683	709	734	742	922
Total Number of Domestic Employees in 2012 *	2,880	2,888	3,000	3,105	3,137	3,900

* Figures do not take into account any relocation of domestic jobs to countries with lower labor costs that might be influenced by the level of investment required by new standards.

d. Impacts on Manufacturing Capacity

According to the majority of commercial refrigeration equipment manufacturers, new energy conservation standards will not significantly affect manufacturers' production capacity. Any necessary redesign of commercial refrigeration equipment will not change the fundamental assembly of the equipment. However, manufacturers anticipate some minor changes to tooling. Thus, manufacturers will be able to maintain manufacturing capacity levels and continue to meet market demand under new energy conservation standards.

e. Impacts on Manufacturers That Are Small Businesses

As discussed in the August 2008 NOPR, DOE expects today's standard to have little or no differential impact on small manufacturers of commercial refrigeration equipment. 73 FR at 50121, 50130–31. DOE found that small manufacturers generally have the same concerns as large manufacturers regarding energy conservation standards. DOE also found no significant differences in the R&D emphasis or marketing strategies between small and large manufacturers. Therefore, DOE believes the GRIM analysis, which models each equipment class separately and aggregates the results to produce an industry-wide impact, is representative of the small manufacturers that would be affected by standards. The impacts on small manufacturers are discussed further in section VII.B of this preamble (''Review Under the Regulatory Flexibility Act'').

3. National Net Present Value and Net National Employment

The NPV analysis estimates the cumulative benefits or costs to the Nation that would result from particular standard levels. While the NES analysis estimates the energy savings from each standard level DOE considers, relative to the base case, the NPV analysis estimates the national economic impacts of each level relative to the base case. Table VI–25 provides an overview of the NPV results for each TSL considered for this final rule, using both a 7-percent and a 3-percent real discount rate.

Table VI–25 shows the estimated cumulative NPV for commercial refrigeration equipment resulting from the sum of the NPV calculated for each of the 15 primary equipment classes analyzed. Table VI–25 assumes the *AEO2008* reference case forecast for electricity prices. At a 7-percent discount rate, TSLs 1–4 show positive cumulative NPVs. The highest NPV is provided by TSL 3 at $1.45 billion. TSL 4 provided $1.41 billion, close to that of TSL 3. TSL 5 showed a negative NPV at − $2.59 billion, the result of negative NPV observed in five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M).

At a 3-percent discount rate, the picture is similar across the equipment classes. TSL 5 showed a negative NPV at − $3.79 billion, whereas the highest NPV was provided at TSL 3 (*i.e.*, $3.97 billion). TSL 4 provided a near equivalent NPV at $3.93 billion. TSL 5 provided a NPV of − $3.79 billion dollars. Five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M) were determined to have negative NPVs at a 3-percent discount rate at TSL 5. See TSD chapter 11 for more detailed NPV results.

TABLE VI–25—OVERVIEW OF NATIONAL NET PRESENT VALUE RESULTS

Trial standard level	NPV (billion 2007$)	
	7% Discount rate	3% Discount rate
1	0.33	0.83
2	0.98	2.60
3	1.45	3.97
4	1.41	3.93
5	(2.59)	(3.79)

DOE also estimated the national employment impacts that would result from each TSL. As discussed in the August 2008 NOPR, 73 FR 50107–08, 50122–23, DOE expects the net monetary savings from standards to be redirected to other forms of economic activity. DOE also expects these shifts in spending and economic activity to affect the demand for labor. As shown in Table VI–26, DOE estimates net indirect employment impacts—those changes of employment in the larger economy (other than in the manufacturing sector being regulated)—from commercial refrigeration equipment energy conservation standards to be positive but very small relative to total national employment. These impacts might be offset by other, unanticipated effects on employment. For details on the employment impact analysis methods and results, *see* TSD chapter 15.

TABLE VI–26—NET NATIONAL CHANGE IN INDIRECT EMPLOYMENT, THOUSANDS OF JOBS IN 2042

Trial standard level	Net national change in jobs			
	2012	2022	2032	2042
1	0	202	289	332
2	(6)	1,056	1,482	1,699
3	(15)	1,591	2,238	2,559
4	(18)	1,658	2,337	2,670
5	(40)	1,856	2,645	3,011
Maximum Job Impact	(40)	1,856	2,645	3,011

4. Impact on Utility or Performance of Equipment

As indicated in section V.B.4 of the August 2008 NOPR, the new standards DOE is adopting today will not lessen the utility or performance of any commercial refrigeration equipment. 73 FR 50123.

5. Impact of Any Lessening of Competition

As discussed in the August 2008 NOPR, 73 FR 50079, 50123, and in section III.D.1.e of this preamble, DOE considers any lessening of competition likely to result from standards. The Attorney General determines the impact, if any, of any lessening of competition.

DOJ concluded that the commercial refrigeration equipment standards contained in the proposed rule would not adversely affect competition. In reaching this conclusion, DOJ noted that the proposed standards took into account comments from commercial refrigeration equipment manufacturers, ASHRAE, ACEEE, and electric utilities. DOJ noted further that all key components are available for purchase by any manufacturer; therefore, no manufacturer has a technological advantage in meeting the proposed standards. Finally, DOJ noted that DOE found no significant differences between the concerns of large and small manufacturers, and DOJ found no evidence that certain manufacturers would be placed at a competitive disadvantage to other manufacturers.

6. Need of the Nation To Conserve Energy

When economically justified, an improvement in the energy efficiency of commercial refrigeration equipment is likely to improve the security of the Nation by reducing overall energy demand, thus reducing the Nation's reliance on foreign sources of energy. Reduced demand is also likely to improve the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, DOE expects the new standards covered under this rulemaking to eliminate the need for the construction of approximately 121 megawatts to 2,989 megawatts of new power by 2042.

Enhanced energy efficiency also produces environmental benefits. The expected energy savings from new standards for the equipment covered by this rulemaking will reduce the emissions of air pollutants and greenhouse gases associated with electricity production. Table VI–27 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would result from the TSLs considered in this rulemaking. The expected energy savings from new standards for commercial refrigeration equipment may also reduce the cost of maintaining nationwide emissions standards and constraints.

TABLE VI–27—SUMMARY OF EMISSIONS REDUCTIONS FOR COMMERCIAL REFRIGERATION EQUIPMENT (CUMULATIVE REDUCTIONS FOR EQUIPMENT SOLD FROM 2012 TO 2042)

	Trial standard levels ††				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
CO_2 (Mt*)	8.5	32.8	50.7	52.6	66.0.

TABLE VI–27—SUMMARY OF EMISSIONS REDUCTIONS FOR COMMERCIAL REFRIGERATION EQUIPMENT (CUMULATIVE REDUCTIONS FOR EQUIPMENT SOLD FROM 2012 TO 2042)—Continued

	Trial standard levels ††				
	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
NO_X (kt **)	0.59 to 14.58	2.27 to 56.04	3.51 to 86.77	3.64 to 89.97	4.56 to 112.84.
Hg (t †)	0 to 0.224	0 to 0.86	0 to 1.332	0 to 1.381	0 to 1.732.

* Mt = million metric tons.
** kt = thousand tons.
† t = tons.
†† Negative values indicate emission increases. Detail may not appear to sum to total due to rounding.

The estimated cumulative CO_2, NO_X, and Hg emissions reductions for the new energy conservation standards range up to 66 Mt for CO_2, 1.56 to 112.84 kt for NO_X, and 0 to 1.732 t for Hg for commercial refrigeration equipment from 2012 to 2042. In the EA (chapter 16 of the TSD), DOE reports estimated annual changes in CO_2, NO_X, and Hg emissions attributable to each TSL. As discussed in section IV.L of this final rule, DOE does not report SO_2 emissions reduction from power plants because reductions from an energy conservation standard would not affect the overall level of SO_2 emissions in the United States due to emissions caps for SO_2.

The NEMS–BT modeling assumed that NO_X would be subject to CAIR, issued by the U.S. Environmental Protection Agency on March 10, 2005.[21] 70 FR 25162 (May 12, 2005). On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) issued its decision in *North Carolina* v. *Environmental Protection Agency*,[22] in which the court vacated the CAIR. 531 F.3d 896 (DC Cir. 2008). If left in place, CAIR would have permanently capped emissions of NO_X in 28 eastern States and the District of Columbia. As with the SO_2 emissions cap, a cap on NO_X emissions would have meant that energy conservation standards are not likely to have a physical effect on NO_X emissions in states covered by the CAIR caps. While the caps would have meant that physical emissions reductions in those States would not have resulted from the energy conservation standards that DOE is establishing today, the standards might have produced an environmental-related economic impact in the form of lower prices for emissions allowance credits, if large enough. DOE notes that the estimated total reduction in NO_X emissions, including projected emissions or corresponding allowance credits in States covered by the CAIR cap, was insignificant and too small to affect allowance prices for NO_X under CAIR.

Even though the DC Circuit vacated CAIR, DOE notes that the DC Circuit left intact EPA's 1998 NO_X SIP Call rule, which capped seasonal (summer) NO_X emissions from electric generating units and other sources in 23 jurisdictions, and gave those jurisdictions the option to participate in a cap and trade program. 63 FR 57356, 57359 (Oct. 27, 1998).[23] The SIP Call rule may provide a similar, although less extensive, regional cap and may limit actual reduction in NO_X emissions from revised standards occurring in states participating in the SIP Call rule. However, the possibility that the SIP Call rule may have the same effect as CAIR is highly uncertain. Therefore, DOE established a range of NO_X reductions due to the standards being established in today's final rule. DOE's low estimate was based on the emission rate of the cleanest new natural gas combined-cycle power plant available for electricity generated, assuming that energy conservation standards would displace the generation of only the cleanest available fossil fuels. DOE used the emission rate, specified as 0.0341 t of NO_X emitted per TWh of electricity generated, associated with an advanced natural gas combined-cycle power plant, as specified by NEMS–BT. To estimate the reduction in NO_X emissions, DOE multiplied this emission rate by the reduction in electricity generation due to the new energy conservation standards considered. DOE's high estimate of 0.843 t of NO_X per TWh was based on a nationwide NO_X emission rate for all electrical generation. Use of such an emission rate assumes that future power plants displaced are no cleaner than the plants that are being used currently to generate electricity. Under the high estimate assumption, energy conservation standards also would have little to no effect on the generation mix. Based on *AEO2008* for 2006, when no regulatory or non-regulatory measures were in effect to limit NO_X emissions, DOE multiplied this emission rate by the reduction in electricity generation due to the standards considered. Table VI–27 shows the range in NO_X emission changes calculated using the low and high estimate scenarios by TSL. NO_X emission reductions range from 0.59 to 112.84 kt for the TSLs considered. These changes in NO_X emissions are extremely small, ranging from 0.001 to 0.168 percent of the national base case emissions forecast by NEMS–BT, depending on the TSL.

As noted in section IV.L, DOE is able to report an estimate of the physical quantity changes in Hg emissions associated with an energy conservation standard. Rather than using the NEMS–BT model, DOE established a range of Hg rates to estimate the Hg emissions that could be reduced through standards. DOE's low estimate assumed that future standards would displace electrical generation from natural gas-fired power plants, resulting in an effective emission rate of zero. The low-

[21] On December 23, 2008, the DC Circuit decided to allow CAIR to remain in effect until it is replaced by a rule consistent with the court's earlier opinion. *North Carolina* v. *EPA*, No. 05–1244, 2008 WL 5335481 (DC Cir. Dec. 23, 2008). Neither the July 11, 2008, nor the December 23, 2008, decisions of the DC Circuit change the standard-setting conclusions reached in this rule. See *http://www.epa.gov/cleanairinterstaterule*.

[22] Case No. 05–1244, 2008 WL 2698180 at *1 (DC Cir. July 11, 2008).

[23] In the NO_X SIP Call rule, EPA found that sources in the District of Columbia and 22 ''upwind'' states were emitting NO_X (an ozone precursor) at levels that significantly contributed to ''downwind'' states not attaining the ozone NAAQS or at levels that interfered with states in attainment maintaining the ozone NAAQS. To ensure that downwind states attain or continue to attain the ozone NAAQS, EPA established a region-wide cap for NO_X emissions from certain large combustion sources and set a NO_X emissions budget for each State. Unlike the cap that CAIR would have established, the NO_X SIP Call Rule's cap only constrains seasonal (summertime) emissions. To comply with the NO_X SIP Call Rule, states could elect to participate in the NO_X Budget Trading Program. Under this program, each emission source is required to have one allowance for each ton of NO_X emitted during the ozone season. States have flexibility in how they allocate allowances through their State Implementation Plans, but states must remain within the EPA-established budget. Emission sources are allowed to buy, sell, and bank NO_X allowances as appropriate. On April 16, 2008, EPA determined that Georgia is no longer subject to the NO_X SIP Call rule. 73 FR 21528 (April 22, 2008).

end emission rate is zero because natural gas-fired power plants have virtually zero Hg emissions associated with their operation.

DOE's high estimate was based on a nationwide mercury emission rate from *AEO2008*. Because power plant emission rates are a function of local regulation, scrubbers, and the mercury content of coal, it is extremely difficult to identify a precise high-end emission rate. Therefore, DOE believes the most reasonable estimate is based on the assumption that all displaced coal generation would have been emitting at the average emission rate for coal generation as specified by *AEO2008*. As noted previously, because virtually all mercury emitted from electricity generation is from coal-fired power plants, DOE based the emission rate on the tons of mercury emitted per TWh of coal-generated electricity. Based on the emission rate for 2006, DOE derived a high-end emission rate of 0.0255 tons per TWh. To estimate the reduction in mercury emissions, DOE multiplied the emission rate by the reduction in coal-generated electricity due to the standards considered in the utility impact analysis. The estimated changes in Hg emissions are shown in Table VI–27 for commercial refrigeration equipment from 2012 to 2042. Hg emission reductions range from 0 to 1.732 tons for the TSLs considered. These changes in Hg emissions are extremely small, ranging from 0 to 0.003 percent of the national base case emissions forecast by NEMS–BT, depending on the TSL.

The NEMS–BT model used for today's rulemaking could not estimate Hg emission reductions due to new energy conservation standards, as it assumed that Hg emissions would be subject to EPA's Clean Air Mercury Rule [24] (CAMR). CAMR would have permanently capped emissions of mercury for new and existing coal-fired plants in all states by 2010. As with SO_2 and NO_X, DOE assumed that under such a system, energy conservation standards would have resulted in no physical effect on these emissions, but might have resulted in an environmental-related economic benefit in the form of a lower price for emissions allowance credits, if large enough. DOE estimated that the change in the Hg emissions from energy conservation standards would not be large enough to influence allowance prices under CAMR.

On February 8, 2008, the DC Circuit issued its decision in *New Jersey* v. *Environmental Protection Agency* [25] to vacate CAMR. In light of this development and because the NEMS–BT model could not be used to directly calculate Hg emission reductions, DOE used the current Hg emission rates discussed above to calculate the emissions reductions in Table VI–27.

In the August 2008 NOPR, DOE considered accounting for a monetary benefit of CO_2 emission reductions associated with this rulemaking. To put the potential monetary benefits from reduced CO_2 emissions into a form that is likely to be most useful to decision-makers and interested parties, DOE used the same methods it used to calculate the net present value of consumer cost savings. DOE converted the estimated year-by-year reductions in CO_2 emissions into monetary values, which were then discounted over the life of the affected equipment to the present using both 3-percent and 7-percent discount rates.

In the August 2008 NOPR, DOE proposed to use the range $0 to $14 per ton. These estimates were based on an assumption of no benefit to an average benefit value reported by the Intergovernmental Panel on Climate Change (IPCC).[26] DOE derived the IPCC estimate used as the upper bound value from an estimate of the mean value of worldwide impacts due to climate change, and not just the effects likely to occur within the United States. As DOE considers a monetary value for CO_2 emission reductions, the value should, if possible, be restricted to a representation of those costs and benefits likely to be experienced in the United States. DOE explained in the August 2008 NOPR that it expects such values would be lower than comparable global values; however, there currently are no consensus estimates for the U.S. benefits likely to result from CO_2 emission reductions. However, it is appropriate to use U.S. benefit values, where available, and not world benefit values, in its analysis.[27] Because U.S.-specific estimates are unavailable, and DOE did not receive any additional information that would help narrow the proposed range of domestic benefits, DOE used the global mean value as an upper bound U.S. value for purposes of the sensitivity analysis.

DOE received several comments in response to the proposed estimated value of CO_2 emissions reductions. In a comment submitted by Earthjustice on behalf of itself and NRDC, Earthjustice questioned both the upper and lower bounds of DOE's range of estimated CO_2 values, which it argued were too low. (Earthjustice, No. 38 at p. 7) Earthjustice also stated that it would be inappropriate to limit the consideration to the value of CO_2 to a domestic value. (Earthjustice, No. 38 at p. 13) Earthjustice suggested that DOE consider relying on the estimate used in DOE's analysis of the impacts of the Lieberman-Warner Climate Security Act of 2007 (S. 2191).[28] (Earthjustice, No. 38 at p. 2) AHRI stated that DOE should not rely on the IPCC study or values under the European Union cap and trade program, because such a program has not yet been established in the United States. (AHRI, No. 33 at p. 6)

Given the uncertainty surrounding estimates of the social cost of carbon, relying on any single estimate may be inadvisable because any estimate will depend on many assumptions. Working Group II's contribution to the Fourth Assessment Report of the IPCC notes the following:

The large ranges of SCC are due in the large part to differences in assumptions regarding climate sensitivity, response lags, the treatment of risk and equity, economic and non-economic impacts, the inclusion of potentially catastrophic losses, and discount rates.[29]

Because of this uncertainty, DOE used the SCC value from Tol (2005), which was presented in the IPCC's Fourth

[24] 70 FR 28606 (May 18, 2005).

[25] No. 05–1097, 2008 WL 341338, at * (DC Cir. Feb. 9, 2008).

[26] During the preparation of its most recent review of the state of climate science, the IPCC identified various estimates of the present value of reducing CO_2 emissions by 1 ton over the life that these emissions would remain in the atmosphere. The estimates reviewed by the IPCC spanned a range of values. Absent a consensus on any single estimate of the monetary value of CO_2 emissions, DOE used the estimates identified by the study cited in ''Summary for Policymakers,'' prepared by Working Group II of the IPCC's Fourth Assessment Report, to estimate the potential monetary value of CO_2 reductions likely to result from standards finalized in this rulemaking. According to IPCC, the mean social cost of carbon (SCC) reported in studies published in peer-reviewed journals was $43 per ton of carbon. This translates into about $12 per ton of CO_2. The literature review (Tol 2005) from which this mean was derived did not report the year in which these dollars were denominated. However, DOE understands this estimate was denominated in 1995$. Updating that estimate to 2007$ yields a SCC of $15 per ton of CO_2.

[27] In contrast, most of the estimated costs and benefits of increasing the efficiency of commercial refrigeration equipment include only economic values of impacts that would be experienced in the United States. DOE generally does not consider impacts on manufacturers that occur solely outside of the United States.

[28] According to Earthjustice's analysis of the Lieberman-Warner Climate Security Act of 2007, implementation of this legislation would lead to a CO_2 allowance price of $30 per ton in 2020, rising to $61 per ton in 2030.

[29] Climate Change 2007—Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the IPCC, 17. Available at *http://www.ipcc-wg2.org* (last accessed Aug. 7, 2008).

Assessment Report and provided a comprehensive meta-analysis of estimates for the value of SCC. Earthjustice commented that this value was out of date, because Tol released an update of his 2005 meta-analysis in September 2007. This update reported an increase in his mean estimate of SCC from $43 to $71/ton carbon. Earthjustice stated that DOE should not continue to use old data and should update its sources. (Earthjustice, No. 38 at p. 9)

Although the Tol study was updated in 2007, the IPCC has not adopted the updated Tol study for its report. As a result, DOE continues to rely on the same study used by the IPCC. Moreover, DOE notes that the conclusions of Tol (2007) are similar to the conclusions of Tol (2005). Tol (2007) continues to indicate that there is no consensus regarding the monetary value of reducing CO_2 emissions by 1 ton. The broad range of values in both Tol studies are the result of significant differences in the methodologies used in the studies Tol summarized. According to Tol, all of the studies have shortcomings, largely because the subject is inherently complex and uncertain and requires broad multidisciplinary knowledge. Thus, it is not certain that the values reported in Tol (2007) are more accurate or representative than the values reported in Tol (2005).

In today's final rule, DOE is relying on the range of values proposed in the August 2008 NOPR, which was based on the values presented in Tol (2005), as proposed. DOE does note that DOE mistakenly assumed that the values presented in Tol (2005) were in 2000 dollars. In actuality, the values in Tol (2005) were indicated to be approximately 1995 values in 1995 dollars. Had DOE at the NOPR stage applied the correct dollar year of the values presented in Tol (2005), DOE would have proposed the range of $0 to $15 in the August 2008 NOPR. Additionally, DOE has applied an annual growth rate of 2.4 percent to the value of SCC, as suggested by the IPCC Working Group II (2007, p. 822). This growth rate is based on estimated increases in damage from future emissions that published studies have reported. As a result, for today's final rule, DOE is assigning a range for SCC of $0 to $20 ($2007) per ton of CO_2 emissions.

Earthjustice questioned the use of the mean estimated social cost of CO_2 as an upper bound of the range. (Earthjustice, No. 38 at p. 9) However, the upper bound of the range DOE used is based on Tol (2005), which reviewed 103 estimates of SCC from 28 published studies. Tol concluded that when only peer-reviewed studies published in recognized journals are considered, ''climate change impacts may be very uncertain but [it] is unlikely that the marginal damage costs of carbon dioxide emissions exceed $50 per ton carbon [comparable to a 2007 value of $20 per ton carbon dioxide when expressed in 2007 U.S. dollars with a 2.4 percent growth rate.]''

Earthjustice also questioned using $0 as the lower bound of DOE's estimated range. (Earthjustice, No. 38 at p. 10) In setting a lower bound, DOE agrees with the IPCC Working Group II (2007) report that ''significant warming across the globe and the locations of significant observed changes in many systems consistent with warming is very unlikely to be due solely to natural variability of temperatures or natural variability of the systems'' (p. 9), and thus tentatively concludes that a global value of zero for reducing emissions cannot be justified. However, it is reasonable to allow for the possibility that the U.S. portion of the global cost of CO_2 emissions may be quite low. In fact, some of the studies examined by Tol (2005) reported negative values for the SCC. As stated in the August 2008 NOPR, DOE is using U.S. benefit values, and not world benefit values, in its analysis. Further, U.S. domestic values will be lower than the global values. Additionally, the statutory criteria in EPCA do not require consideration of global effects. Therefore, DOE is using a lower bound of $0 per ton of CO_2 emissions in estimating the potential benefits of today's final rule.

Table VI–28 presents the resulting estimates of the potential range of net present value benefits associated with reducing CO_2 emissions.

TABLE VI—28 ESTIMATES OF SAVINGS FROM CO_2 EMISSIONS REDUCTIONS UNDER COMMERCIAL REFRIGERATION EQUIPMENT TRIAL STANDARD LEVELS AT A SEVEN-PERCENT DISCOUNT RATE AND THREE-PERCENT DISCOUNT RATE

TSL	Estimated cumulative CO_2 (Mt) emission reductions	Value of estimated CO_2 emission reductions (million 2007$) at 7% discount rate	Value of estimated CO_2 emission reductions (million 2007$) at 3% discount rate
1	8.52	$0 to $76.01	$0 to $154.73.
2	32.76	$0 to $292.26	$0 to $594.94.
3	50.71	$0 to $452.49	$0 to $921.1.
4	52.59	$0 to $469.19	$0 to $955.1.
5	65.95	$0 to $588.44	$0 to $1,197.85.

DOE also investigated the potential monetary impact from today's energy conservation standards of reducing SO_2, NO_X, and Hg emissions. As previously stated, DOE's initial analysis assumed the presence of nationwide emission caps on SO_2 and Hg, and caps on NO_X emissions in the 28 states covered by CAIR. In the presence of these caps, DOE concluded that no physical reductions in power sector emissions would occur, but that the lower generation requirements associated with energy conservation standards could put downward pressure on the prices of emissions allowances in cap and trade markets. Estimating this effect is very difficult because of factors such as credit banking, which can change the trajectory of prices. DOE has further concluded that the effect from energy conservation standards on SO_2 allowance prices is likely to be negligible, based on runs of the NEMS–BT model. See chapter 16 (Environmental Assessment) of the TSD for further details.

Because the courts have vacated the CAIR rule, projected annual NO_X allowances from NEMS–BT are no longer relevant. In DOE's subsequent analysis, NO_X emissions are not controlled by a nationwide regulatory system. DOE estimated the national monetized benefits of NO_X and Hg emissions reductions from today's rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values for NO_X emissions, ranging from $370 per ton to $3,800 per

ton of NO_X from stationary sources, measured in 2001$,[30] or a range of $432 per ton to $4,441 per ton in 2007$.

DOE has conducted research for today's final rule and determined that the basic science linking mercury emissions from power plants to impacts on humans is considered highly uncertain. However, DOE identified two estimates of the environmental damage of mercury based on two estimates of the adverse impact of childhood exposure to methyl mercury on IQ for American children, and subsequent loss of lifetime economic productivity resulting from these IQ losses. The high-end estimate is based on an estimate of the current aggregate cost of the loss of IQ in American children that results from exposure to mercury of U.S. power plant origin ($1.3 billion per year in year 2000$), which works out to $32.6 million per ton emitted per year (2007$).[31] The low-end estimate was $664,000 per ton emitted in 2004$ or $729,000 per ton in 2007$, which DOE derived from a published evaluation of mercury control using different methods and assumptions from the first study, but also based on the present value of the lifetime earnings of children exposed.[32] Table VI–29 and Table VI–30 present the resulting estimates of the potential range of present value benefits associated with reducing national NO_X and Hg emissions.

TABLE VI–29—ESTIMATES OF SAVINGS FROM REDUCING NO_X AND HG EMISSIONS UNDER COMMERCIAL REFRIGERATION EQUIPMENT TSLS AT A SEVEN-PERCENT DISCOUNT RATE

TSL	Estimated cumulative NO_X (kt) emission reductions*	Value of estimated NO_X emission reductions (thousand 2007$)	Estimated cumulative Hg (tons) emission reductions*	Value of estimated Hg emission reductions (thousand 2007$)
1	0.59 to 14.58	$64 to $1,578	0 to 0.224	$0 to $46.
2	2.27 to 56.04	$245 to $6,067	0 to 0.86	$0 to $177.
3	3.51 to 86.77	$380 to $9,394	0 to 1.332	$0 to $274.
4	3.64 to 89.97	$394 to $9,741	0 to 1.381	$0 to $284.
5	4.56 to 112.84	$494 to $12,216	0 to 1.732	$0 to $356.

* Values in Table VI–29 may not appear to sum to the cumulative values in Table VI–27 due to rounding.

TABLE VI–30—ESTIMATES OF SAVINGS FROM REDUCING NO_X AND HG EMISSIONS UNDER COMMERCIAL REFRIGERATION EQUIPMENT TSLS AT A THREE-PERCENT DISCOUNT RATE

TSL	Estimated cumulative NO_X (kt) emission reductions*	Value of estimated NO_X emission reductions (thousand 2007$)	Estimated cumulative Hg (tons) emission reductions*	Value of estimated Hg emission reductions (thousand 2007$)
1	0.59 to 14.58	$135 to $3,329	0 to 0.224	$0 to 91.
2	2.27 to 56.04	$518 to $12,799	0 to 0.86	$0 to $349.
3	3.51 to 86.77	$802 to 19,815	0 to 1.332	$0 to $540.
4	3.64 to 89.97	$831 to $20,547	0 to 1.381	$0 to $560.
5	4.56 to 112.84	$1,042 to $25,769	0 to 1.732	$0 to $702.

* Values in Table VI–30 may not appear to sum to the cumulative values in Table VI–27 due to rounding.

7. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII) and 6316(e)(1)) Under this provision, DOE considered LCC impacts on identifiable groups of customers, such as customers of different business types who may be disproportionately affected by any national energy conservation standard level. DOE also considered the reduction in generated capacity that could result from the imposition of any national energy conservation standard level.

D. Conclusion

EPCA contains criteria for prescribing new or amended energy conservation standards. It provides that any such standard for commercial refrigeration equipment must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6316(e)(1)) As stated above, the Secretary must determine whether the benefits of the standards exceed its burdens considering the seven factors discussed in section II.A. (42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1)) A determination is not made based on any one of these factors in isolation. The Secretary must weigh each of these seven factors in total. Further, the Secretary may not establish a new or amended standard if such standard would not result in ''significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B) and 42 U.S.C. 6316(e)(1))

In selecting today's energy conservation standards for commercial refrigeration equipment, DOE started by examining the maximum technologically feasible levels to determine whether those levels were economically justified. Upon finding the maximum technologically feasible levels not to be justified, DOE analyzed the next lower TSL. DOE followed this procedure until it identified a TSL that is economically justified.

[30] 2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. Office of Management and Budget Office of Information and Regulatory Affairs, Washington, DC.

[31] Trasande, L., *et al.*, ''Applying Cost Analyses to Drive Policy that Protects Children,'' 1076 Ann. N.Y. Acad. Sci. 911 (2006).

[32] Ted Gayer and Robert Hahn, ''Designing Environmental Policy: Lessons from the Regulation of Mercury Emissions,'' Regulatory Analysis 05–01. AEI-Brookings Joint Center for Regulatory Studies, Washington, DC, 2004. A version of this paper was published in the *Journal of Regulatory Economics* in 2006. The estimate was derived by back-calculating the annual benefits per ton from the net present value of benefits reported in the study.

Table VI–31 summarizes DOE's quantitative analysis results for each TSL it considered for this final rule. This table presents the results or a range of results for each TSL, and will aid the reader in understanding the costs and benefits of each one. The range of values for industry impacts represents the results for the different markup scenarios that DOE used to estimate manufacturer impacts.

TABLE VI–31—SUMMARY OF RESULTS BASED UPON THE AEO2008 REFERENCE CASE ENERGY PRICE FORECAST *

	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Primary Energy Saved (quads)	0.168	0.645	1.013	1.035	1.298
7% Discount Rate	0.041	0.159	0.250	0.256	0.321
3% Discount Rate	0.088	0.339	0.532	0.544	0.683
Generation Capacity Reduction (GW) **	(0.121)	(0.465)	(0.720)	(0.747)	(0.936)
NPV (2007$ billion)					
7% Discount Rate	$0.33	$0.98	$1.45	$1.414	$(2.59)
3% Discount Rate	$0.83	$2.60	$3.97	$3.930	$(3.79)
Industry Impacts					
Industry NPV (2007$ million)	0–(7)	8–(39)	(11)–(99)	(39)–(148)	20–(340)
Industry NPV (% change)	0–(1)	1–(7)	(2)–(18)	(7)–(27)	4–(63)
Cumulative Emissions Impacts †					
CO_2 (Mt)	8.52	32.76	50.71	52.59	65.95
NO_X (kt)	0.59–14.58	2.27–56.04	3.51–86.77	3.64–89.97	4.56–112.84
Hg (t)	0–0.224	0–0.86	0–1.332	0–1.381	0–1.732
Employment Impacts					
Indirect Employment Impacts (2042)	332	1,699	2,559	2,670	3,011
Direct, Domestic Employment Impacts (2012) ††	6	92	172	197	779
Life-Cycle Cost					
Net Savings (%)	18–45	36–65	61–89	70–92	0–92
Net Increase (%)	0–0	0–0	0–0	0–0	0–99
No Change (%)	55–82	35–64	11–39	8–30	1–19
Mean LCC Savings (2007$)	211–3501	615–4893	797–5450	785–5419	(3959)–5419
Mean PBP (years)	0.3–1.1	0.6–2.4	1.2–3.8	1.3–3.9	1.3–196.8

* Parentheses indicate negative (−) values. For LCCs, a negative value means an increase in LCC by the amount indicated.
** Change in installed generation capacity by 2042 based on *AEO2008* Reference Case.
† CO_2 emissions impacts include physical reductions at power plants. NO_X emissions impacts include physical reductions at power plants as well as production of emissions allowance credits where NO_X emissions are subject to emissions caps.
†† Change in total number of domestic production employees in 2012 due to standards.

First, DOE considered TSL 5, the most efficient level for all equipment classes. TSL 5 would likely save an estimated 1.298 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.321 quads. For the Nation as a whole, DOE projects that TSL 5 would result in a net decrease of $2.59 billion in NPV, using a discount rate of 7 percent. Five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SVO.SC.M, and SOC.RC.M) show negative NPV at TSL 5, primarily due the use of LED lighting for these cases.[33] The emissions reductions at TSL 5 are 65.95 Mt of CO_2 and up to 112.84 kt of NO_X. DOE also estimates that under TSL 5, total generating capacity in 2042 will decrease compared to the base case by 0.936 gigawatts (GW).

At TSL 5, DOE projects that the average commercial refrigeration equipment customer will experience a reduction in LCC compared to the baseline for 10 of the 15 equipment classes analyzed, while they will experience an increase in LCC for five equipment classes (VOP.RC.M, VOP.SC.M, SVO.RC.M, SOC.RC.M). These equipment classes are the five that DOE showed had negative NPV. Mean LCC savings for all 15 equipment classes vary from −$3,959 to $5,419. At TSL 5, DOE estimates the fraction of customers experiencing LCC increases will vary between 0 and 99 percent depending on equipment class. The mean payback period for the average commercial refrigeration equipment customer at TSL 5 compared to the baseline level is projected to be between 1.3 and 196.8 years, depending on equipment class.

At TSL 5, there is the risk of very large negative impacts on the industry if manufacturers' profit margins are reduced. The investments required to modify all equipment lines at the max-tech levels are large. At this level, manufacturers have to make costly changes to their production lines. In addition, the incremental cost of adding LED lights at TSL 5 are extremely large. Because customers put a much higher priority on marketing and displaying their goods than they do on energy efficiency, most manufacturers expressed a concern that they would be unable to fully recover the additional cost incurred when only manufacturing the most efficient equipment possible. If manufacturers are not able to fully pass along these large incremental production costs, the industry could lose up to 63 percent of the INPV.

Although TSL 5 is the most efficient level and thus saves the most energy of all TSLs, four of the 15 equipment classes show a reduction in LCC compared to the baseline. The energy savings at TSL 5 would reduce installed generating capacity by 0.94 GW, or roughly 2.5 large, 400-MW power plants. DOE estimates the associated emissions reductions at 66 Mt of CO_2. DOE concludes that at TSL 5, the benefits of energy savings, generating capacity reductions, and emission reductions would be outweighed by the economic burdens on customers as indicated by the net decrease in NPV, long payback periods of up to 197 years, and a drop in INPV of up to 63 percent. Consequently, DOE concludes that TSL 5 is not economically justified.

DOE then considered TSL 4, which provides for all equipment classes the maximum efficiency levels that the analysis showed to have positive NPV to the Nation. DOE projects that the

[33] LED lighting for open cases was updated from the August 2008 NOPR to reflect LED lighting fixtures currently available for, and specific to, open cases. DOE also increased the amount of LED lighting assumed for open cases. See section V.A.2.a and appendix B of the TSD.

average commercial refrigeration equipment customer will experience a reduction in LCC compared to the baseline for all 15 equipment classes analyzed, ranging from $785 to $5,419 depending on equipment class. The mean payback period for the average commercial refrigeration equipment customer at TSL 4 is projected to be between 1.3 and 3.9 years compared to the purchase of baseline equipment.

TSL 4 would likely save an estimated 1.035 quads of energy through 2042, an amount DOE considers significant. Discounted at 7 percent, the projected energy savings through 2042 would be 0.256 quads. For the Nation as a whole, DOE projects that TSL 4 would result in a net increase of $1.41 billion in NPV, using a discount rate of 7 percent. The estimated emissions reductions at TSL 4 are 42.6 Mt of CO_2 and up to 90 kt of NO_X.

Similar to TSL 5, there is a risk at TSL 4 of large negative impacts on the industry if manufacturers' profit margins are reduced. The investments required at TSL 4 are also large because, based on the construction of the TSL, many equipment classes are at the max-tech level. Because a large portion of the equipment classes are at max-tech, the incremental manufacturing costs are also large. If manufacturers are not able to fully pass along these large incremental production costs, the industry could lose up to 27 percent of the INPV.

After carefully considering the analysis and weighing the benefits and burdens of TSL 4, DOE concludes that the benefits of TSL 4 (in terms of energy savings to the Nation of 1.035 quads through 2042, economic benefits of $1.41 billion in NPV using a discount rate of 7 percent, significant environmental benefits in terms of reduced emissions from power plants, and national employment benefits) outweigh the burdens in terms of the range of possible reductions in INPV of up to 27 percent, and that TSL 4 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. Therefore, DOE is adopting the energy conservation standards for this equipment at TSL 4.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993), requires each agency to identify in writing the market failure or other problem that it intends to address that warrants agency action such as today's final rule, and to assess the significance of that problem in evaluating whether any new regulation is warranted.

In the August 2008 NOPR for this rulemaking, DOE requested feedback related to the possible existence of a market failure in the commercial refrigeration equipment industry. Because the commercial refrigeration equipment industry is part of the food merchandising industry, energy efficiency and energy cost savings are not the primary drivers of the business. Selling food products to shoppers is the primary driver. It is difficult for store personnel to identify cost-effective efficiency levels for commercial refrigeration equipment given reasons identified in the NOPR, and doing so may incur transaction costs, thus reducing cost-effectiveness of the energy efficiency investment. 73 FR 50128. DOE sought data on the efficiency levels of existing commercial refrigeration equipment by owner, electricity price, and equipment class. Following the publication of the August 2008 NOPR and subsequent public comment period, DOE did not receive any feedback related to this request.

Because today's regulatory action is a significant regulatory action under section 3(f)(1) of Executive Order 12866, section 6(a)(3) of the Executive Order requires DOE to prepare and submit for review to the Office of Information and Regulatory Affairs (OIRA) in OMB an assessment of the costs and benefits of today's rule. Accordingly, DOE presented to OIRA for review the draft final rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA). These documents are included in the rulemaking record and are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The August 2008 NOPR contained a summary of the RIA, which evaluated the extent to which major alternatives to standards for commercial refrigeration equipment could achieve significant energy savings at reasonable cost, as compared to the effectiveness of the proposed rule. 73 FR 50128–29. The complete RIA (*Regulatory Impact Analysis for Proposed Energy Conservation Standards for Commercial Refrigeration Equipment*) is contained in the TSD prepared for today's rule. The RIA consists of: (1) A statement of the problem addressed by this regulation and the mandate for government action, (2) a description and analysis of the feasible policy alternatives to this regulation, (3) a quantitative comparison of the impacts of the alternatives, and (4) the national economic impacts of today's standards.

As explained in the August 2008 NOPR, none of the alternatives DOE examined would save as much energy or have an NPV as high as the proposed standards. That same conclusion applies to the standards in today's rule. Also, several of the alternatives would require new enabling legislation, because authority to carry out those alternatives does not exist. Additional detail on the regulatory alternatives is found in the RIA report in the TSD.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (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 General Counsel's Web site: *http://www.gc.doe.gov*.

Small businesses, as defined by the Small Business Administration (SBA) for the commercial refrigeration equipment manufacturing industry, are manufacturing enterprises with 750 employees or fewer. DOE used the small business size standards published by SBA to determine whether any small entities would be required to comply with the rule. 61 FR 3286 and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description. Commercial refrigeration equipment manufacturing is classified under NAICS 333415.

DOE interviewed two of the nine manufacturers of commercial refrigeration equipment it identified as small businesses affected by this rulemaking. 73 FR 50130. DOE reviewed

the proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. *Id.* On the basis of this review, DOE determined that it could not certify that the proposed standards (TSL 4) would have no significant economic impact on a substantial number of small entities. *Id.* DOE made this determination because of the potential impacts of the proposed standard levels on commercial refrigeration equipment manufacturers generally, including small businesses. *Id.*

Because of these potential impacts on small manufacturers, DOE prepared an IRFA during the NOPR stage of this rulemaking. DOE provided the IRFA in its entirety in the August 2008 NOPR, 73 FR 50130–31, and also transmitted a copy to the Chief Counsel for Advocacy of the SBA for review. Chapter 13 of the TSD contains more information about the impact of this rulemaking on manufacturers.

The IRFA divided potential impacts on small businesses into two broad categories: (1) Impacts associated with commercial refrigeration equipment design and manufacturing, and (2) impacts associated with the effect on customers' ability to merchandise products by limiting the flexibility in choosing design options. The commercial refrigeration industry is highly customized, and manufacturers were concerned that limiting the choices in design options would commoditize the industry and reduce profit margins. However, this concern was echoed by all manufacturers, not just small business manufacturers.

DOE has prepared a FRFA for this rulemaking, which is presented in the following discussion. DOE has transmitted a copy of this FRFA to the Chief Counsel for Advocacy of the SBA for review. The FRFA below is written in accordance with the requirements of the Regulatory Flexibility Act.

1. Reasons for the Final Rule

Part A–1 of Title III of EPCA addresses the energy efficiency of certain types of commercial and industrial equipment. (42 U.S.C. 6311–6317) EPACT 2005, Public Law 109–58, included an amendment to Part A–1 requiring that DOE prescribe energy conservation standards for the commercial refrigeration equipment that is the subject of this rulemaking. (EPACT 2005, Section 136(c); 42 U.S.C. 6313(c)(4)(A)) DOE publishes today's final rule pursuant to Part A–1. The commercial refrigeration equipment test procedures appear at 10 CFR parts 430–431.

2. Objectives of, and Legal Basis for, the Rule

EPCA requires new and amended standards to be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (see section II.B of this preamble). To determine whether economic justification exists, DOE reviews comments received and conducts analysis to determine whether the economic benefits of the new standard exceed the burdens to the greatest extent practicable, taking into consideration seven factors set forth in 42 U.S.C. 6295(o)(2)(B) and 6316(e)(1) (see section II.B of this preamble). Further information concerning the background of this rulemaking is provided in chapter 1 of the TSD.

3. Description and Estimated Number of Small Entities Regulated

DOE reviewed AHRI's listing of commercial refrigeration equipment manufacturer members and surveyed the industry to develop a list of every manufacturer. DOE also asked interested parties and AHRI representatives within the industry if they were aware of any other small business manufacturers. DOE then looked at publicly available data and contacted manufacturers, when needed, to determine if they meet the SBA's definition of a small business manufacturing facility and if their manufacturing facilities are located within the United States. Based on this analysis, DOE identified nine small commercial refrigeration equipment manufacturers and conducted on-site interviews with two of them. See chapter 13 of the TSD for further discussion about the methodology DOE used in the manufacturer impact analysis.

4. Description and Estimate of Compliance Requirements

Potential impacts on manufacturers, including small businesses, come from impacts associated with commercial refrigeration equipment design and manufacturing. All manufacturers, including small businesses, would have to develop designs to comply with higher TSLs. Product redesign costs tend to be fixed and do not scale with sales volume. Thus, small manufacturers would be at a relative disadvantage at higher TSLs because research and development efforts would be on the same scale as those for larger companies. Furthermore, the level of research and development needed to meet energy conservation standards increases with more stringent energy conservation standards. DOE expects that small manufacturers will have more difficulty funding the required research and development necessary to meet energy conservation standards than larger manufacturers. However, as explained in part 6 of the IRFA, ''Significant Alternatives to the Proposed Rule,'' DOE explicitly considered the impacts on small manufacturers of commercial refrigeration equipment in selecting TSL 4, rather than selecting a higher standard level. DOE expects that the differential impact on small manufacturers of commercial refrigeration equipment would be smaller in moving from TSL 3 to TSL 4 than it would be in moving from TSL 4 to TSL 5.

5. Significant Issues Raised by Public Comments

DOE summarized comments from interested parties, including commercial refrigeration equipment manufacturers, in sections IV and V of this preamble. However, DOE did not receive any comments regarding impacts specific to small business manufacturers for the adoption of TSL 4 or the alternatives identified in section 6 of the IRFA, ''Significant Alternatives to the Rule.''

6. Steps DOE Has Taken To Minimize the Economic Impact on Small Manufacturers

In consideration of the benefits and burdens of standards, including the burdens posed on small manufacturers, DOE concluded that TSL 4 is the highest level that can be justified for commercial refrigeration equipment. As explained in part 6 of the IRFA, ''Significant Alternatives to the Rule,'' DOE explicitly considered the impacts on small manufacturers of commercial refrigeration equipment in selecting TSL 4. Levels at TSL 5 would place excessive burdens on manufacturers, including small manufacturers, of commercial refrigeration equipment. Such burdens would include research and development costs and also a potential reduction of profit margins by limiting the flexibility of customers to choose design options. However, the differential impact on small businesses is expected to be lower in moving from TSL 3 to TSL 4 than in moving from TSL 4 to TSL 5, because research and development efforts are less at lower TSLs. Chapter 13 of the TSD contains additional information about the impact of this rulemaking on manufacturers.

Section VI.C.2 discusses how small business impacts entered into DOE's selection of today's standards for commercial refrigeration equipment.

DOE made its decision regarding standards by beginning with the highest level considered (TSL 5) and successively eliminating TSLs until it found a TSL that is both technically feasible and economically justified, taking into account other EPCA criteria. As discussed in section VI.C.2.e, DOE expects today's standard to have little or no differential impact on small manufacturers of commercial refrigeration equipment.

Finally, in the NOPR, DOE requested comment on the impacts on small business manufacturers of TSL 4 and any other alternatives to the proposed rule. DOE received no comments in reference to any undue burden placed on small manufacturers.

C. Review Under the Paperwork Reduction Act

DOE stated in the August 2008 NOPR that this rulemaking would impose no new information and recordkeeping requirements, and that OMB clearance is not required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 73 FR 50131–32. DOE received no comments on this in response to the August 2008 NOPR, and, as with the proposed rule, today's rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE prepared an environmental assessment of the impacts of today's standards which it published as chapter 16 within the TSD for the final rule. DOE found the environmental effects associated with today's various standard levels for commercial refrigeration equipment to be insignificant. Therefore, DOE is issuing a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined the proposed rule and determined that the rule 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. 73 FR 50132. DOE received no comments on this issue in response to the August 2008 NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE is taking no further action in today's final rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

As indicated in the August 2008 NOPR, DOE reviewed the proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), which imposes requirements on Federal agencies when their regulatory actions will have certain types of impacts on State, local, and Tribal governments and the private sector. 73 FR 50132. DOE concluded that although this rule would not contain an intergovernmental mandate, it may result in expenditure of $100 million or more in one year by the private sector. *Id.* Therefore, in the August 2008 NOPR, DOE addressed the UMRA requirements that it prepare a statement as to the basis, costs, benefits, and economic impacts of the proposed rule, and that it identify and consider regulatory alternatives to the proposed rule. *Id.* DOE received no comments concerning the UMRA in response to the August 2008 NOPR, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE is taking no further action in today's final rule with respect to the UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

DOE determined that, for this rulemaking, it need not prepare a Family Policymaking Assessment under Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277). *Id.* DOE received no comments concerning Section 654 in response to the August 2008 NOPR, and, therefore, takes no further action in today's final rule with respect to this provision.

I. Review Under Executive Order 12630

DOE determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that today's rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution. 73 FR 50132. DOE received no comments concerning Executive Order 12630 in response to the August 2008 NOPR, and, therefore, takes no further action in today's final rule with respect to this Executive Order.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's

guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any significant energy action. DOE determined that the proposed rule was not a ''significant energy action'' within the meaning of Executive Order 13211. 73 FR 50133. Accordingly, it did not prepare a Statement of Energy Effects on the proposed rule. DOE received no comments on this issue in response to the August 2008 NOPR. As with the proposed rule, DOE has concluded that today's final rule is not a significant energy action within the meaning of Executive Order 13211, and has not prepared a Statement of Energy Effects on the rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology, issued its ''Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government. As indicated in the August 2008 NOPR, this includes influential scientific information related to agency regulatory actions, such as the analyses in this rulemaking. 73 FR 50133.

As set forth in the August 2008 NOPR, DOE held formal in-progress peer reviews of the types of analyses and processes that DOE has used to develop the energy efficiency standards in today's rule, and issued a report on these peer reviews. *Id.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2). DOE also will submit the supporting analyses to the Comptroller General in the U.S. Government Accountability Office (GAO) and make them available to each House of Congress.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

Issued in Washington, DC, on December 31, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference.

■ For the reasons set forth in the preamble, chapter II of title 10, Code of Federal Regulations, part 431 is amended as set forth below.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 431.62 of subpart C is amended by adding in alphabetical order new definitions for ''air-curtain angle,'' ''commercial hybrid refrigerator, freezer, and refrigerator-freezer,'' ''door angle,'' ''horizontal closed,'' ''horizontal open,'' ''semivertical open,'' ''vertical closed,'' ''vertical open,'' and ''wedge case'' to read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers, and refrigerator-freezers.

Air-curtain angle means:

(1) For equipment without doors and without a discharge air grille or discharge air honeycomb, the angle between a vertical line extended down from the highest point on the manufacturer's recommended load limit line and the load limit line itself, when the equipment is viewed in cross-section; and

(2) For all other equipment without doors, the angle formed between a vertical line and the straight line drawn by connecting the point at the inside edge of the discharge air opening with the point at the inside edge of the return air opening, when the equipment is viewed in cross-section.

* * * * *

Commercial hybrid refrigerator, freezer, and refrigerator-freezer means a commercial refrigerator, freezer, or refrigerator-freezer that has two or more chilled and/or frozen compartments that are:

(1) In two or more different equipment families,

(2) Contained in one cabinet, and

(3) Sold as a single unit.

* * * * *

Door angle means:

(1) For equipment with flat doors, the angle between a vertical line and the line formed by the plane of the door, when the equipment is viewed in cross-section; and

(2) For equipment with curved doors, the angle formed between a vertical line and the straight line drawn by connecting the top and bottom points where the display area glass joins the cabinet, when the equipment is viewed in cross-section.

* * * * *

Horizontal Closed means equipment with hinged or sliding doors and a door angle greater than or equal to 45°.

* * * * *

Horizontal Open means equipment without doors and an air-curtain angle greater than or equal to 80° from the vertical.

* * * * *

Semivertical Open means equipment without doors and an air-curtain angle greater than or equal to 10° and less than 80° from the vertical.

* * * * *

Vertical Closed means equipment with hinged or sliding doors and a door angle less than 45°.

Vertical Open means equipment without doors and an air-curtain angle greater than or equal to 0° and less than 10° from the vertical.

Wedge case means a commercial refrigerator, freezer, or refrigerator-freezer that forms the transition between two regularly shaped display cases.

■ 3. Section 431.63 of subpart C is revised to read as follows:

§ 431.63 Materials incorporated by reference.

(a) *General.* We incorporate by reference the following standards into Subpart C of Part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal**

Register. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202–586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/*. Standards can be obtained from the sources listed below.

(b) *ANSI*. American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, or go to *http://www.ansi.org:*

(1) ANSI /AHAM HRF–1–2004, *Energy, Performance and Capacity of Household Refrigerators, Refrigerator-Freezers and Freezers*, approved July 7, 2004, IBR approved for § 431.64.

(2) [Reserved]

(c) ARI. Air-Conditioning and Refrigeration Institute, 4100 N. Fairfax Dr., Suite 200, Arlington, VA 22203, or *http://www.ari.org/std/standards.html:*

(1) ARI Standard 1200–2006, *Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets*, 2006, IBR approved for §§ 431.64 and 431.66.

(2) [Reserved]

■ 4. Section 431.66 of subpart C is amended by adding new paragraphs (a)(3) and (d) to read as follows:

§ 431.66 Energy conservation standards and their effective dates.

(a) * * *

(3) The term ''TDA'' means the total display area (ft²) of the case, as defined in the ARI Standard 1200–2006, appendix D (incorporated by reference, see § 431.63).

* * * * *

(d) Each commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors; commercial refrigerator, freezer, and refrigerator-freezer with a remote condensing unit; and commercial ice-cream freezer manufactured on or after January 1, 2012, shall have a daily energy consumption (in kilowatt hours per day) that does not exceed the levels specified:

(1) For equipment other than hybrid equipment, refrigerator-freezers or wedge cases:

Equipment category	Condensing unit configuration	Equipment family	Rating temp. (°F)	Operating temp. (°F)	Equipment class designation*	Maximum daily energy consumption (kWh/day)
Remote Condensing Commercial Refrigerators and Commercial Freezers.	Remote (RC)	Vertical Open (VOP)	38 (M)	≥32	VOP.RC.M	0.82 × TDA + 4.07
			0 (L)	<32	VOP.RC.L	2.27 × TDA + 6.85
		Semivertical Open (SVO)	38 (M)	≥32	SVO.RC.M	0.83 × TDA + 3.18
			0 (L)	<32	SVO.RC.L	2.27 × TDA + 6.85
		Horizontal Open (HZO)	38 (M)	≥32	HZO.RC.M	0.35 × TDA + 2.88
			0 (L)	<32	HZO.RC.L	0.57 × TDA + 6.88
		Vertical Closed Transparent (VCT).	38 (M)	≥32	VCT.RC.M	0.22 × TDA + 1.95
			0 (L)	<32	VCT.RC.L	0.56 × TDA + 2.61
		Horizontal Closed Transparent (HCT).	38 (M)	≥32	HCT.RC.M	0.16 × TDA + 0.13
			0 (L)	<32	HCT.RC.L	0.34 × TDA + 0.26
		Vertical Closed Solid (VCS)	38 (M)	≥32	VCS.RC.M	0.11 × V + 0.26
			0 (L)	<32	VCS.RC.L	0.23 × V + 0.54
		Horizontal Closed Solid (HCS).	38 (M)	≥32	HCS.RC.M	0.11 × V + 0.26
			0 (L)	<32	HCS.RC.L	0.23 × V + 0.54
		Service Over Counter (SOC).	38 (M)	≥32	SOC.RC.M	0.51 × TDA + 0.11
			0 (L)	<32	SOC.RC.L	1.08 × TDA + 0.22
Self-Contained Commercial Refrigerators and Commercial Freezers without Doors.	Self-Contained (SC).	Vertical Open (VOP)	38 (M)	≥32	VOP.SC.M	1.74 × TDA + 4.71
			0 (L)	<32	VOP.SC.L	4.37 × TDA + 11.82
		Semivertical Open (SVO)	38 (M)	≥32	SVO.SC.M	1.73 × TDA + 4.59
			0 (L)	<32	SVO.SC.L	4.34 × TDA + 11.51
		Horizontal Open	38 (M)	≥32	HZO.SC.M	0.77 × TDA + 5.55
			0 (L)	<32	HZO.SC.L	1.92 × TDA + 7.08
Commercial Ice-Cream Freezers.	Remote (RC)	Vertical Open (VOP)	−15 (I)	≤−5**	VOP.RC.I	2.89 × TDA + 8.7
		Semivertical Open (SVO)			SVO.RC.I	2.89 × TDA + 8.7
		Horizontal Open (HZO)			HZO.RC.I	0.72 × TDA + 8.74
		Vertical Closed Transparent (VCT).			VCT.RC.I	0.66 × TDA + 3.05
		Horizontal Closed Transparent (HCT).			HCT.RC.I	0.4 × TDA + 0.31
		Vertical Closed Solid (VCS)			VCS.RC.I	0.27 × V + 0.63
		Horizontal Closed Solid (HCS).			HCS.RC.I	0.27 × V + 0.63
		Service Over Counter (SVO).			SOC.RC.I	1.26 × TDA + 0.26
	Self-Contained (SC).	Vertical Open (VOP)			VOP.SC.I	5.55 × TDA + 15.02
		Semivertical Open (SVO)			SVO.SC.I	5.52 × TDA + 14.63
		Horizontal Open (HZO)			HZO.SC.I	2.44 × TDA + 9
		Vertical Closed Transparent (VCT).			VCT.SC.I	0.67 × TDA + 3.29
		Horizontal Closed Transparent (HCT).			HCT.SC.I	0.56 × TDA + 0.43

Equipment category	Condensing unit configuration	Equipment family	Rating temp. (°F)	Operating temp. (°F)	Equipment class designation *	Maximum daily energy consumption (kWh/day)
		Vertical Closed Solid (VCS)			VCS.SC.I	0.38 × V + 0.88
		Horizontal Closed Solid (HCS).			HCS.SC.I	0.38 × V + 0.88
		Service Over Counter (SVO).			SOC.SC.I	1.76 × TDA + 0.36

* The meaning of the letters in this column is indicated in the three columns to the left.
** Ice-cream freezer is defined in 10 CFR 431.62 as a commercial freezer that is designed to operate at or below −5 °F (−21 °C) and that the manufacturer designs, markets, or intends for the storing, displaying, or dispensing of ice cream.

(2) For commercial refrigeration equipment with two or more compartments (*i.e.*, hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers), the maximum daily energy consumption (MDEC) for each model shall be the sum of the MDEC values for all of its compartments. For each compartment, measure the TDA or volume of that compartment, and determine the appropriate equipment class based on that compartment's equipment family, condensing unit configuration, and designed operating temperature. The MDEC limit for each compartment shall be the calculated value obtained by entering that compartment's TDA or volume into the standard equation in paragraph (d)(1) of this section for that compartment's equipment class. Measure the calculated daily energy consumption (CDEC) or total daily energy consumption (TDEC) for the entire case:

(i) For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more independent condensing units each separately cool only one compartment, measure the total refrigeration load of each compartment separately according to the ARI Standard 1200–2006 test procedure (incorporated by reference, see § 431.63). Calculate compressor energy consumption (CEC) for each compartment using Table 1 in ARI Standard 1200–2006 using the saturated evaporator temperature for that compartment. The CDEC for the entire case shall be the sum of the CEC for each compartment, fan energy consumption (FEC), lighting energy consumption (LEC), anti-condensate energy consumption (AEC), defrost energy consumption (DEC), and condensate evaporator pan energy consumption (PEC) (as measured in ARI Standard 1200–2006).

(ii) For remote condensing commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, where two or more compartments are cooled collectively by one condensing unit, measure the total refrigeration load of the entire case according to the ARI Standard 1200–2006 test procedure (incorporated by reference, see § 431.63). Calculate a weighted saturated evaporator temperature for the entire case by:

(A) Multiplying the saturated evaporator temperature of each compartment by the volume of that compartment (as measured in ARI Standard 1200–2006),

(B) Summing the resulting values for all compartments, and

(C) Dividing the resulting total by the total volume of all compartments.

Calculate the CEC for the entire case using Table 1 in ARI Standard 1200–2006 (incorporated by reference, see § 431.63), using the total refrigeration load and the weighted average saturated evaporator temperature. The CDEC for the entire case shall be the sum of the CEC, FEC, LEC, AEC, DEC, and PEC.

(iii) For self-contained commercial hybrid refrigerators, hybrid freezers, hybrid refrigerator-freezers, and non-hybrid refrigerator-freezers, measure the TDEC for the entire case according to the ARI Standard 1200–2006 test procedure (incorporated by reference, see § 431.63).

(3) For remote-condensing and self-contained wedge cases, measure the CDEC or TDEC according to the ARI Standard 1200–2006 test procedure (incorporated by reference, see § 431.63). The MDEC for each model shall be the amount derived by incorporating into the standards equation in paragraph (d)(1) of this section for the appropriate equipment class a value for the TDA that is the product of:

(i) The vertical height of the air-curtain (or glass in a transparent door) and (ii) The largest overall width of the case, when viewed from the front.

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

Department of Justice, Antitrust Division, Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645(f, *antitrust@justice.usdoj.gov, http://www.usdoj.gov*.

October 24, 2008.

Warren Belmar, Esq., Deputy General Counsel for Energy Policy, Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Belmar: I am responding to your August 12, 2008 letter seeking the views of the Attorney General about the potential impact on competition of the proposed energy efficiency standards for commercial refrigeration equipment. The Energy Policy and Conservation Act (''EPCA'') authorizes the Department of Energy (''DOE'') to establish energy conservation standards for a number of appliances where DOE determines that those standards would be technologically feasible, economically justified, and result in significant energy savings.

Your request was submitted pursuant to Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act, 42 U.S.C. § 6295 (''EPCA''), which states that, before the Secretary of Energy may prescribe a new or amended energy conservation standard, the Secretary shall ask the Attorney General to make a determination of ''the impact of any lessening of competition * * * that is likely to result from the imposition of standard.'' The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g). In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by placing certain manufacturers of a product at an unjustified competitive disadvantage compared to other manufacturers, or by inducing avoidable inefficiencies in production or distribution of particular products. In addition to harming consumers directly through higher prices, these effects could undercut the ultimate goals of the legislation.

Along with your request, you sent us the draft final rule and a number of other documents relating to commercial refrigeration equipment, including a hearing transcript and the names of parties interviewed by DOE's consultant.

We have concluded that the proposed standards would not adversely affect competition. In reaching this conclusion, we note that the proposed standards were

developed taking into account comments by commercial refrigeration equipment manufacturers, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, the American Council for an Energy Efficient Economy and electric utilities. We note further that all key components are available for purchase by any manufacturer; therefore no manufacturer has a technological advantage in meeting the proposed standards. Finally, DOE found no significant differences between the concerns of large and small manufacturers, and we found no evidence that certain manufacturers would be placed at a competitive disadvantage to other manufacturers.

In conclusion, the Antitrust Division does not believe the proposed final rule would adversely affect competition.

Yours sincerely,

Deborah A. Garza,

Acting Assistant Attorney General.

[FR Doc. E8–31449 Filed 1–8–09; 8:45 am]

BILLING CODE 6450–01–P

Rules and Regulations

Federal Register
Vol. 74, No. 6
Friday, January 9, 2009

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS–FV–08–0081; FV08–966–1 FR]

Tomatoes Grown In Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Florida Tomato Committee (Committee) for the 2008–09 and subsequent fiscal periods from $0.0325 to $0.0375 per 25-pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375 Fax: (863) 325–8793, or E-mail: *William.Pimental@usda.gov* or *Christian.Nissen@usda.gov.*

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes beginning on August 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from $0.0325 to $0.0375 per 25-pound carton of tomatoes.

The Florida tomato marketing order provides authority for the Committee, 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 Committee are producers of Florida tomatoes. They are familiar with the Committee'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.

For the 2007–08 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate 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 Committee or other information available to USDA.

The Committee met on August 14, 2008, and unanimously recommended 2008–09 expenditures of $2,438,200 and an assessment rate of $0.0375 per 25-pound carton of tomatoes. In comparison, last year's budgeted expenditures were $2,101,000. The assessment rate of $0.0375 is $0.005 higher than the rate currently in effect. The assessment increase is needed to offset the 2008–09 increase in education and promotion expenses, salaries, and employee retirement. Without the increase in the assessment rate, the Committee will need to utilize an additional $250,000 from the authorized reserve. Therefore, the Committee voted to increase the assessment rate.

The major expenditures recommended by the Committee for the 2008–09 year include $1,200,000 for education and promotion, $505,500 for salaries, $320,000 for research, and $77,000 for employee retirement. Budgeted expenses for these items in 2007–08 were $900,000, $467,000, $320,000, and $71,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses, less anticipated funds from the USDA Market Access Program (MAP), by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million 25-pound cartons and should provide $1,875,000 in assessment income.

Income derived from handler assessments, along with interest income, MAP funds, and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently approximately $593,000) will be kept within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44 of the order.

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2008–09 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

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

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2007–08 season was approximately $13.71 per 25-pound container, and total fresh shipments for the 2007–08 season were 45,177,457 25-pound cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from $0.0325 to $0.0375 per 25-pound carton of tomatoes. The Committee unanimously recommended 2008–09 expenditures of $2,438,200 and an assessment rate of $0.0375 per 25-pound carton. The assessment rate of $0.0375 is $0.005 higher than the 2007–08 rate. The quantity of assessable tomatoes for the 2008–09 season is estimated at 50 million 25-pound cartons. Thus, the $0.0375 rate should provide $1,875,000 in assessments. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, and other income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2008–09 year include $1,200,000 for education and promotion, $505,500 for salaries, $320,000 for research, and $77,000 for employee retirement. Budgeted expenses for these items in 2007–08 were $900,000, $467,000, $320,000, and $71,000, respectively.

The assessment increase is needed to offset the 2008–09 increase in education and promotion expenses, salaries, and employee retirement. Without the increase in the assessment rate, the Committee would need to utilize an additional $250,000 from the authorized reserve. Therefore, the Committee voted to increase the assessment rate.

The Committee reviewed and unanimously recommended 2008–09 expenditures of $2,438,200, which included increases in education and promotion, salaries, and employee retirement. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups based upon the relative value of various education and promotion projects to the tomato industry. The assessment rate of $0.0375 per 25-pound container of assessable tomatoes was determined by examining the anticipated expenses, expected shipments, MAP funds, and available reserves. The recommended assessment rate should generate $1,875,000 in income. Considering income from assessments, interest, and other sources, total income will be approximately $27,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2008–09 fiscal period indicates that the grower price for the 2008–09 season could range between $7.98 and $12.95 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2008–09 season as a percentage of total grower revenue could range between 0.3 and 0.5 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on October 20, 2008 (73 FR 62218). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and Florida tomato handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending November 19, 2008, was provided for interested persons to respond to the proposal. No comments were 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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving tomatoes from the 2008–09 crop, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such period. In addition, the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment Rate.

On and after August 1, 2008, an assessment rate of $0.0375 per 25-pound carton is established for Florida tomatoes.

Dated: January 5, 2009.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–174 Filed 1–8–09; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Federal Civil Penalties Inflation Adjustment Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The FTC is making adjustments to certain civil penalty amounts within its jurisdiction, as required by law. These adjustments reflect inflation since the penalty amounts were last adjusted.

EFFECTIVE DATE: February 9, 2009.

FOR FURTHER INFORMATION CONTACT: Kathleen R. Johnson, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2869, *kjohnson2@ftc.gov*.

SUPPLEMENTARY INFORMATION: As required at least once every four years by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 31001(s)(1), 110 Stat. 1321-373, the FTC is making certain regulatory adjustments to civil penalty amounts within its jurisdiction. The civil penalty amounts adjusted by the FTC are set forth in Commission Rule 1.98, 16 CFR 1.98. The FTC published the original adjustments in 1996. *See* 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). No adjustments were warranted under the law in 2000. *See* 65 FR 69665 (Nov. 20, 2000). The FTC published adjustments to civil penalties under the Clayton Act section 11(l) and the Energy Policy and Conservation Act section 525(a) in 2004. *See* 69 FR 76611 (Dec. 22, 2004).

Adjustments are based on the increase in the Consumer Price Index (CPI) between June of the year in which the prior adjustment was made and June of the year preceding the year in which the adjustment is being made. Thus, for civil penalties adjusted in 2004, the relevant CPI period is between June, 2004 and June, 2007. Within that time frame, the CPI has increased from 189.7 to 208.352, or 9.8%. Applying this percentage increase to currently adjusted civil penalty amounts, the FTC is adjusting civil penalty amounts currently set at $6,500 under two statutes: the Clayton Act section 11(l), for violations of cease-and-desist orders issued under section 11(b) of that Act; and section 525(a) of the Energy Policy and Conservation Act, for recycled oil labeling violations. Each will be adjusted to $7,500, in accordance with the rounding rules of the adjustment statute.

For civil penalties that were last adjusted in 1996, the relevant CPI period is between June, 1996 and June, 2007. During this period, the CPI increased from 156.7 to 208.352 for a total percentage increase of 32.96%. Applying this percentage increase to the civil penalties as they were adjusted in 1996 results in an increase from $11,000 to $16,000 for civil penalties in the following statutes: premerger notification violations under the Hart-Scott-Rodino Antitrust Improvements Act section 7A(g)(1), unfair or deceptive acts or practices under the FTC Act sections 5(l), (m)(1)(A) and (m)(1)(B), and energy conservation violations under the Energy Policy and Conservation Act section 525(b). Further, applying the CPI increase to credit reporting violations under the Fair Credit Reporting Act section 621(a)(2) raises that penalty amount from $2,500 to $3,500.

The FTC is amending Commission Rule 1.98 by modifying paragraphs (a) through (e), (l) and (m) and adding paragraph (n) to reflect these adjustments, which will become effective thirty days following publication.

The FCPIAA rounding rules do not authorize the FTC at this time to increase the amounts of the other civil penalties within its jurisdiction. Increases in civil penalties of greater than $100 and less than or equal to $1,000 must be in $100 increments, and the increase in the CPI was not high enough to round up any adjustment to $100. Accordingly, all other paragraphs of Commission Rule 1.98 remain unchanged.

Likewise, the FTC is not adding new adjustments for other statutory civil penalty amounts that have been enacted since the last adjustments, such as the Energy Independence and Security Act of 2007 section 814(a). This authority is too recent to warrant adjustments for inflation. Similarly, the FTC is not adjusting section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 because the amount of inflation since the inception of this authority is insufficient to warrant adjustment.

In light of the ministerial nature of the adjustments, the public comment requirements of the Administrative Procedure Act (APA) do not apply to this action. 5 U.S.C. 553(b)(B) (exception when public comment is unnecessary). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. 5 U.S.C. 603 and 604 (no regulatory flexibility analyses required where the APA does not require public comment).

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996

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

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 1.98 introductory text, paragraphs (a) through (e), (l) and (m) and add paragraph (n) to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following civil penalty amounts apply to violations occurring after February 9, 2009.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$16,000;

(b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)—$7,500;

(c) Section 5(l) of the FTC Act, 15 U.S.C. 45(l)—$16,000;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$16,000;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$16,000;

* * * * *

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$7,500 and $16,000, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$3,500; and

(n) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E9–210 Filed 1–8–09: 8:45 am]

[BILLING CODE 6750–01–S]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918 and 1926

[Docket No. OSHA–2008–0031]

RIN 1218–AC42

Clarification of Employer Duty To Provide Personal Protective Equipment and Train Each Employee

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule; correction.

SUMMARY: OSHA is correcting an error in the final rule published in the **Federal Register** on December 12, 2008, clarifying employers' duty to provide personal protective equipment and to train each employee.

DATES: Effective January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Jennifer Ashley, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999 or fax (202) 693–1634.

SUPPLEMENTARY INFORMATION: On December 12, 2008 (73 FR 75568), OSHA issued a final rule entitled ''Clarification of Employer Duty To Provide Personal Protective Equipment and Train Each Employee.'' Subsequently, an error was discovered in the amendatory language of that **Federal Register** notice. This notice is being published to correct that language.

Correction of Publication

In FR Doc. E8–29122 appearing on page 75568 in the **Federal Register** of Friday, December 12, 2008, the following correction is made:

§ 1926.1101 [Corrected]

■ On page 75589, in the first column, Subpart Z, item 44, the instruction ''In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2), and (k)(9)(i) are revised to read as follows:'' is corrected to read ''In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2)(i), and (k)(9)(i) are revised to read as follows'':

Signed at Washington, DC, this 6th day of January 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–311 Filed 1–8–09; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–7 and R2009–1; Order No. 163]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Canada Post Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 70682 (November 21, 2008).

The Postal Service seeks to add a new product identified as Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (Bilateral Agreement or Agreement) to the Market Dominant Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On November 13, 2008, the Postal Service filed a request pursuant to 39

U.S.C. 3622(c)(10) and 3642, and 39 CFR 3010.40 *et seq.* and 3020.30 *et seq.* to add the Bilateral Agreement to the Market Dominant Product List.[1] This Request has been assigned Docket No. MC2009–7.

The Postal Service contemporaneously filed notice that the Governors have authorized a Type 2 rate adjustment to establish rates for inbound market dominant services as reflected in the Bilateral Agreement.[2] More specifically, the Bilateral Agreement, which has been assigned Docket No. R2009–1, governs the exchange of inbound air and surface Letter Post (LC/AO) and Xpresspost from Canada.[3]

The Request includes two attachments. Attachment 1 sets forth proposed Mail Classification Schedule language; Attachment 2 provides a Statement of Supporting Justification as required by 39 CFR 3020.32. In addition, the Postal Service indicates that it filed an unredacted copy of the Agreement and supporting materials under seal. *Id.* at 2, n.2.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, reviews the factors of section 3622(c) and concludes, *inter alia*, that the revenues generated will cover the attributable costs of the services offered under the Bilateral Agreement; that the rates are preferable to default rates set by the Universal Postal Union (UPU); and that the rates represent a modest increase over those reflected in the existing bilateral agreement with Canada Post. *Id.*, Attachment 2, at 2–4.

In its Request, the Postal Service provides information responsive to part 3010, subpart D of the Commission's rules. To that end, it addresses the requirements of section 3622(c)(10) as well as certain details of the negotiated service agreement. *Id.* at 2–7. The Postal Service asserts that the Bilateral Agreement satisfies all applicable statutory criteria. *Id.* at 7–8.

The Postal Service filed much of the supporting materials, financial analysis, and specific Bilateral Agreement under seal. *Id.* at 2, n.2. The Postal Service maintains that the Bilateral Agreement and related financial information should remain under seal as they contain pricing, cost, and other information that is highly confidential.[4] *Id.* at 2.

The Postal Service has an existing bilateral agreement with Canada Post which is set to expire December 31, 2008. *Id.* at 8. This instant Agreement represents a one-year extension of the existing agreement, with some modifications. It has a planned effective date of January 1, 2009. *Id.* at 3. The Postal Service urges the Commission to act promptly to allow the rates to be implemented under 39 CFR 3010.40. *Id.* at 8.

In Order No. 133, the Commission gave notice of the two dockets, appointed a public representative, and provided the public an opportunity to comment.[5] Pursuant to 39 CFR 3015.6, Chairman's Information Request No. 1 (CIR No. 1) was filed December 1, 2008, regarding cost information with a response due from the Postal Service by December 8, 2008. The Postal Service filed its information on December 8, 2008, as requested.[6]

II. Comments

Comments were filed by the Public Representative.[7] No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the Agreement. Public Representative Comments at 2–4.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. He notes that performance benchmarks for both parties provide incentive to Canada Post and the Postal Service to make improvements to services. *Id.* at 3. He also observes that the Postal Service indicates that the rates of the Bilateral Agreement provide a modest increase over the current bilateral agreement with Canada Post. *Id.* Based on his review at the filing, the Public Representative indicates that the Agreement is in compliance with the requirements of 39 U.S.C. 3622 and 3642.

III. Commission Analysis

The Commission has reviewed the Agreement, supporting information, the financial analysis provided under seal that accompanies it, responses to the Chairman's Information Request and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning the Bilateral Agreement to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. For market dominant products this includes a review of the section 3622(c)(10). 39 U.S.C. 3633.

Product list assignment. In determining whether to assign the Bilateral Agreement as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service notes the determination was made in Order No. 43 that shipments of single-piece Letter Post were assigned to the market dominant category.[8] The Postal Service

[1] Request of the United States Postal Service to Add Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal), November 13, 2008 (Request).

[2] Type 2 rate adjustments involve negotiated service agreements. *See* 39 CFR 3010.5.

[3] To elaborate, the Bilateral Agreement covers Letter Post, including letters, flats, packets, containers, and International Registered Mail service ancillary thereto, and Canada Post's Xpresspost, which consists of documents and packages containing merchandise. Request at 3.

[4] The Postal Service indicates that the materials filed under seal constitute a subset of the overarching agreement between the parties. Although unstated, presumably the subset represents the parties' agreement concerning inbound market dominant services. The Postal Service further indicates that the parties anticipate finalizing ''this and related agreements by mid-December, and any lingering details will not affect the rates, classification, or other fundamental basis for this Request and Notice.'' *Id.* at 3, n.4.

[5] PRC Order No. 133, Notice and Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, November 18, 2008 (Order No. 133).

[6] Response of United States Postal Service to Chairman's Information Request No.1 and Notice of Filing of Responsive Materials (Under Seal) December 8, 2008 (Response to CIR No. 1).

[7] Public Representative Comments in Response to United States Postal Service Request to Add Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Notice of Filing Agreement (Under Seal), December 3, 2008 (Public Representative Comments).

[8] Request at 10. *See* Docket No. RM2007–1, Commission Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, para. 4003

Continued

also represents that Canadian law allows Canada Post an exclusive privilege to carry outbound letters weighing less than 500 grams (17.64 ounces). Its belief is that Canada Post is generally dominant in the market for letters not within its exclusive privilege, making Canada Post the single entity that can enter into this type of agreement with the Postal Service. Request at 5. The Postal Service contends that its monopoly on inbound letters from Canada within certain price and weight limits make it fairly certain that private entities would not be able to serve the United States market for inbound Letter Posts from Canada in accordance with this agreement. *Id.*

The Postal Service also contends that there is no significant competition in this market. As a result, it believes the Bilateral Agreement does not pose competitive harm to the marketplace. *Id.* at 6. It states the ''marketplace'' has a long-term history of accommodation of agreements between the United States and Canada Post for these services since such agreements have been used by both postal administrations for inbound single-piece Letter Post since 1888. *Id.* The Postal Service asserts that the parties to this Agreement serve as their respective countries' designated entities for the exchange of mail, inclusive of Letter Post, under rules set by the UPU. *Id.* at 5. According to the Postal Service, under the UPU guidelines, designated operators would normally compensate each other for the delivery of Letter Post in compliance with terminal dues set by the UPU, unless a bilateral agreement between the parties existed. *Id.* It represents that no other entities are subject to terminal dues with regard to inbound Letter Post from Canada, and the market for these services under the Agreement is limited to these parties. Therefore, the Postal Service concludes that there can be no reasonable expectation of any competitive harm to the marketplace. *Id.* at 5–6.

The Postal Service's Request presents the Commission with an issue of first impression concerning the classification of inbound Letter Post. As currently configured, inbound Letter Post combines both competitive and market dominant elements.

Under the UPU, inbound Letter Post is identified by type of transportation as either Air Letters and Cards (Air LC) or Surface All Other (Surface AO). As the names suggest, Air LC consists of letters and cards while Surface AO consists of flats, packets, bags, and containers. All Air LC and Surface AO mail must weigh less than 2 kilograms (approximately 4.4 pounds). For purposes of the negotiated Bilateral Agreement, however, Air LC includes Xpresspost from Canada, which may weigh up to 30 kilograms (approximately 67 pounds).

Xpresspost exhibits characteristics of a competitive product. Canada Post advertises Xpresspost as a lower cost alternative to private courier service.[9] Xpresspost is also described as the fastest parcel service into the United States from Canada after Next Business Day USA—Priority Worldwide. Once presented to the Postal Service, inbound Xpresspost is processed and handled as Priority Mail. Both as a service offering and in operational terms, Xpresspost appears to parallel domestic Priority Mail.

These features suggest that inbound Letter Post from Canada should be classified as two separate products, one market dominant (Air LC and Surface AO) and the other competitive (Xpresspost). To classify Xpresspost as a competitive product would require the Commission to find that Xpresspost exhibits distinct costs and market characteristics. At this time, the Postal Service is unable to provide separate cost data or market data for Xpresspost and Air LC. In future filings, the Postal Service will be expected to develop the necessary cost and market data to permit a definitive determination on the appropriate classification of Xpresspost as either a market dominant or competitive product.

No commenter opposes the proposed classification of the Bilateral Agreement as market dominant. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds, for purposes of this proceeding, that the Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services may be classified as a market dominant product and added to the Market Dominant Product List.

Cost considerations. The Postal Service's filing seeks to establish a new international mail product. The Agreement provides delivery and scanning performance objectives and incentives to promote operational improvement. The Agreement's new rates are to be effective January 1, 2009. Request at 3–4. Additionally, performance responsibilities include Canada Post's work sharing arrangements, including presorting items to a 3-digit delivery ZIP Code level and providing transportation for inbound airmail items to multiple Postal Service International Service Centers for acceptance. *Id.* at 4.

The Postal Service filed information under seal regarding financial improvements, costs, volumes, and anticipated revenues. The Postal Service represents that the new Agreement ''includes performance-based incentives to promote cost reduction, increase efficiency, and improve service performance.'' *Id.*, Attachment 2, at 2.

The requirements of 39 U.S.C. 3622(c)(10) obligate the Commission, when reviewing a negotiated service agreement, to determine whether such an agreement (1) Improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers.

With respect to the first requirement, the Postal Service uses system average cost for inbound Air Letters and Cards (Air LC) for inbound Letter Post from Canada. However, this mail includes ''Xpresspost,'' a Canada Post product that is equivalent to the Postal Service's domestic Priority Mail. Xpresspost weighs up to 30 kilograms (67 pounds). The Postal Service's system average cost for Air LC reflects the cost for mail weighing up to 4.4 pounds per piece. Thus, it is not likely that the system average cost for Air LC captures the cost of these much heavier weight items.[10] For weight-related costs, Xpresspost will be substantially more expensive than the average Air LC piece because the average weight of Xpresspost is significantly greater than of Air LC.

Additionally, the Postal Service writes that ''Xpresspost items receive a Delivery Confirmation scan'' while Air LC items do not receive such a scan. Chairman's Information Request No. 1, Question 7(a). The Postal Service also maintains that ''Canada Post's higher per-item rate reflects this value-added service for its Xpresspost product.'' *Id.* However, the Postal Service does not include the cost of Delivery Confirmation scans for Xpresspost in its financial model. Rather, the Postal Service uses the systemwide average unit costs for Air LC. The most recent estimate of unit volume-variable cost of delivery confirmation service is approximately 8.8 cents.[11]

assigning Inbound Single-Piece First Class Mail International to First Class Mail (Order No. 43).

[9] Xpresspost—USA is a shipping service that provides fast, guaranteed delivery at a lower cost than a courier to every address in the United States, including post office boxes.

[10] Differences in shape and cube-related costs also are not captured.

[11] The Postal Service estimated the unit volume-variable cost of delivery confirmation service in Docket No. R2006–1. *See* testimony of witness Berkeley (USPS–T–39).

For these reasons, the costs may be understated. Because there is a lack of Xpresspost specific costs, however, the Commission cannot state with certainty the cost coverage level. For purposes of this proceeding, the Commission accepts the Postal Service representations. In future filings, the Commission expects the Postal Service to provide unit delivery, transportation, and ''other'' costs for Xpresspost to permit a more complete evaluation of the cost coverage.

The Postal Service asserts that the instant Agreement will not result in unreasonable harm to the marketplace because, among other things, ''Canada Post is the only entity in a position to avail itself of an agreement with the Postal Service of this type and scope.'' Request at 5. Moreover, because Canada Post and the Postal Service are their respective countries' designated operators for the exchange of mail, the Postal Service states that the market is limited to these parties. Under the circumstances presented in this proceeding, the Commission finds that Agreement will not result in unreasonable harm to the marketplace.

The Postal Service also asserts that no entities are similarly situated to Canada Post because none has the ability to tender Letter Post from Canada under similar conditions or to serve as the designated operator for Letter Post originating from Canada. *Id.* at 7–8. Thus, the Postal Service suggests that the ''similarly situated mailer'' criterion of section 3622(c)(10) is inapplicable to this Bilateral Agreement. *Id.* at 8. Given its narrow characterization of the underlying Agreement, the Postal Service's position is correct. For purposes of this proceeding, the Commission concludes that it would be largely an academic exercise to consider whether a broader characterization should be employed.

Based on the data submitted and the comments received, the Commission finds that the Bilateral Agreement comports with section 3622(c)(10). Thus, an initial review of the proposed Bilateral Agreement indicates that it comports with the provisions applicable to rates for market dominant products.

The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than the proposed one-year term, but no later than the actual termination date. The Commission will then remove the Agreement from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves the Canada Post—United States Postal Service contractual Bilateral Agreement for Inbound Market Dominant Services as a new product. The revision to the Market Dominant Product List is shown below the signature of this Order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It Is Ordered:

1. Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2009–7 and R2009–1) is added to the Market Dominant Product List as a new product under Negotiated Service Agreements International.

2. The Postal Service shall notify the Commission if the Agreement terminates earlier than the proposed one-year term.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
  Inbound International
  Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services (MC2009–7 and R2009–1)
Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
  Single-Piece Letters/Postcards
  [Reserved for Product Description]
  Bulk Letters/Postcards
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Parcels
  [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
  High Density and Saturation Letters
  [Reserved for Product Description]
  High Density and Saturation Flats/Parcels
  [Reserved for Product Description]
  Carrier Route
  [Reserved for Product Description]
  Letters
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels
  [Reserved for Product Description]
Periodicals
[Reserved for Class Description]
  Within County Periodicals
  [Reserved for Product Description]
  Outside County Periodicals
  [Reserved for Product Description]
Package Services
[Reserved for Class Description]
  Single-Piece Parcel Post
  [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates)
  [Reserved for Product Description]
  Bound Printed Matter Flats
  [Reserved for Product Description]
  Bound Printed Matter Parcels
  [Reserved for Product Description]

Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Part B-Competitive Products
2000 Competitive Product List
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Parcel Return Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Outbound International
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Global Direct Contracts (MC2009–9, CP2009–10 and CP2009–11)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–177 Filed 1–8–09; 8:45 am]

BILLING CODE 7710–FW–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 542 and 552

[GSAR Amendment 2008–05; GSAR Case 2008–G512 (Change 26); Docket 2009–0012; Sequence 1]

RIN 3090–AI59

General Services Administration Acquisition Regulation; GSAR Case 2008–G512; Rewrite of GSAR Part 542; Contract Administration and Audit Services

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR Part 542 that provide requirements for contract administration and audit services.

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

FOR FURTHER INFORMATION CONTACT Contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082 for clarification of content. For information pertaining to the status or publication schedules, please contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2008–04, GSAR case 2008–G512 (Change 26).

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update the text addressing GSAR Subpart 542.1107, Production Surveillance and Reporting, and the clause at 552.242–70, Status Report of Orders and Shipments. The language in the contract clause at 542.1107 is revised to add emphasis to the contracting officer's responsibilities. The clause at 552.242–70, Status Report of Orders and Shipments, is revised to update information about the referenced GSA office. The language in 542.15, Contractor Performance Information, is reorganized and removed from the GSAR because it is considered guidance that is internal to the agency.

GSA published a proposed rule with request for comments in the **Federal Register** at 73 FR 35614, June 24, 2008. There were three public comments, pertaining to GSAM 542.1503, received from one respondent. This language in 542.1503, previously shown as GSAR coverage, is now, not included in the GSAR but provided as instruction to contracting officers in the GSA Manual (GSAM). This is internal GSA guidance for contracting officers.

The respondent suggested ''putting oversight mechanisms in place to review evaluations in the database for disagreements where no review, or an inadequate review, exists from Contracting Directors.'' GSA does not agree. GSA's procedures allow flexibility for the Heads of the Services to identify the officials responsible for collecting, disseminating, and applying contractor performance information in the acquisition process. In addition, contracting directors, as specified by Service organizations, are responsible for reviewing and making the final determination. GSA believes that the information provided to agency personnel is adequate.

The respondent suggested that the contractor and the contracting director respond to the evaluation within 30 days from receipt of the contractor's rebuttal statements. GSA does not agree. The current coverage allows flexibility for the contracting office to make final determinations as needed for the contract at hand. In addition, FAR 42.1503(b) allows agencies to address final decisions as soon as is practical.

The respondent also recommended that GSAR 542.1503 should ''provide guidance to Contracting Directors on what should be included in any review comments to satisfy the FAR and ensure an honest and unbiased evaluation.'' GSA does not agree. The current coverage allows flexibility for the contracting director to make final determinations as needed for the contract at hand. Each contractor performance evaluation is tailored to the contract requirements and, therefore, is specific to the contract at hand.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule provides clarity for existing language and updates other language.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved on July 30, 2008, under OMB Control Number3090–0027.

List of Subjects in 48 CFR Parts 542 and 552

Government procurement.

Dated: October 30, 2008.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 542 and 552 as set forth below:

PART 542—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 542 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Revise section 542.1107 to read as follows:

542.1107 Contract clause.

The contracting officer shall insert 552.242–70, Status Report of Orders and Shipments, in solicitations and indefinite quantity and requirements contracts for Stock or Special Order Program items. The clause may be used in indefinite-delivery definite-quantity contracts for Stock or Special Order Program items when close monitoring is necessary because numerous shipments are involved.

SUBPART 542.15 [Removed]

■ 3. Remove Subpart 542.15.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 5. Amend section 552.242–70 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a) ''*FQC*'' and adding ''*QVOC*'' in its place; and

■ c. Revising paragraph (b) to read as follows:

552.242–70 Status Report of Orders and Shipments.

* * * * *

STATUS REPORT OF ORDERS AND SHIPMENTS February 9, 2009.

* * * * *

(b) A copy of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be reproduced by the Contractor.

(End of clause)

[FR Doc. E9–216 Filed 1–8–09; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 543 and 552

[GSAR Amendment 2005–04; GSAR Case 2008–G513 (Change 25); Docket 2009–0012; Sequence 2]

RIN 3090–AI83

General Services Administration Acquisition Regulation; GSAR Case 2008–G513; Rewrite of GSAR Part 543, Contract Modifications

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the GSA Acquisition Regulation (GSAR) to revise the language that provides requirements for contract modifications.

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

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell at (202) 501–4082, for clarification of content. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite Amendment 2005–04, GSAR case 2008–G513 (Change 25).

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSAR to revise GSAR 543.205, Contract clauses, and associated clauses in GSAR 552.243. The information in GSAR 543.205, Contract clauses, is revised to remove 543.205(a)(1) and 543.205(b) and be re-numbered accordingly. The information in 543.205(a)(1) is deleted. This clause prescription is no longer necessary. The information in 543.205(b) is relocated to part 538. The prescription for the clause at 552.243–71, Equitable Adjustment, is revised to include the clause title for FAR 52.243–4, Changes. The clause at 552.243–70, Pricing of Adjustments, is deleted. Information formerly contained in this clause is now contained in the revised clause at 552.243–71, Equitable Adjustments. The clause at 552.243–71, Equitable Adjustments, is revised to clarify costs, overhead, profit, and proposal preparation costs. The clause at 552.243–72, Modifications, (Multiple Award Schedule) is relocated to GSAR part 538.

The GSA published a proposed rule with request for comments in the **Federal Register** at 73 FR 35614 on June 24, 2008. There were four public comments from two respondents. One respondent recommended adding the phrase ''impacted by the change'' to paragraph (e) of the clause at 552.243–71 to limit the equitable adjustment to only the work impacted by the change. The GSA agrees and the language was revised to include this recommendation. The second respondent made three suggestions regarding internal GSA procedures. These suggestions are outside the scope of the GSAR case as published. Additional editorial corrections were made in paragraphs (b), (d), and (j)(2)of the clause at 552.243–71.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates, clarifies, and reorganizes existing language.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C.3501, *et seq.*

List of Subjects in 48 CFR Parts 543 and 552

Government procurement.

Dated: December 8, 2008.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 543 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 543 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 543—CONTRACT MODIFICATONS

■ 2. Revise section 543.205 to read as follows:

543.205 Contract clauses.

The contracting officer shall insert 552.243–71, Equitable Adjustments, in solicitations and contracts containing FAR 52.243–4, Changes.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.243–70 [Removed]

■ 3. Remove section 552.243–70.

■ 4. Revise section 552.243–71 to read as follows:

552.243–71 Equitable Adjustments.

As prescribed in 543.205, insert the following clause:

Equitable Adjustments

(JAN 2009)

(a) This clause governs the determination of equitable adjustments to which the Contractor may be entitled under the ''Changes'' clause prescribed by FAR 52.243–4, the ''Differing Site Conditions'' clause prescribed by FAR 52.236–2, and any other provision of this contract allowing entitlement to an equitable adjustment. This clause does not govern determination of the Contractor's relief allowable under the ''Suspension of Work'' clause prescribed by FAR 52.242–14.

(b) At the written request of the Contracting Officer, the Contractor shall submit a proposal, in accordance with the requirements set forth herein, for an equitable adjustment to the contract for changes or other conditions that may entitle a Contractor to an equitable adjustment. If the Contractor deems an oral or written order to be a change to the contract, it shall promptly submit to the Contracting Officer a proposal for equitable adjustment attributable to such deemed change. The proposal shall also conform to the requirements set forth herein.

(c) The proposal shall be submitted within the time specified in the ''Changes'' clause, or such other time as may reasonably be required by the Contracting Officer. In the case of a proposal submitted based on the ''Differing Site Conditions'' clause, the notice requirement of that clause shall be met.

(d) Proposals for equitable adjustments, including no cost requests for adjustment of the contract's required

completion date, shall include a detailed breakdown of the following elements, as applicable:

(1) Direct Costs.

(2) Markups.

(3) Change to the time for completion specified in the contract.

(e) *Direct Costs.* The Contractor shall separately identify each item of deleted and added work associated with the change or other condition giving rise to entitlement to an equitable adjustment, including increases or decreases to unchanged work impacted by the change. For each item of work so identified, the Contractor shall propose for itself and, if applicable, its first two tiers of subcontractors, the following direct costs:

(1) Material cost broken down by trade, supplier, material description, quantity of material units, and unit cost (including all manufacturing burden associated with material fabrication and cost of delivery to site, unless separately itemized);

(2) Labor cost broken down by trade, employer, occupation, quantity of labor hours, and burdened hourly labor rate, together with itemization of applied labor burdens (exclusive of employer's overhead, profit, and any labor cost burdens carried in employer's overhead rate);

(3) Cost of equipment required to perform the work, identified with material to be placed or operation to be performed;

(4) Cost of preparation and/or revision to shop drawings and other submittals with detail set forth in paragraphs (e)(1) and (e)(2) of this clause;

(5) Delivery costs, if not included in material unit costs;

(6) Time-related costs not separately identified as direct costs, and not included in the Contractor's or subcontractors' overhead rates, as specified in paragraph (g) of this clause; and

(7) Other direct costs.

(f) Marked-up costs of subcontractors below the second tier may be treated as other direct costs of a second tier subcontractor, unless the Contracting Officer requires a detailed breakdown under paragraph (i) of this clause.

(g) Extensions of Time and Time-Related Costs. The Contractor shall propose a daily rate for each firm's time-related costs during the affected period, and, for each firm, the increase or decrease in the number of work days of performance attributable to the change or other condition giving rise to entitlement to an equitable adjustment, with supporting analysis. Entitlement to time and time-related costs shall be determined as follows:

(1) Increases or decreases to a firm's time-related costs shall be allowed only if such increase or decrease necessarily and exclusively results from the change or other condition giving rise to entitlement to an equitable adjustment.

(2) The Contractor shall not be entitled to an extension of time or recovery of its own time-related costs except to the extent that such change or other condition necessarily and exclusively causes its duration of performance to extend beyond the completion date specified in the contract.

(3) Costs may be characterized as time-related costs only if they are incurred solely to support performance of this contract and the increase or decrease in such costs is solely dependent upon the duration of a firm's performance of work.

(4) Costs may not be characterized as time-related costs if they are included in the calculation of a firm's overhead rate.

(5) Equitable adjustment of time and time-related costs shall not be allowed unless the analysis supporting the proposal complies with provisions specified elsewhere in this contract regarding the Contractor's project schedule.

(h) *Markups.* For each firm whose direct costs are separately identified in the proposal, the Contractor shall propose an overhead rate, profit rate, and where applicable, a bond rate and insurance rate. Markups shall be determined and applied as follows:

(1) Overhead rates shall be negotiated, and may be subject to audit and adjustment.

(2) Profit rates shall be negotiated, but shall not exceed ten percent, unless entitlement to a higher rate of profit may be demonstrated.

(3) The Contractor and its subcontractor[s] shall not be allowed overhead or profit on the overhead or profit received by a subcontractor, except to the extent that the subcontractor's costs are properly included in other direct costs as specified in paragraph (f) of this clause.

(4) Overhead rates shall be applied to the direct costs of work performed by a firm, and shall not be allowed on the direct costs of work performed by a subcontractor to that firm at any tier except as set forth below in paragraphs (h)(6) and (h)(7) of this clause.

(5) Profit rates shall be applied to the sum of a firm's direct costs and the overhead allowed on the direct costs of work performed by that firm.

(6) Overhead and profit shall be allowed on the direct costs of work performed by a subcontractor within two tiers of a firm at rates equal to only fifty percent of the overhead and profit rates negotiated pursuant to paragraphs (h)(1) and (h)(2) of this clause for that firm, but not in excess of ten percent when combined.

(7) Overhead and profit shall not be allowed on the direct costs of a subcontractor more than two tiers below the firm claiming overhead and profit for subcontractor direct costs.

(8) If changes to a Contractor's or subcontractor's bond or insurance premiums are computed as a percentage of the gross change in contract value, markups for bond and insurance shall be applied after all overhead and profit is applied. Bond and insurance rates shall not be applied if the associated costs are included in the calculation of a firm's overhead rate.

(9) No markup shall be applied to a firm's costs other than those specified herein.

(i) At the request of the Contracting Officer, the Contractor shall provide such other information as may be reasonably necessary to allow evaluation of the proposal. If the proposal includes significant costs incurred by a subcontractor below the second tier, the Contracting Officer may require the same detail for those costs as required for the first two tiers of subcontractors, and markups shall be applied to these subcontractor costs in accordance with paragraph (h).

(j) *Proposal Preparation Costs.* If performed by the firm claiming them, proposal preparations costs shall be included in the labor hours proposed as direct costs. If performed by an outside consultant or law firm, proposal preparation costs shall be treated as other direct costs to the firm incurring them. Requests for proposal preparation costs shall include the following:

(1) A copy of the contract or other documentation identifying the consultant or firm, the scope of the services performed, the manner in which the consultant or firm was to be compensated, and if compensation was paid on an hourly basis, the fully burdened and marked-up hourly rates for the services provided.

(2) If compensation was paid on an hourly basis, documentation of the quantity of hours worked, including descriptions of the activities for which the hours were billed, and applicable rates.

(3) Written proof of payment of the costs requested. The sufficiency of the proof shall be determined by the Contracting Officer.

(k) Proposal preparation costs shall be allowed only if—

(1) The nature and complexity of the change or other condition giving rise to

entitlement to an equitable adjustment warrants estimating, scheduling, or other effort not reasonably foreseeable at the time of contract award;

(2) Proposed costs are not included in a firm's time-related costs or overhead rate; and

(3) Proposed costs were incurred prior to a Contracting Officer's unilateral determination of an equitable adjustment under the conditions set forth in paragraph (o), or were incurred prior to the time the request for equitable adjustment otherwise became a matter in dispute.

(l) Proposed direct costs, markups, and proposal preparation costs shall be allowable in the determination of an equitable adjustment only if they are reasonable and otherwise consistent with the contract cost principles and procedures set forth in part 31 of the Federal Acquisition Regulation (48 CFR part 31) in effect on the date of this contract. Characterization of costs as direct costs, time-related costs, or overhead costs must be consistent with the requesting firm's accounting practices on other work under this contract and other contracts.

(m) If the Contracting Officer determines that it is in the Government's interest that the Contractor proceed with a change before negotiation of an equitable adjustment is completed, the Contracting Officer may order the Contractor to proceed on the basis of a unilateral modification to the contract increasing or decreasing the contract price by an amount to be determined later. Such increase or decrease shall not exceed the increase or decrease proposed by the Contractor.

(n) If the parties cannot agree to an equitable adjustment, the Contracting Officer may determine the equitable adjustment unilaterally.

(o) The Contractor shall not be entitled to any proposal preparation costs incurred subsequent to the date of a unilateral determination or denial of the request if the Contracting Officer issues a unilateral determination or denial under any of the following circumstances:

(1) The Contractor fails to submit a proposal within the time required by this contract or such time as may reasonably be required by the Contracting Officer.

(2) The Contractor fails to submit additional information requested by the Contracting Officer within the time reasonably required.

(3) Agreement to an equitable adjustment cannot be reached within 60 days of submission of the Contractor's proposal or receipt of additional requested information, despite the Contracting Officer's diligent efforts to negotiate the equitable adjustment.

(End of clause)

552.243–72 [Removed]

■ 5. Remove section 552.243–72.

[FR Doc. E9–215 Filed 1–8–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XM47

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2009 Bering Sea Pollock Total Allowable Catch Amount; Correction

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

ACTION: Correction to a temporary rule; inseason adjustment; request for comments.

SUMMARY: This document corrects the comment period and a date for a temporary rule that published in the **Federal Register** on January 2, 2009 (74 FR 38). That rule adjusted the 2009 total allowable catch amount (TAC) for the Bering Sea pollock fishery to ensure the Bering Sea pollock TAC does not exceed the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. One typographical error specifies that comments are due on the date of publication and another typographical error specifies that comments are due on January 13, 2008. The correct date is January 13, 2009. The date that data became available is also corrected.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2008, through 2400 hrs, A.l.t., December 31, 2009, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–XM47,'' by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.

• Mail: P. O. Box 21668, Juneau, AK 99802.

• Fax: (907) 586–7557.

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Correction

The final rule, identified as FR Doc. E8–31224 that published in the **Federal Register** on January 2, 2009 (74 FR 38) is corrected by fixing three typographical errors as follows.

1. On page 38, in the second column, the second paragraph under the DATES caption is corrected to read:

''Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2009.''

2. On page 39, column 2, in the last line the date ''December 19, 2007'' is corrected to read ''December 19, 2008''.

3. On page 40, in the first column, line 2, the date ''January 13, 2008'' is corrected to read ''January 13, 2009''.

Classification

This action corrects three typographical errors and does not otherwise change the requirements in the January 2, 2009 (74 FR 38) temporary rule.

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is

impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 19, 2008, and additional time for prior public comment would result in conservation concerns for the ESA–listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided in the January 2, 2009 (74 FR 38) rule and is not repeated here.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: January 6, 2009.

Emily H. Menashes,

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

[FR Doc. E9–222 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 6
Friday, January 9, 2009

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

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SATS No. OK–032–FOR; Docket ID: OSM–2008–0023]

Oklahoma Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma is proposing revisions to the Appeals procedures in section 460:20–5–13, Appeals board in section 460:20–5–14, and Notice of violations in section 460:20–59–4.

This document gives the times and locations that the Oklahoma program and proposed amendments to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., February 9, 2009. If requested, we will hold a public hearing on the amendment on February 3, 2009. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on January 26, 2009.

ADDRESSES: You may submit comments, identified by Docket ID: OSM–2008–0023, by any of the following methods:

- *E-mail: aclayborne@osmre.gov.* Include ''Docket ID: OSM–2008–0023'' in the subject line of the message.
- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2008–0023. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0023 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0023, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Oklahoma regulations, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430, E-mail: *aclayborne@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Oklahoma Department of Mines, 2915 N. Classen Blvd., Suite 213, Oklahoma City, Oklahoma 73106–5406, Telephone: (405) 427–3859;

Federal eRulemaking Portal: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office, Telephone: (918) 581–6430, E-mail: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning the Oklahoma program and program amendments at 30 CFR 936.10, 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated November 26, 2008 (Administrative Record No. OK–998), Oklahoma sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment at its own initiative. Below is a summary of the changes proposed by Oklahoma. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes or corrections of cross-references. They can be found in the full text document of the program amendment, which is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Oklahoma proposes to make the following revisions to its program.

A. Section 460:20–5–13—Appeals procedures [Revoked]

Oklahoma proposes to delete Appeals procedures for State employees.

(a) Employees have the right to appeal an order for remedial action under Section 460:20–5–12, and shall have 30 days to exercise this right before disciplinary action is initiated. Employees may file their appeal, in writing, with the Appeals board established in Section 460:20–14 below.

(b) Members of advisory boards, the Oklahoma Mining Commission, and commissions representing multiple interests should follow any appeals process provided for by the Oklahoma Governor's Office, Director of Appointments.

B. Section 460:20–5–14—Appeals board [Revoked]

Oklahoma proposes to delete the Appeals board for State employees. A department appeals board, composed of three persons appointed by the Director as representatives of the Department, shall hear any grievance from Department personnel concerning termination, salary disputes, conflict of interest, or other personnel matters which have been determined by the Director.

(1) Any decisions rendered by the appeals board shall be a majority vote, after both parties have had an opportunity to be heard in an individual proceeding under the Administrative Procedures Act.

(2) Should the appeals board vote against the decision of the Chief Administrative Officer, the matter shall be taken to the Director, and his or her decision shall be considered a final order, appealable under the Administrative Procedures Act.

C. Section 460:20–59–4—Notice of violation

Oklahoma proposes to make editorial changes by adopting language similar to 30 CFR 843.12 (f)(1), which specifies the circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days. Oklahoma proposes new language at line (F)(2) allowing for situations where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit revision which abates an outstanding violation and which includes no other changes to permit design or plans, but such revision approval has not or will not be issued within 90 days for reasons not within the control of the permittee.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written or Electronic Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on January 26, 2009. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

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

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Oklahoma program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Oklahoma program has no effect on Federally-recognized Indian tribes.

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 9, 2008.

William Joseph,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E9–204 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–05–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–192

[FMR Amendment 200X–XXX; FMR Case 2008–102–4; Docket 2008–0001; Sequence 1]

RIN 3090–AI79

Federal Management Regulation; FMR Case 2008–102–4, Mail Management; Financial Requirements for All Agencies

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is amending the mail management section of the Federal Management Regulation (FMR). The proposed changes will help agencies show accountability for their costs regardless of whether they choose to use commercial payment processes.

DATES: Interested parties should submit comments in writing on or before March 10, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2008–102–4 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the FMR case number (for example, FMR Case 2008–102–4) and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration'', and typing the FMR case number in the keyword field. Select the ''Submit'' button.
- *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405. Instructions: Please submit comments only and cite FMR case 2008–102–4 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Henry Maury, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management (MT), (202) 208–7928 or e-mail at *henry.maury@gsa.gov.* For information pertaining to status or publication schedules contact the Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501–4755; please cite FMR case 2008–102–4, Amendment XXXX.

SUPPLEMENTARY INFORMATION:

A. Background

On June 6, 2002, the General Services Administration (GSA) published an interim rule for mail management in the **Federal Register** (67 FR 38896) that required agencies to stop using the U.S. Postal Service's Official Mail Accounting System (OMAS) and start using commercial payment for postage no later than October 31, 2003. A final rule published in the **Federal Register** on September 29, 2003 (68 FR 56112) extended the date for conversion to December 31, 2003. If agencies did not convert by that date, they were required to submit a deviation request that included a detailed plan of how they were going to make the conversion in order to be granted the deviation. Deviation requests could be for no longer than a period of two years. On August 25, 2008, GSA published a final rule (73 FR 49955) that completely replaced Federal Management Regulation 102–192, Mail Management; that final rule clarified the requirement to stop using OMAS.

The primary goal behind converting to commercial payment was to show accountability for postage, both in terms of who was spending money on postage within agencies as well as ensuring that agencies pay for postage costs up front like other individuals and private businesses, therefore encouraging better planning of resources. Reducing costs was also a key goal of the initiative. When commercial payment was introduced at the Department of Defense, dramatic reductions in postage costs were realized.

Rule's Unintended Effects Lead to New Solutions

Since the final rule was published in 2003, many agencies have successfully converted to commercial payment. However, some agencies have found it challenging to fully convert to commercial payment, and have submitted multiple requests for deviations as they worked toward a solution. Therefore, for these agencies, the interim rule has created the unintended effect of a cycle of deviation requests and paperwork between agencies and GSA, which was not the intent of the initiative and is not an efficient use of government resources.

As it became clear the deviation cycle was not going to end anytime soon, GSA needed to devise alternative strategies to ensure agencies could meet the primary goal of accountability and still achieve cost savings even if the agencies did not implement commercial payment processes. The impetus to make the change came from agencies that stated they can meet the intent of the initiative, either by continuing to use OMAS or through other means.

GSA issued a bulletin on April 11, 2008 that gave an automatic additional one-year deviation to all of the agencies with outstanding deviation requests as GSA developed additional options for meeting the intent of the initiative. (An announcement of this bulletin was published in the **Federal Register** on May 13, 2008 (73 FR 27540).) Upon implementation of this proposed rule, no further deviations will be granted for this subpart.

New Options Also Show Accountability

Before the final rule was implemented in 2003, many agencies did not use OMAS or any other process to track their costs. Especially in larger agencies, mail managers had no way to determine who was using postage or if there were any ways they could be saving money.

Even when the commercial payment process idea was first introduced, it was recognized that implementing it alone did not completely show accountability; implementing other measures also helps round out an agency's accountability picture. Therefore, this proposed rule allows agencies a choice of measures to best show their accountability portrait. The options, outlined more fully in the proposed rule, include:

1. Convert to commercial payment processes (unchanged).
2. Show quantified dollar savings in mail costs that result from management action, with a clear explanation of how the savings were achieved.
3. Provide a detailed breakdown of all agency mail costs.
4. Provide names, responsibility areas, and mail costs for program officials who are accountable for 75 percent (or more) of the agency's postage.
5. Provide cost-per-piece data for at least 75 percent of all outgoing mail.

If an agency can implement at least two of five of these options, GSA believes the agency will have shown accountability for its operations. GSA will use the annual reporting process to collect information about how the large agencies are meeting the requirements of this rule.

The additional strategies presented in this proposed rule do not imply that an agency now must choose two options other than commercial payment; if commercial payment has already been successfully implemented or will be implemented soon in an agency that spends less than $1 million per year on postage, then commercial payment by itself will be deemed as meeting the accountability requirement.

B. Executive Order 12866

This proposed rule is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553 (a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–192

Government contracts, Mail, Performance measurement, Records management, Reporting and recordkeeping requirements, Security.

Dated: November 18, 2008.

Gary Klein,

Associate Administrator.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–192 as set forth below:

PART 102–192—MAIL MANAGEMENT

1. The authority citation for 41 CFR part 102–192 continues to read as follows:

Authority: 44 U.S.C. 2904; 40 U.S.C. 121(c).

2. Revise Subpart B of 41 CFR part 102–192 to read as follows:

Subpart B—Financial Requirements for All Agencies

§ 102–192.50 What payment processes are we required to use?

All payments to all service providers must be made through a process that ensures accountability to the program level, as defined in § 102–192.55.

§ 102–192.55 What options are available to show accountability?

(a) Your agency must show accountability by using at least two of the following methods:

(1) Implement or continue using commercial payment processes.

(2) Show quantified dollar savings in mail costs that result from management action, with a clear explanation of how the savings were achieved. Dollar savings must be recent, defined as occurring within the last five fiscal years. That is, after five fiscal years, additional information about how the agency has achieved recent savings and/or will continue to achieve dollar savings will be required in the annual mail management report.

(3) Provide a detailed breakdown of all agency mail costs.

(4) Provide names, responsibility areas, and mail costs for program officials who are accountable for 75 percent (or more) of the agency's postage.

(5) Provide cost-per-piece data for at least 75 percent of all outgoing mail.

(b) Agencies that spend more than $1 million per year on postage must describe how they are showing accountability by responding fully, beginning with the Fiscal Year 2009 report, to the questions on accountability in the annual report format. Agencies that do not respond fully or whose responses do not, in the judgment of the GSA Office of Governmentwide Policy, meet the standard established in this paragraph, will be considered out of compliance with this regulation.

§ 102–192.60 If my agency spends less than $1 million per year on postage and has already converted to commercial payment processes, are we responsible for selecting one of the additional options?

Any agency that spends less than $1 million on postage per year and has already successfully converted to commercial payment is in compliance with this regulation and does not need to select any additional options presented in § 102–192.55.

§ 102–192.65 If my agency still wants to implement the commercial payment process, how do we do so?

Guidance on implementing a compliant payment process is in the GSA Policy Advisory, Guidelines for Federal Agencies on Converting to Commercial Payment Systems for Postage, which can be found at *http://www.gsa.gov/mailpolicy.*

3. Amend § 102–192.90 by revising paragraph (f) read as follows:

§ 102–192.90 What must we include in our annual mail management report to GSA?

* * * * *

(f) Describe how your agency is ensuring accountability for postage by identifying which two of the five methods (see § 102–192.55) you use to meet this objective and explaining in detail how these two apply to your agency.

* * * * *

[FR Doc. E9–172 Filed 1–8–09; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2007–021; Docket 2009-0014; Sequence 1]

RIN 9000–AL14

Federal Acquisition Regulation; FAR Case 2007–021, Fair Labor Standards Act and Service Contract Act Price Adjustment Clauses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to specifically require the incorporation of the FAR clauses regarding Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-Year and Option Contracts) and Fair Labor Standards Act and Service Contract Act-Price Adjustment in time-and-materials and labor—hour service contracts that are subject to the Service Contract Act.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before March 10, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2007–021 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2007–021'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2007–021. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2007–021'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2007–021 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2007–021.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend the Federal Acquisition Regulation (FAR) to revise the clause prescriptions at FAR 22.1006(c)(1) and (2) to specifically require that time-and-materials and labor-hour service contracts subject to the Service Contract Act contain the appropriate price adjustment clauses set forth at 52.222–43 and 52.222–44.

Despite the current prescriptions which do not require use of the clauses in time-and-materials or labor-hour

contracts, there is, in fact, broad usage of the clause(s) in such contracts. Adoption of the proposed change would achieve consistency throughout the Government acquisition community and resolve potential inequities where the clauses have not been applied. Not only would this achieve an equitable result for contractors, but it would also allow the Government to avoid use of other means of adjusting contract unit price labor rates which may be more costly to the Government. Other means of adjusting contract labor rates, such as allowing for wage/benefit escalation, equitable adjustment or economic price adjustment, would likely include profit, overhead and general and administrative expenses. The clauses at 52.222–43 and 52.222–44 explicitly exclude these additional costs.

The clause prescriptions at FAR 22.1006(c)(1) and (c)(2) currently require that Service Contract Act wage determination updates be applied to contracts subject to the clause at 52.222–41, Service Contract Act of 1965, but, as required by FAR clause 52.222–41, minimum monetary wages and fringe benefits to be paid to service employees under the contract may be subject to adjustment, under wage determinations issued by the Department of Labor. While there may be other means permitted to adjust fixed labor rates on time-and-materials or labor-hour contracts, those other means will not achieve the consistent results that use of the Service Contract Act price adjustment clause(s) will achieve. Requirement by the prescription for the clauses will achieve that consistency and at the same time will allow the Government to avoid any adjustment to profit, overhead or general and administrative costs that could be incurred in addition to wage or fringe benefit costs increases.

The proposed rule requires Government time-and-materials and labor-hour service contracts to incorporate the appropriate price adjustment clauses.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely clarifies the existing prescriptions relating to service contracts. FAR clause 52.222–41 requires contractors to comply with wage determinations of the Department of Labor and may require adjustment to wage rates during the term of the contract. Most contracts that include this clause therefore provide some mechanism for dealing with the potential required price adjustment. The Councils have been advised that use of these clauses for time-and-materials and labor-hour service contracts is already widespread. Uniform use of the appropriate clause will ensure consistency in the adjustment method for any required increase in wage rate, but should not have a significant cost impact.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 22 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2007–021), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: December 9, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 22 and 52 as set forth below:

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1006 [Amended]

2. Amend section 22.1006 by removing from paragraphs (c)(1) and (c)(2) ''fixed-price'' and adding ''fixed-price, time-and-materials, or labor-hour'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

3. Amend section 52.212–5 by removing the date of the clause and adding ''(DATE)'' in its place; by removing from paragraph (c)(3) ''(Nov 2006)'' and adding ''(Date)'' in its place; and by removing from paragraph (c)(4) ''(Feb 2002)'' and adding ''(Date)'' in its place.

4. Amend section 52.222–43 by revising the date of the clause, paragraph (d), and the third and fourth sentences of paragraph (f) to read as follows:

52.222–43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

* * * * *

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (DATE)

* * * * *

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of—

* * * * *

(f) * * * The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. * * *

* * * * *

(End of clause)

5. Amend section 52.222–44 by revising the date of the clause, paragraph (c), and the third and fourth sentences of paragraph (e) to read as follows:

52.222–44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

* * * * *

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (DATE)

* * * * *

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that

these increases or decreases are made to comply with—

* * * * *

(e) * * * The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. * * *

* * * * *

(End of clause)

[FR Doc. E9–217 Filed 1–8–09; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register
Vol. 74, No. 6
Friday, January 9, 2009

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

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Pacific Northwest Region, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Recreation Resource Advisory Committee will meet in Portland, Oregon. The purpose of the meeting is to review and provide recommendations on recreation fee proposals for facilities and services offered on lands managed by the Forest Service and Bureau of Land Management in Oregon and Washington, under the Federal Lands Recreation Enhancement Act of 2004.

DATES: The meeting will be held on January 30, 2009, from 8:30 a.m.–5 p.m. A public input session will be provided at 10:30 a.m. on January 30, 2009. Comments will be limited to three minutes per person.

ADDRESSES: The meeting will be at the Residence Inn by Marriott, Lloyd Center, 1710 NE Multnomah St., Portland, Oregon 97232. Send written comments to Dan Harkenrider, Designated Federal Official for the Pacific Northwest Recreation RAC, 902 Wasco Street, Suite 200, Hood River, OR 97031, *dharkenrider@fs.fed.us,* or 541–308–1700.

FOR FURTHER INFORMATION CONTACT: Dan Harkenrider, Designated Federal Official, 541–308–1700.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Recreation RAC discussion is limited to Forest Service and Bureau of Land Management staff and Recreation RAC members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who have made written requests by January 25, 2009, to the Designated Federal Official will have the opportunity to address the Committee during the meeting on January 30, 2009, at 10:30 a.m.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: January 5, 2009.

Mary Wagner,

Regional Forester, Pacific Northwest Region.

[FR Doc. E9–199 Filed 1–8–09; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* February 8, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: The Committee's longstanding convention is to publish its proposed and final notices on Friday each week; however, the notices that should have been published on Friday, 01/02/2009 were published on Monday, 01/05/2009 instead. Interested members of the Public can see 74 FR 260, 261 for the proposed additions and deletions to the Procurement List that were published on Monday, 01/05/2009 instead of Friday, 01/02/2009.

Additions

On 10/10/2008 and 11/7/2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (73 FR 60236, 60237 and 73 FR 66216, 66217) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.
2. The action will result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Bag, Sand, Polypropylene, 20″ x 14″, Green

NSN: 8105–01–467–0402.
NPA: Southeast Vocational Alliance, Inc., Houston, TX.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia.

Services

Service Type/Location: Custodial Services, Depot Maintenance

Activity Group at Robins AFB, Building 640, Robins AFB, GA.
NPA: Good Vocations, Inc., Macon, GA.
Contracting Activity: Dept of the Air Force, FA8501 WR ALC PKO.
Service Type/Location: Custodial Grounds Maintenance, Multiple Locations Parcel #13, Parcel #13, St John, VI.
Service Type/Location: Grounds Maintenance, Multiple Locations St Thomas, 6310 Est Nazaareth, Red Hook, St Thomas, VI.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: National Park Service, Southeast Region.
Service Type/Location: Laundry Service, Fort Indiantown Gap, Annville, PA.
NPA: Opportunity Center, Incorporated, Wilmington, DE.
Contracting Activity: Dept of the Army, XRAW7NX USPFO Activity PA ARNG.

Deletions:

On 10/17/2008 and 10/31/2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (73 FR 61779 and 73 FR 64908) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Cloth, Abrasive

NSN: 5350–00–187–6285.
NPA: Louisiana Association for the Blind, Shreveport, LA.
Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

Clipboard Folder, Recycled

NSN: 7520–01–484–1746.
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: GSA/FSS OFC SUP CTR—PAPER PRODUCTS, NEW YORK, NY.

EcoLab Water Soluble Cleaners/ Detergents

NSN: 7930–01–436–8012.
NPA: Assoc f/t Blind & Visually Impaired & Goodwill Ind. of Greater Rochester, Rochester, NY.
Contracting Activity: GSA/FAS SOUTHWEST SUPPLY CENTER (QSDAC), FORT WORTH, TX.

Barry S. Lineback,
Acting Director, Program Operations,

[FR Doc. E9–221 Filed 1–8–09; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 0811061422–9003–02]

Solicitation of Applications for the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity Pursuant to the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law Number 110–329, 122 Stat. 3574 (2008)

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: Pursuant to section 703 of the Public Works and Economic Development Act of 1965, as amended, and the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, EDA announces general policies and application procedures for the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity. Pursuant to this notice, EDA solicits applications for Economic Adjustment Assistance investments (CFDA No. 11.307). This Economic Adjustment Assistance will help devise long-term economic redevelopment strategies and carry out implementation activities and public works projects to address economic development challenges in regions impacted by hurricanes, floods and other natural disasters during 2008 and covered by a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Through the Economic Adjustment Assistance program, selected applicants will utilize EDA's flexible set of program tools to develop and implement on a regional basis long-term economic redevelopment strategies for the recently disaster-impacted regions in the United States. As stated below under ''Electronic Access,'' the complete federal funding opportunity announcement for this notice and request for applications is available at *http://www.grants.gov* and at *http://www.eda.gov*, and provides more detailed information regarding the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity.

DATES: Applications are accepted on a continuing basis and processed as received. For all applications, EDA anticipates award notification approximately sixty (60) days after receipt of a completed application. All applications may be submitted electronically in accordance with the instructions provided at *http://www.grants.gov* or mailed to the applicable EDA regional office listed below under ''Addresses and Telephone Numbers for EDA's Regional Offices.''

Application Submission Requirements: On October 1, 2008, EDA published a notice in the **Federal Register** (73 FR 57049) to introduce its new, streamlined *Application for Investment Assistance* (Form ED–900), which consolidates all EDA-specific requirements into a single application form. Form ED–900 replaces the suite of forms previously required by EDA for federal funding (the *Pre-Application for Investment Assistance* (Form ED–900P), the *Application for Investment Assistance* (Form ED–900A), and the program-specific components to Form ED–900A). EDA, however, will continue to require additional government-wide federal grant assistance forms from the Standard Form (SF) 424 family and certain Department of Commerce (CD) forms that were a part of EDA's previous suite of forms. The specific SF forms required with the Form ED–900 depend on whether the applicant seeks construction or non-construction assistance.

Applicants seeking assistance for a project with construction components are required to complete and submit the following:

(i) Form ED–900 *(Application for Investment Assistance);*

(ii) Form SF–424 *(Application for Federal Assistance);*

(iii) Form SF–424C *(Budget Information—Construction Programs);*

(iv) Form SF–424D *(Assurances—Construction Programs);* and

(v) Form CD–511 *(Certification Regarding Lobbying).*

Applicants seeking assistance for a project without construction components are required to complete and submit the following forms:

(i) Form ED–900 *(Application for Investment Assistance);*

(ii) Form SF–424 *(Application for Federal Assistance);*

(iii) Form SF–424A *(Budget Information—Non-Construction Programs);*

(vi) Form SF–424B *(Assurances—Non-Construction Programs);* and

(v) Form CD–511 *(Certification Regarding Lobbying).*

Applicants for both construction and non-construction assistance may be required to submit to an individual background screening on the form titled *Applicant for Funding Assistance* (Form CD–346) and to provide certain lobbying information using the form titled *Disclosure of Lobbying Activities* (Form SF–LLL). The new Form ED–900 provides detailed guidance to help the applicant assess whether Forms CD–346 and SF–LLL are required and how to access them.

Content and Form of the Form ED–900: The applicant is advised to read carefully the instructions contained in this notice and in all forms contained in the appropriate application package. It is the sole responsibility of the applicant to ensure that the appropriate application package is complete and received by EDA.

The new Form ED–900 is divided into lettered sections that correspond to specific EDA program components that address all of EDA's statutory and regulatory requirements. Based on program type, the Form ED–900 details the sections and exhibits that the applicant must complete. Because this solicitation seeks Economic Adjustment Assistance applications only, an applicant must complete certain sections as detailed in the table below.

EDA program	Required form ED–900 sections
Economic Adjustment	Complete Sections A, B, and K and Exhibit C. Also complete Section M and Exhibits A, D, and E if request has construction components, and Section N if request has only design/engineering requirements. Complete Section E if request has no construction components.

Addresses and Telephone Numbers for EDA's Regional Offices: Applicants eligible for assistance under this notice may request paper (hardcopy) application packages by contacting the applicable EDA regional office servicing your geographic area listed below. Alternatively, applicants may obtain the application packages electronically. All components of the applicable application package may be accessed and downloaded at either *http://www.grants.gov* or *http://www.eda.gov/InvestmentsGrants/Application.xml*.

Applicants who wish to obtain forms in a screen-fillable format are directed to download a complete application package from *http://www.grants.gov/applicants/apply_for_grants.jsp*. Applicants should be aware that only the Forms ED–900 and CD–346 are screen-fillable. Required forms from the Standard Form (SF) 424 family are not screen-fillable on EDA's Web site, and the applicant will have to print these forms and complete them manually or with a typewriter.

Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308, Telephone: (404) 730–3002, Fax: (404) 730–3025, Serves: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

Economic Development Administration, Austin Regional Office, 504 Lavaca Street, Suite 1100, Austin, Texas 78701, Telephone: (512) 381–8144, Fax: (512) 381–8177, Serves: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606, Telephone: (312) 353–7706, Fax: (312) 353–8575, Serves: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin and Muscatine and Scott counties, Iowa.

Economic Development Administration, Denver Regional Office, 410 17th Street, Suite 250, Denver, Colorado 80202, Telephone: (303) 844–4714, Fax: (303) 844–3968, Serves: Colorado, Iowa (excluding Muscatine and Scott counties), Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–4603, Fax: (215) 597–1063, Serves: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands, Virginia and West Virginia.

Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Fax: (206) 220–7669, Serves: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands, Micronesia, Nevada, Northern Mariana Islands, Oregon, Republic of Palau and Washington.

Application Submission Formats: Applications may be submitted either (i) in paper (hardcopy) format to the applicable regional office address provided above; or (ii) electronically in accordance with the procedures provided on *http://www.grants.gov*. The content of applications is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile transmissions of applications.

Paper Submissions: Under this solicitation, an applicant for EDA investment assistance may submit a completed paper application to the applicable EDA regional office listed above. The applicant should contact the appropriate regional office to obtain an application package or download and print copies of the application package appropriate to the type of assistance sought, whether construction or non-construction.

The applicant must submit one original and two copies of the appropriate completed application package via postal mail, shipped overnight, or hand-delivered to the applicable regional office, unless otherwise directed by EDA staff. Department of Commerce mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Therefore, applicants who submit paper submissions are advised to use guaranteed overnight delivery services.

Electronic Submissions: Applicants are encouraged to submit applications

electronically in accordance with the instructions provided at *http://www.grants.gov*. The preferred file format for electronic attachments is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Microsoft Excel formats.

Applicants should access the following link for assistance in navigating *http://www.grants.gov* and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under *Frequently Asked Questions*, try consulting the *Applicant's User Guide*. If you still cannot find an answer to your question, contact *http://www.grants.gov* via e-mail at *support@grants.gov* or telephone at 1–800–518–4726. The hours of operation for *http://www.grants.gov* are Monday-Friday, 7 a.m. to 9 p.m. (Eastern Time) (except for federal holidays).

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the complete federal funding opportunity (FFO) announcement for the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity, contact the appropriate EDA regional office listed above under ''Addresses and Telephone Numbers for EDA's Regional Offices.'' EDA's Internet Web site at *http://www.eda.gov* also contains additional information on EDA and its programs.

SUPPLEMENTARY INFORMATION:

Electronic Access: Applicants are highly encouraged to refer to the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity Federal Funding Opportunity (FFO) announcement for additional detailed information on program information and application requirements. The FFO is available at *http://www.grants.gov* and at *http://www.eda.gov*. This notice is for the Second Supplemental Appropriations Disaster Relief Opportunity only. Please also access the separate FFO announcement posted at *http://www.grants.gov* on October 1, 2008, for information regarding the first Supplemental Appropriations Disaster Relief Opportunity. Please access the separate FFO announcement posted at *http://www.grants.gov* on October 1, 2008 for information regarding funding priorities, application and selection processes, time frames, and evaluation criteria for EDA's regular Economic Adjustment Assistance and Public Works investments, which are funded under the FY 2009 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329, 122 Stat. 3574 (2008). Additional information may be found at EDA's Internet Web site at *http://www.eda.gov*.

Background Information: On September 30, 2008, Congress enacted the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329, 122 Stat. 3574 (2008) (Second Disaster Appropriation). Under the Second Disaster Appropriation, EDA received $400,000,000 as a supplemental appropriation for disaster assistance. The statute mandates that these funds be used in regions covered by a major disaster declaration under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) (Stafford Act) as a result of ''hurricanes, floods and other natural disasters occurring during 2008.'' For purposes of this solicitation, EDA interprets ''occurring during 2008'' to mean disaster declarations starting January 1, 2008 for incident periods occurring through December 31, 2008.

Through the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity, EDA intends to award investments for expenses related to disaster relief, long-term recovery, and restoration of infrastructure related to the consequences of hurricanes, floods and other natural disasters occurring during 2008 for which the President declared a major disaster under title IV of the Stafford Act. Please see section III.B of the Federal Funding Opportunity (FFO) for a list of natural disaster declarations that are within the scope of this solicitation. EDA solicits applications for Economic Adjustment Assistance investments under the Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. 3121 *et seq.*). Under the Economic Adjustment Assistance program (CFDA No. 11.307), selected applicants will utilize EDA's flexible set of program tools to develop and implement on a regional basis long-term economic redevelopment strategies for the recently disaster-impacted regions in the United States.

Through this competitive solicitation, EDA seeks to fund investments that generate new employment opportunities for regions suffering economic distress in the form of high unemployment, underemployment, low per capita incomes, and outmigration due to the 2008 natural disasters. The Economic Adjustment Assistance program can provide a wide range of technical, planning and infrastructure assistance. This program is designed to respond adaptively to pressing economic recovery issues and is well suited to help address the challenges faced by the regions affected by the hurricanes, floods and other natural disasters occurring during 2008. Assistance can support the development of a strategy to alleviate economic dislocation caused by the disaster (a strategy grant) or support project implementation (an implementation grant), such as infrastructure improvements.

EDA's economic development activities encourage business growth and increased business establishment, retention and expansion, and help create jobs. Post-disaster recovery activities that do not contribute directly to these goals (such as flood mapping, levee public works or housing) are entirely necessary to the recovery effort and may lead indirectly to economic development. However, those types of activities are funded by other federal agencies and are therefore not within the province of the funding opportunities provided in the FFO. EDA's statutory mandate, as applied to post-disaster assistance, is to help formulate and implement economic recovery strategies to restore, replace and expand economic activity in disaster-impacted regions and prioritize projects that will diversify the economic base and lead to a stronger, more globally competitive and disaster-resilient regional economy. By maintaining its focus on economic development, EDA fulfills its mission to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy.

EDA recognizes that urgent infrastructure rebuilding needs exist throughout the regions affected by recent natural disasters. In addition, tensions often arise in the wake of a disaster between advocates of immediate infrastructure rebuilding and advocates of rebuilding infrastructure pursuant to a long-term redevelopment strategy. In EDA's experience with post-disaster recovery, the most effective long-term infrastructure rebuilding efforts are based on a long-term development or redevelopment strategy, established either before or after the disaster. For this reason, EDA encourages the submission of applications geared toward the development and implementation of long-term, regionally-based, collaborative economic redevelopment strategies. EDA will regard applications for infrastructure that are substantively supported by such a strategy as competitive. Applications that are not demonstrably supported by a long-term

plan ordinarily will not be viewed as competitive. EDA will evaluate and select applications according to the information set forth below under ''Evaluation Criteria'' and ''Funding Priorities'' and in section V. of the FFO announcement.

In addition to soliciting applications for all eligible types of Economic Adjustment projects, EDA specifically encourages submission of applications for the following types of projects under the Economic Adjustment Assistance program.

State-Based ''Mother Grants.'' States most severely impacted by the 2008 disasters may submit applications to fund ''mother grants'' to assist States to recover from the disasters. The major distinction between a ''mother grant'' award and EDA's traditional award is that the amount distributed at one time to a State may be larger than the usual EDA award, with the intent that funds will be distributed expeditiously to respond to the needs of disaster-affected regions and communities. States may directly expend mother grant funds or may redistribute the funds in the form of sub-grants to other eligible recipients for disaster-related individual projects that are required components of the EDA-approved scope of work for the mother grant project. *See* section 217 of PWEDA (42 U.S.C. 3154c). Each State mother grant recipient will have three years from the date of execution of its mother grant award to expend or redistribute as sub-grants the funds obligated pursuant to the investment. Funds not expended or redistributed prior to the end of the three-year period will be de-obligated and re-obligated pursuant to the terms of the award. States applying for mother grants are required to demonstrate quantitatively and qualitatively the connection between the amount of their proposed mother grant and the extent of damage suffered and needs established within the State's affected areas, including such factors as the scale of damage suffered, the existence of contiguous affected areas, historical frequency of disaster occurrence and the size of affected population. States also are encouraged to list specific projects, if known, which they believe would be suitable candidates for EDA funding. Each sub-grant redistributed by the State to a region subject to a disaster declaration (*see* section III.B of the FFO) will be subject to the final approval of EDA in its sole discretion prior to the issuance of the sub-grant. No disbursement will be made under the grant for any sub-grant for which until EDA has not provided its final approval. Each State's mother grant award documents will contain a provision prohibiting the disbursement of any EDA funds to any sub-grant unless EDA has received and approved the budget and proposal for that sub-grant project. In addition, each sub-grant redistributed by the State to a region subject to a disaster declaration (*see* section III.B of the FFO) will be required to comply with all EDA requirements throughout the life of each sub-grant project as though it were invested directly by EDA. EDA will review amounts budgeted for administration, including amounts proposed for the use of consultants, carefully for reasonableness and conformity with the applicable cost principles. When a State determines that it will expend mother grant funds directly for a project, rather than through redistribution as a sub-grant, similar requirements in terms of final approval, budgeting, and compliance with EDA requirements will apply.

Universities and Research Institution Grants. Universities, other accredited institutions of higher education, and qualified non-profit research institutions may submit applications to fund a full range of methodologically rigorous peer-review quality research proposals and other activities appropriate to a multi-disciplinary approach to developing disaster-resilient regional economies in areas affected by the 2008 natural disasters (*see* Section III.B. of the FFO). Examples of such activities include the development and construction of business incubators for enterprises with a disaster-resilience orientation, facilities for the conduct of commercialized disaster-resilience research, the development of regional disaster-resilient economic development strategies, and the design and development of disaster-resilient infrastructure architecture. The scope of work of any proposed project must tie directly to the development of a disaster-resilient economy in an area affected by the 2008 natural disasters (*see* section III.B of the FFO). Institutions applying for these investments are required to demonstrate the connection between the amount of their proposed investment and the extent of damage suffered and needs established within their service region's areas due to the 2008 natural disasters, including such factors as the scale of damage suffered, the existence of contiguous affected areas, historical frequency of disaster occurrence, and the size of the affected population.

Regional Strategy Grants for Disaster Resilience. Eligible applicants may apply to one or more EDA regional office to undertake the strategic development and implementation of disaster-resilient regional economies in areas affected by the 2008 natural disasters (*see* Section III.B. of the FFO). These projects would integrate existing State-based strategic redevelopment campaigns into an overarching approach involving private sector-specific groups, collaboration between or among State governments within a defined region, and other cross-cutting interests. Such projects would map, evaluate and integrate existing regional assets such as communication, intermodal facility, port, aviation, highway, healthcare, energy, education, ecosystem natural defense and other critical infrastructure systems, all to promote the competitiveness of the region for the next twenty years, increasing its resilience and sustainability in the face of future disasters. EDA will evaluate applications based on the following four criteria, each of which shall be weighted at 12.5% and combined shall comprise 50% of an application's score. The evaluation criteria set forth in section V.B of the FFO shall be weighed at 10% each and shall provide the remaining 50% of an application's score.

(a) Experience in disaster redevelopment work (12.5%);

(b) Prior and existing work with cross-cutting private sector interests (12.5%);

(c) Prior and existing work with governments at the State and local levels (12.5%); and

(d) Presentation of a list of robust benchmarks, milestones and deliverables incorporated into the scope of work (12.5%).

EDA anticipates that applicants for a regional strategy grant would consist of economic development organizations of national or significant regional scope. Applicants may form consortia to undertake the work; however, one entity must assume principal responsibility for undertaking, completing, and reporting on the work, and all consortium members must be EDA eligible applicants. Applicants may define a multi-State region within their scope of work that falls within the service area of more than one EDA regional office. In this event, the applicant shall submit its application to each EDA regional office whose service area includes a State within the applicant's defined region (example: an application whose proposed region includes Iowa and Indiana would be submitted to both of EDA's Denver and Chicago Regional Offices). The evaluation panel for such applications will consist of senior career officials in equal numbers from each of the relevant EDA regional offices, and the Regional Directors from those offices will serve jointly as Selecting Officials.

In the event that the Regional Directors cannot agree on a selection, then the Deputy Assistant Secretary for Regional Affairs (or such official who is acting in that position) shall be the Selecting Official, and shall also decide who will serve as the Grants Officer for the project. Successful applicants will be required to complete their scope of work within no more than a two-year timeframe, unless the applicant specifies a longer timeframe in its application and EDA and the recipient agree to the same in the award document. Applicants must place their proposal in the context of other disaster resiliency efforts being funded by the States and Federal Government, to avoid unwarranted duplication of effort.

Funding Availability: Under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329, 122 Stat. 3574 (2008) (Second Disaster Appropriation), EDA received $400,000,000 as a supplemental appropriation for disaster assistance. As set out below, EDA will allocate the $400,000,000 appropriation provided in the Second Disaster Appropriation among its six regional offices, located in Atlanta, Austin, Chicago, Denver, Philadelphia and Seattle. The allocation formula consisted of six elements weighted according to their perceived impact on recover efforts and included population, inverse per capita income, unemployment, the number of Federal Emergency Management Agency (FEMA) public assistance-eligible counties, the number of FEMA designated counties, and the number of National Response Center environmental damage incidents resulting from natural occurrences. *See also* section II.B of the FFO announcement. The funds are provided for the necessary expenses related to the following three activities: (i) Disaster relief; (ii) long-term recovery; and (iii) restoration of infrastructure.

Percentage and Funding Allocations per Regional Office

Atlanta Regional Office—14.38% or $57.5 million
Austin Regional Office—33.58% or $134.3 million
Chicago Regional Office—15.00% or $60.0 million
Denver Regional Office—26.14% or $104.6 million
Philadelphia Regional Office—6.93% or $27.7 million
Seattle Regional Office—3.96% or $15.8 million

At a later date, EDA may adjust this allocation to the regional offices, based on its experience in administering the supplemental appropriation to ensure funds are used to maximum effect, or to adjust to unforeseen changes in recovery efforts.

Statutory Authority: The statutory authority for the Economic Adjustment Assistance program is section 209 of PWEDA (42 U.S.C. 3149). Unless otherwise provided in this notice or in the FFO announcement, applicant eligibility, program objectives and priorities, application procedures, evaluation criteria, selection procedures, and other requirements for all programs are set forth in EDA's regulations (codified at 13 CFR chapter III). EDA's regulations and PWEDA are available at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml*. Please note that EDA funds may not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with obtaining investment assistance under the FFO. *See* 13 CFR 302.10.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.307, Economic Adjustment Assistance.

Applicant Eligibility: Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance under this announcement include a(n): (i) District Organization; (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State, city or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State. *See* section 3 of PWEDA (42 U.S.C. 3122) and 13 CFR 300.3.

For the FY 2009 Second Supplemental Appropriations Disaster Relief Opportunity, EDA will consider applications submitted by eligible applicants located in or acting on behalf of the disaster-affected regions, including one or more institutions of higher education; one or more of the States, cities or other units of local government; and economic development organizations, including but not limited to regional multi-jurisdictional District Organizations and public or private non-profit organizations working in cooperation with private for-profit organizations, local businesses and industry leaders.

EDA is not authorized to provide grants directly to individuals or to for-profit entities seeking to start or expand a private business. Such requests may be referred to State or local agencies, or to non-profit economic development organizations.

Economic Distress Criteria: Pursuant to the Second Disaster Appropriation, regional eligibility is predicated upon the Presidential declarations of disaster areas and/or disaster declarations issued by the Federal Emergency Management Agency (FEMA), as listed in section III.B of the FFO announcement.

Cost Sharing Requirement: As stated above, the disaster declarations issued by FEMA provide EDA with the requisite determination of eligibility under section 703 of PWEDA (42 U.S.C. 3233). Similar to the cost-sharing required under that Act, EDA expects to fund seventy-five (75) percent of the eligible cost of such assistance. The remaining twenty-five (25) percent must be borne by the recipient or provided to the recipient by a third-party as a contribution for the purposes of, and subject to the terms of, the award. In accordance with statutory authority under section 703 of PWEDA (42 U.S.C. 3233), EDA may increase the investment rate up to a maximum of one hundred (100) percent. EDA will be particularly inclined to fund regional strategy grants (as mentioned under ''Background Information'' above) at an investment rate of one hundred (100) percent. In determining whether to increase the federal share above seventy-five (75) percent, EDA will consider whether the applicant has exhausted its effective taxing or borrowing capacity, or other indicia of dire need. Therefore, the applicant must fully describe and define the ''region'' in which the proposed project will be located, and is responsible for demonstrating to EDA, by providing statistics and other appropriate information, the nature and level of economic distress in the region.

While cash contributions are preferred, in-kind contributions, consisting of contributions of space, equipment, or services, or forgiveness or assumptions of debt, may provide the required non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144). EDA will fairly evaluate all in-kind contributions, which must be eligible project costs and meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the project period, will be available as needed and is not

conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Proposals or applications for assistance under EDA's programs are subject to the State review requirements imposed by Executive Order 12372, ''*Intergovernmental Review of Federal Programs.*''

Evaluation and Selection Procedures: EDA's six regional offices conduct all application review for EDA's Economic Adjustment Assistance investments. Each application is circulated by a project officer within the applicable EDA regional office for review and comments. When the necessary input and information are obtained, the application is considered by the regional office's investment review committee (IRC), which is comprised of regional office staff. The IRC discusses the application to determine if it meets the program-specific award and application requirements provided in 13 CFR 307.2 and 307.4 for Economic Adjustment Assistance, and evaluates it using the general evaluation criteria set forth in 13 CFR 301.8. These general evaluation criteria also are provided below under ''Evaluation Criteria.''

EDA will notify the applicant if EDA accepts a completed application, and will forward it for final review and processing in accordance with EDA and Department of Commerce procedures. The Selecting Official, who is the Regional Director, may consider the evaluations and recommendations provided by the IRC and the degree to which one or more of the funding priorities provided below are included, in making the decision as to which applications for investment assistance will be awarded funding. Depending on the quality of the applications received, the Selecting Official also may select an application outside of the IRC's recommendations or make no selection at all.

To limit the burden on the applicant, EDA requests additional documentation only if EDA determines that the applicant's project merits further consideration. The Form ED–900 provides detailed guidance on documentation, information, and other materials that will be requested if, and only if, EDA selects the project for further consideration. EDA will inform the applicant if its application has been selected for further consideration or if the application has not been selected for funding. Unsuccessful applications will be retained in the EDA regional office in accordance with EDA's record retention schedule.

Evaluation Criteria: EDA will select applications competitively based on the investment policy guidelines and funding priority considerations listed below. EDA will evaluate the extent to which a project embodies the maximum number of investment policy guidelines and funding priorities possible and strongly exemplifies at least one of each. EDA will give additional favorable consideration to applications for: (a) State-based mother grants; (b) university and other research institution grants; and (c) regional strategy grants for disaster resilience, each as described above. All investment applications will be competitively evaluated primarily on their ability to satisfy one (1) or more of the following investment policy guidelines, each of which are of equivalent weight and also are set forth in 13 CFR 301.8.

1. *Be market-based and results driven.* An EDA investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: an increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. *Have strong organizational leadership.* An EDA investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. *Advance productivity, innovation and entrepreneurship.* An EDA investment will embrace the principles of entrepreneurship, enhance regional industry clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* An EDA investment will be part of an overarching, long-term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. *Demonstrate a high degree of local commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage;
- Clear and unified leadership and support by local elected officials; and
- Strong cooperation between the business sector, relevant regional partners and local, State and Federal governments.

In addition to using the investment policy guidelines set forth above, EDA also will evaluate all strategy grant applications based on the (i) quality of the proposed scope of work for the development, implementation, revision or replacement of a comprehensive economic development strategy (CEDS); and (ii) qualifications of the applicant to implement the goals and objectives resulting from the CEDS. *See* 13 CFR 303.3(a)(1) and (2). To ensure that the application fully meets these requirements, applicants should pay particular attention to 13 CFR 303.7(b), which sets forth specific technical requirements for the CEDS.

Funding Priorities: Although the Stafford Act declarations serve as a finding of regional economic distress for purposes of eligibility under this competitive solicitation, EDA will give priority to projects that will render the maximum amount of economic revitalization based on satisfaction of one or more of the following core criteria (investment applications that meet more than one core criterion will be given more favorable consideration):

1. *Investments in support of long-term, coordinated and collaborative regional economic development approaches:*

- Establish comprehensive regional economic development strategies that identify promising opportunities for long-term economic growth.
- Exhibit demonstrable, committed multi-jurisdictional support from leaders across all sectors:

i. Public (e.g., mayors, city councils, county executives, senior State leadership);

ii. Institutional (e.g., institutions of higher learning);

iii. Non-profit (e.g., chambers of commerce, development organizations); and

iv. Private (e.g., leading regional businesses, significant regional industry associations).

- Generate quantifiable positive economic outcomes.
- Make a persuasive case that the project would not have occurred ''but for'' EDA's investment assistance (e.g., a project in which EDA's assistance represents a substantial share of the total public infrastructure investment and which are unlikely to attract public investment absent specific and discrete EDA involvement).

2. *Investments that support innovation and competitiveness:*

- Develop and enhance the functioning and competitiveness of

leading and emerging industry clusters in an economic region.

• Advance technology transfer from research institutions to the commercial marketplace.

• Bolster critical infrastructure (e.g., transportation, communications, specialized training) to prepare economic regions to compete in the world-wide marketplace.

• Leverage local partnerships and other federal programs (e.g., Economic Development District Organizations, Trade Adjustment Assistance Centers, University Centers, the U.S. Department of Labor's Workforce Innovation in Regional Economic Development (WIRED) initiative) that increase the project's probability of success, as well as its probability of bringing substantial benefits to the distress community in which it is located.

3. *Investments that encourage entrepreneurship:*

• Cultivate a favorable entrepreneurial environment consistent with regional strategies.

• Enable economic regions to identify innovative opportunities among growth-oriented small and medium-size enterprises.

• Promote community and faith-based entrepreneurship programs aimed at improving economic performance in an economic region.

• Link the economic benefits of the project to the distressed community in which it is located.

4. *Support strategies that link regional economies with the global marketplace:*

• Enable businesses and local governments to understand that ninety-five (95) percent of our potential customers do not live in the United States.

• Enable businesses, local governments and key institutions (e.g., institutions of higher education) to understand and take advantage of the numerous free trade agreements.

• Enable economic development professionals to develop and implement strategies that reflect the competitive environment of the 21st Century global marketplace.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*, published in the **Federal Register** on February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900 (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the Control Number 0610–0094. The use of Forms SF–424 (*Application for Financial Assistance*), SF–424A (*Budget Information—Non-Construction Programs*), SF–424B (*Assurances—Non-Construction Programs*), SF–424C (*Budget Information—Construction Programs*), and SF–424D (*Assurances—Construction Programs*) has been approved under OMB Control Numbers 4040–0004, 0348–0041, 4040–0007, and 4040–0009, respectively. The Form CD–346 (*Applicant for Funding Assistance*) is approved under OMB control number 0605–0001, and Form SF-LLL (*Disclosure of Lobbying Activities*) is approved under OMB control number 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866 (Regulatory Planning and Review): This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 5, 2009.

Casey Hoffman,

Chief of Staff, Economic Development Administration.

[FR Doc. E9–184 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–880]

Barium Carbonate from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: On September 2, 2008, the Department of Commerce (''Department'') initiated a sunset review of the antidumping duty order on barium carbonate from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-year (''Sunset'') Review*, 73 FR 51275 (September 2, 2008) (''Sunset Initiation''); *see also Antidumping Duty Order: Barium Carbonate from the People's Republic of China*, 68 FR 56619 (October 1, 2003) (''*Order*''). On September 16, 2008, Chemical Products Corporation (''CPC''), the petitioner in the original barium carbonate investigation, notified the Department that it intended to participate in the sunset review. The Department did not receive a substantive response from any respondent party. Based on the notice of intent to participate and adequate response filed by the domestic interested party, and the lack of response from any respondent interested party, the Department conducted an expedited sunset review of the Order pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the Order would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Review'' section of this notice, *infra.*

EFFECTIVE DATE: January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Hallie Noel Zink; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–6907.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2008, the Department initiated a sunset review of the order on barium carbonate pursuant to section 751(c) of the Act. *See Sunset Initiation*, 73 FR 51275. On September 16, 2008, the Department received a timely notice of intent to participate in

the sunset review from CPC, pursuant to 19 C.F.R. 351.218(d)(1)(i). In accordance with 19 C.F.R. 351.218(d)(1)(ii)(A), CPC claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product.

On October 2, 2008, CPC filed a substantive response in the sunset review, within the 30-day deadline as specified in 19 C.F.R. 351.218(d)(3)(i). The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 C.F.R. 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Order*.

Scope of the Order

The merchandise covered by this order is barium carbonate, regardless of form or grade. The product is currently classifiable under subheading 2836.60.0000 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

A complete discussion of all issues raised in these sunset reviews is addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. See ''Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Barium Carbonate from the People's Republic of China,'' from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary for Import Administration, dated December 31, 2008 (''I&D Memo''). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* was revoked. Parties can obtain a public copy of the I&D Memo on file in the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete public version of the I&D Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the I&D Memo are identical in content.

Final Results of Sunset Review

The Department determines that revocation of the Order on barium carbonate would likely lead to continuation or recurrence of dumping at the rates listed below:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
Qingdao Red Star Chemical Import & Export Co., Ltd.	34.44
PRC–Wide Entity	81.30

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

December 31, 2008.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E9–223 Filed 1–8–09; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–892

Carbazole Violet Pigment 23 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 September 8, 2008, the Department of Commerce (the Department) published the preliminary results and partial rescission of the 2006–2007 administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). *See Carbazole Violet Pigment 23 from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52007 (September 8, 2008) (*Preliminary Results*). We gave interested parties an opportunity to comment on the *Preliminary Results*. We received no comments. Therefore, the margin for the final results does not differ from the preliminary results. The final dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2008, the Department published in the **Federal Register** the *Preliminary Results*. We invited parties to comment on the *Preliminary Results*. We did not receive any comments.

Period of Review

The period of review is December 1, 2006 through November 30, 2007.

Scope of the Order

The merchandise covered by the order is carbazole violet pigment 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 $C_{34}H_{22}C_{l2,}N_4O_2$.[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 this 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 scope of the order is dispositive.

Separate Rates

In the *Preliminary Results*, the Department noted that none of the 11 companies in this administrative review responded to the Department's separate rate application/certification, including the single mandatory respondent in this review, Goldlink Industries Company, Limited (Goldlink). Goldlink also failed to respond to the Department's antidumping questionnaire. Accordingly, the Department found that

[1] The bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information, but is part of the chemical nomenclature.

Goldlink, along with the ten other companies in this review (Aesthetic Colortech (Shanghai) Company, Limited (Aesthetic Colortech); Anhui Worldbest IE Company, Limited (Anhui Worldbest); Cidic Company, Limited (Cidic); Ganguink Company, Pigment Division (Ganguink); Hunan Sunlogistics International Company, Limited (Hunan Sunlogistics); Hygeia–Chem (Shanghai) Company, Limited (Hygeia–Chem); Pudong Prime International Logistic Incorporated (Pudong Prime); Shanghai Rainbow Dyes Import and Export (Shanghai Rainbow); Sinocol Corporation, Limited (Sinocol); and Yangcheng Tiacheng Chemical Company, Limited (Yangcheng Chemical)) did not qualify for separate rate status. *See Preliminary Results*, 73 FR at 52009. As a result, the Department considered these 11 companies to be part of the PRC–wide entity, which is assigned a rate of 241.32 percent based on facts otherwise available with an adverse inference. *See Preliminary Results*, 73 FR at 52009–52011. The Department did not receive any comments on this issue.

Use of Facts Otherwise Available and the PRC–Wide Rate

As noted above, the Department determined that Aesthetic Colortech, Anhui Worldbest, Cidic, Ganguink, Goldlink, Hunan Sunlogistics, Hygeia–Chem, Pudong Prime, Shanghai Rainbow, Sinocol, and Yangcheng Chemical did not demonstrate eligibility for separate rate status, and thus were properly considered to be part of the PRC–wide entity. As the Department found that the PRC–wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information and thereby impeded the Department's proceeding, the Department assigned the PRC–wide entity a rate based on facts otherwise available with an adverse inference pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) and section 776(b) of the Tariff Act of 1930, as amended (the Act). *See Preliminary Results*, 73 FR at 52009–52010. The Department did not receive any comments regarding its application of adverse facts available (AFA) to the PRC–wide entity in the *Preliminary Results*. Therefore, for these final results, the Department has not altered its analysis or decision to apply total AFA to the PRC–wide entity.

Final Results of Review

We determine that the following antidumping duty margin exists for the period December 1, 2006 through November 30, 2007:

Exporter/Manufacturer	Margin (percent)
PRC–Wide Rate (including Aesthetic Colortech, Anhui Worldbest, Cidic, Ganguink, Goldlink, Hunan Sunlogistics, Hygeia–Chem, Pudong Prime, Shanghai Rainbow, Sinocol, and Yangcheng Chemical)	241.32%

Assessment of Antidumping Duties

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b)(1). The Department intends to issue assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by the PRC–wide entity, including Aesthetic Colortech, Anhui Worldbest, Cidic, Ganguink, Goldlink, Hunan Sunlogistics, Hygeia–Chem, Pudong Prime, Shanghai Rainbow, Sinocol, and Yangcheng Chemical, the cash–deposit rate will be equal to 241.32 percent; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have a separate rate, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 241.32 percent; (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC 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: January 2, 2009.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E9–224 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin from Italy: Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Alicia Winston, at (202) 482-0189 or (202) 482–1785, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: On September 30, 2008, the Department of Commerce (''the Department'') published a notice announcing the initiation of an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy, covering the period August 1, 2007, through July 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56794, (September 30, 2008). The review was requested by Solvay Solexis, Inc. and Solvay Solexis S.p.A. (collectively, ''Solvay''). We are now rescinding this

review as a result of Solvay's withdrawal of its request for an administrative review.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.213(b), on August 29, 2008, Solvay timely requested an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy. Solvay was the only party to request this administrative review. On September 30, 2008, in accordance with 19 CFR 351.221 (c)(1)(i), the Department published its notice of initiation of administrative review of this order for the period August 1, 2007, through July 31, 2008. Solvay withdrew its request for this review on December 9, 2008.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Secretary will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. Solvay withdrew its request within the 90–day period, and no other party requested a review. Therefore, in response to Solvay's withdrawal of its request for an administrative review, the Department hereby rescinds the administrative review of the antidumping order on granular'' polytetrafluoroethylene resin from Italy for the period August 1, 2007, through July 31, 2008.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protection orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 30, 2008.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–225 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Alicia Winston, at (202) 482–0189 or (202) 482–1785, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2008, the Department published the notice of amended preliminary results of the administrative review of the antidumping duty order on granular polytetrafluoroethylene resin from Italy covering the period August 1, 2006, through July 31, 2007. *See Amended Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, 73 FR 54557 (September 22, 2008) (''*Preliminary Results*'').

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the final results of an administrative review within 120 days of the publication of the preliminary results. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days.

Extension of Time Limits for Final Results

The Department requires additional time to complete this review because it conducted sales and cost verifications after the *Preliminary Results*. The Department needs to allow time for parties to brief any issues and for the Department to consider all the issues raised, including complex cost accounting issues. Consequently, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by January 20, 2009). Therefore, the Department is extending the time limit for completion of the final results by 60 days to March 21, 2009, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. However, March 21, 2009, falls on a Saturday 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 preliminary results is now no later than March 23, 2009.

We are issuing this notice in accordance with section 751(a)(3)(A) of the Act.

Dated: December 30, 2008.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–226 Filed 1–8–09; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part

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

EFFECTIVE DATE: January 9, 2009.

SUMMARY: On November 25, 2008, the Department of Commerce (the ''Department'') received a request on behalf of petitioners, the American Furniture Manufacturers Committee for Legal Trade and its individual members (the ''AFMC'' or ''petitioners''), for a changed circumstances review and a request to revoke in part the antidumping duty (''AD'') order on wooden bedroom furniture from the People's Republic of China (''PRC'') with respect to certain toy boxes. In its November 25, 2008, submission, AFMC stated that it no longer has any interest in antidumping relief from imports of certain toy boxes with respect to the subject merchandise defined in the ''Scope of the Review'' section below. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4474 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, the Department published the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). On November 25, 2008, AFMC requested revocation in part of the AD order pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (''the Act''), with respect to certain toy boxes, as described below.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests,[1] highboys,[2] lowboys,[3] chests of drawers,[4] chests,[5] door chests,[6] chiffoniers,[7] hutches,[8] and armoires;[9] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[10] (9) jewelry armories;[11] (10) cheval

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24'' in width, 18'' in depth, and 49'' in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. *See also Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

mirrors;[12] (11) certain metal parts;[13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set; and (13) upholstered beds.[14] Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[12] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50'' that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 9403.90.7000.

[14] Upholstered beds that are completely upholstered, i.e., containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part

At the request of AFMC, and in accordance with sections 751(d)(1) and 751(b)(1) of the Act and 19 CFR 351.216, the Department is initiating a changed circumstances review of wooden bedroom furniture from the PRC to determine whether partial revocation of the AD order is warranted with respect to certain toy boxes. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g)(l)(i) and 351.221(c)(3)(ii), we are initiating this changed circumstances review and have determined that expedited action is warranted. In accordance with 19 CFR 351.216(b) and (c), we find that the petitioners' affirmative statement of no interest constitutes good cause for the conduct of this review. Additionally, our decision to expedite this review stems from the domestic industry's lack of interest in applying the AD order to the specific wooden bedroom furniture (i.e., certain toy boxes, discussed below) covered by this request.

Based on the expression of no interest by petitioners and absent any objection by any other domestic interested parties, we have preliminarily determined that substantially all of the domestic producers of the like product have no interest in the continued application of the AD order on wooden bedroom furniture to the merchandise that is subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD order as it relates to imports of the certain toy boxes from the People's Republic of China, as described below.

If the order is revoked with respect to this product, we will add the following language to the list of excluded items included in the scope of the order:

''Excluded from the scope are toy boxes that meet each of the following criteria. The toy box must: 1) be wider than it is tall; (2) have dimensions within 16 27 inches in height, 15 18 inches in depth, and 21 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow–closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (ASTM) standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings.''

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of these preliminary results in the **Federal Register**. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties that comment agree with our preliminary results. *See* 19 CFR 351.216(e).

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation (*e.g.* January 1, 2007, the first day on which such merchandise is not subject to the final results of administrative review) and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated AD duties on all subject merchandise will remain in effect until further notice.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: December 30, 2008.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–227 Filed 1–9–09; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold a meeting on Friday, January 23, 2009 from 3 p.m. to 5 p.m. Eastern Standard Time (EST). The primary purpose of this meeting is to review and approve the Committee's draft NEHRP reauthorization letter to the Interagency Coordinating Committee (ICC). The draft letter will be posted on the NEHRP Web site at *http://nehrp.gov/*. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a meeting on Friday, January 23, 2009, from 3 p.m. until 5 p.m. Eastern Standard Time (EST). The meeting will be open to the public. Interested parties may participate in the meeting from their remote location.

ADDRESSES: Questions regarding the meeting should be sent to National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899–8630. For instructions on how to participation in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899–8630. Dr. Hayes' e-mail address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 15 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/*.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advisory Committee on Earthquake Hazards Reduction (ACEHR) will hold a meeting on Friday, January 23, 2009, from 3 p.m. until 5 p.m. Eastern Standard Time (EST). There will be no central meeting location. The public is invited to participate in the meeting by calling in from remote locations. The primary purpose of this meeting is to review and approve the Committee's draft NEHRP reauthorization letter to the Interagency Coordinating Committee (ICC). The draft letter will be posted on the NEHRP Web site at *http://nehrp.gov/*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request detailed instructions on how to dial in from a remote location to participate in the meeting. Approximately fifteen minutes will be reserved from 4:45 p.m.–5 p.m. Eastern Standard Time (EST) for public comments, and speaking times will be assigned on a first-come, first-serve basis.

The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8630, Gaithersburg, Maryland 20899–8630, via fax at (301) 975–5433, or electronically by e-mail to *info@nehrp.gov*.

All participants of the meeting are required to pre-register to be admitted. Anyone wishing to participate must register by close of business Friday, January 16, 2009, in order to be admitted. Please submit your name, time of participation, e-mail address, and phone number to Tina Faecke. At the time of registration, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address with their registration. Ms. Faecke's e-mail address is *cookie@nist.gov*, and her phone number is (301) 975–5911.

Dated: January 6, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–218 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Designation of Fishery Management Council Members and Application for Reinstatement of State Authority

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before March 10, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to William Chappell, (301) 713–2337 or *William.Chappell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official who will perform duties under the Magnuson-Stevens Act, and for a request by a state for reinstatement of state authority over a managed fishery. Nominees must provide the governor or tribe with the background documentation which is then submitted to NOAA with the nomination. The information submitted with these actions will be used to ensure that the requirements of the Magnuson-Stevens Act are met.

II. Method of Collection

Information is submitted on paper documents.

III. Data

OMB Control Number: 0648–0314.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 275.

Estimated Time Per Response: 1 hour to designate a principal state fishery official(s); 80 hours for a nomination for a Council appointment; 16 hours for background documentation for nominees; and 1 hour for a request to reinstate state authority.

Estimated Total Annual Burden Hours: 4,607.

Estimated Total Annual Cost to Public: $800 (recordkeeping/reporting costs).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–161 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM61

Marine Mammals; File No. 1128–1922

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Eduardo Mercado III, Ph.D., Department of Psychology, 350 Park Hall, University at Buffalo, SUNY, Buffalo, New York, 14260, has been issued a permit to conduct research on humpback whales (*Megaptera novaeangliae*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521 and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 21, 2007, notice was published in the **Federal Register** (72 FR 46610) that a request for a scientific research permit to take humpback whales, had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Mercado is authorized a five-year scientific research permit to conduct acoustic playback sessions in the presence of humpback whales and approach animals to record whale songs in the coastal waters of Puerto Rico. The purpose of this research is to develop methods for testing the hearing and auditory perceptual capabilities of humpback whales in order to better predict when anthropogenic sounds may interfere with social behaviors, particularly mating and group feeding. Up to 200 humpback whales may be harassed by playback experiments (active acoustics) three times per year and up to 30 additional humpbacks may be harassed by close approach during vessel surveys for passive acoustic recordings annually. In addition, up to 5 humpback whales, 45 Stenellid dolphins (*Stenella* spp.), 45 common dolphins (*Delphinus delphis*), 45 bottlenose dolphins (*Tursiops truncatus*), and 5 Cuvier's beaked whales (*Ziphius cavirostris*) may be incidentally harassed up to three times annually during playback sessions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 2, 2009.

P. Michael Payne,

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

[FR Doc. E9–234 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XM57

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee

(GAC) will hold a working meeting, which is open to the public.

DATES: The GAC meeting will be held Tuesday, January 27, 2009, from 8:30 a.m. until business for the day is completed. The GAC will reconvene on Wednesday, January 28 and Thursday, January 29, 2009, at 8:30 a.m. each day until their business is completed.

ADDRESSES: The GAC meeting will be held at the Shilo Inn Portland Airport, Mt. Hood Room, 11707 NE Airport Way, Portland, OR 97220; telephone: +(503) 252–7500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GAC meeting is to consider draft alternatives and other material for a contemplated allocation of future harvests of selected groundfish species and stock complexes to limited entry trawl sectors and other sectors of the west coast groundfish fishery; accumulation and control limits for individual fishing quotas assigned to limited entry trawl permit holders in a contemplated rationalized shoreside trawl sector; and a new limited entry licensing system for west coast open access groundfish fisheries (open access license limitation). No management actions will be decided by the GAC. The GAC's role will be development of recommendations and preferred alternatives for analysis in contemplated NEPA-compliant environmental analyses for these three initiatives. The GAC recommendations will be provided for consideration by the Council at its March and April 2009 meetings in Seattle, Washington and Millbrae, CA, respectively.

Although non-emergency issues not contained in the meeting agenda may come before the GAC for discussion, those issues may not be the subject of formal GAC action during this meeting. GAC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GAC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 5, 2008.

Tracey L. Thompson,

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

[FR Doc. E9–143 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Public Key Infrastructure (PKI) Certificate Action Form.

Form Number(s): PTO–2042.

Agency Approval Number: 0651–0045.

Type of Request: Extension of a currently approved collection.

Burden: 1,383 hours annually.

Number of Respondents: 4,126 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to read the instructions and subscriber agreement, gather the necessary information, prepare the Certificate Action Form, and submit the completed request. The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to complete and electronically submit the information required for certificate self-recovery.

Needs and Uses: The USPTO uses Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. In order to access secure online systems offered by the USPTO for transactions such as electronic filing of patent applications and retrieving confidential patent application information, customers must first obtain a digital certificate. The public uses this collection to request a new digital certificate, the revocation of a current certificate, or the recovery of a lost certificate. This collection includes the existing Certificate Action Form (PTO–2042), which is provided by the USPTO to ensure that customers submit the necessary information for processing certificate requests. The accompanying subscriber agreement explains the regulations governing the use of the digital certificates and the software that creates and validates the encryption keys. The online self-recovery form allows the public to recover lost keys without having to contact support staff at the USPTO.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0045 PKI Certificate Action Form copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before February 9, 2009, to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 5, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9–185 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

January 5, 2009.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: January 9, 2009.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain printed raschel knit open work crepe fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 100.2008.12.01.Fabric.SoriniSamet forHansoll

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list (73 FR 53200) (''Procedures'').

On December 1, 2008, the Chairman of CITA received a Request for a commercial availability determination (''Request'') under the CAFTA-DR from Sorini Samet & Associates, LLC, on behalf of Hansoll Textile, Ltd., for certain printed raschel knit open work crepe fabric. On December 2, 2008, in accordance with CITA's Procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by December 15, 2008, and any Rebuttal be submitted by December 19, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and CITA's Procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Printed Raschel Knit Open Work Crepe Fabric

Fabric type: Raschel knit, open work crepe fabric with a 'blistered' surface with interstices covering 15% of the surface area of the fabric.

HTSUS: 6005.24.00

Fiber content: 66% cotton, 31% nylon, wrapped around 3% spandex

Yarn Size (metric):
Cotton: 28/2 to 32/2
Nylon: 213 to 236 denier / 10 filament
Spandex: 40 to 45 denier

Machine gauge: 18
Number of bars: 18
Weight: 170 to 185 grams per square meter
Width: not less than 137.2 to 147.4 centimeters, cuttable
Color: various
Finishing: printed

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.E9–138 Filed 1–8–09; 8:45 am]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

January 5, 2009.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

EFFECTIVE DATE: January 9, 2009.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain piece-dyed or yarn-dyed raschel knit open work crepe fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

FOR FURTHER INFORMATION ON-LINE: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf.Reference number: 101.2008.12.01.Fabric.SoriniSamet forHansoll.

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Act); the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Act; Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25, Note; see also section 203(o)(4)(C) of the CAFTA-DR Act.

The CAFTA-DR Act requires the President to establish procedures governing the submission of a request

and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list (73 FR 53200) (''Procedures'').

On December 1, 2008, the Chairman of CITA received a Request for a commercial availability determination (''Request'') under the CAFTA-DR from Sorini Samet & Associates, LLC, on behalf of Hansoll Textile, Ltd., for certain piece-dyed or yarn-dyed raschel knit open work crepe fabric. On December 2, 2008, in accordance with CITA's Procedures, CITA notified interested parties of the Request and posted the Request on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by December 15, 2008, and any Rebuttal be submitted by December 19, 2008. No interested entity submitted a Response advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Act, and CITA's Procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

Specifications: Piece-Dyed or Yarn-Dyed Raschel Knit Open Work Crepe Fabric

Fabric type: Raschel knit, open work crepe fabric with a 'blistered' surface with interstices covering approximately 15% of the surface area of the fabric.

HTSUS: 6005.22.00, 6205.23.00

Fiber content: 66% cotton, 31% nylon, wrapped around 3% spandex

Yarn Size (metric):
Cotton: 28/2 to 32/2
Nylon: 213 to 236 denier / 10 filament
Spandex: 40 to 45 denier

Machine gauge: 18
Number of bars: 18
Weight: 170 to 185 grams per square meter
Width: not less than 137.2 to 147.4 centimeters, cuttable
Color: various
Finishing: piece dyed or yarn dyed

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.E9–139 Filed 1–8ndash;09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: DoD; Uniformed Services University of the Health Sciences (USU).

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces the following meeting of the Board of Regents of the Uniformed Services University of the Health Sciences.

DATES: Tuesday, February 3, 2009, from 8:30 a.m. to 1 p.m.

ADDRESSES: Everett Alvarez Jr. Board of Regents Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Official, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held November 18, 2008; acceptance of reports from working committees; approval of faculty appointments and promotions; and the awarding of masters and doctoral degrees in the biomedical sciences and public health. The President, USU; and the Director, Armed Forces Radiobiology Research Institute will also present reports. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, this meeting is completely open to the public. Seating is on a first-come basis.

Written Statements: Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address listed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the February 2009 meeting or at a future meeting.

Dated: January 5, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–201 Filed 1–8–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Final Environmental Impact Statement for the Proposed Stormwater Treatment Areas in Everglades Agricultural Area Located in Palm Beach and Hendry Counties, FL

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

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Draft Environmental Impact Statement (Draft EIS) has been completed and is available for review and comment.

DATES: In accordance with the National Environmental Policy Act (NEPA), we have filed the Final EIS with the U.S. Environmental Protection Agency (EPA) for publication of their notice of availability in the **Federal Register**. The EPA notice officially starts the 30-day review period for this document. It is

the goal of the USACE to have this notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the Final EIS. Comments on the Final EIS must be submitted to the address below under **FOR FURTHER INFORMATION CONTACT** and must be received no later than 5 p.m. Eastern Standard Time, Monday, February 9, 2009.

ADDRESSES: The Final EIS can be viewed online at *http://www.saj.usace.army.mil/regulatory/index.htm*. Copies of the Final EIS are also available for review at the following libraries:

Belle Glade Branch Public Library, 530 S. Main Street, Belle Glade, FL 33430.
Palm Beach County Main Library, 3650 Summit Blvd., W. Palm Beach, FL 33406.
Clewiston Public Library, 120 W. Osceola Ave., Clewiston, FL 33440.
Pahokee Branch Public Library, 525 Bacom Point Rd., Pahokee, FL 33476.
Legislative Library, 701 The Capitol, Tallahassee, FL 32399–1300.
Glades County Public Library, PO Box 505, Riverside Dr., Moorehaven, FL 33471.
South Bay Public Library, 375 SW. 2nd Ave., South Bay, FL 33493.

FOR FURTHER INFORMATION CONTACT: Ms. Alisa Zarbo, Project Manager, U.S. Army Corps of Engineers, Jacksonville District, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 33410, Telephone: 772–219–8418, Fax: 561–626–6971.

SUPPLEMENTARY INFORMATION: The South Florida Water Management District (SFWMD) proposes to construct and operate stormwater treatment areas (STAs) on Compartments B and C of the Everglades Agricultural Area in Palm Beach and Hendry Counties, Florida. Compartment B STA will consist of approximately 6,817 acres of effective treatment area, and will be operated in close coordination with the existing STA 2 to assist in the phosphorus reduction capability of this STA, which discharges into Water Conservation Area (WCA) 2A. The Compartment C STA will consist of approximately 4,850 acres of effective treatment area, and will be operated in close coordination with existing STA 5 and STA 6 to assist in the phosphorus reduction capability of these two STAs, which discharge into WCA 3A and Rotenberger Wildlife Management Area. As proposed, the project would impact approximately 7,699 acres and 5,918 acres of jurisdictional wetlands and other waters of the United States associated with the construction of Compartments B and C, respectively. The SFWMD would need to obtain a Department of the Army permit pursuant to Section 404 of the Clean Water Act from the USACE and land use approval from Department of Interior for construction of Compartments B and C which were purchased with federal funds for Everglades restoration. This Final Environmental Impact Statement evaluates the environmental effects of 5 alternatives including the SFWMD's preferred alternative described above, 2 additional alternatives that utilize Compartments B and C but with a different operational regime for Compartment B, an alternative that includes other lands for construction of an STA to assist existing STA 1W and STA 1E, and the no action alternative.

Dated: December 29, 2008.

David S. Hobbie,

Chief, Regulatory Division.

[FR Doc. E9–219 Filed 1–8–09; 8:45 am]

BILLING CODE 3710–AJ–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 9, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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) provides interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 5, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Documents Associated with the Notice of Terms and Conditions of Purchase of Loans under the Ensuring Continued Access to Student Loans Act of 2008.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 15,195.

Burden Hours: 26,980.

Abstract: As one of several measures intended to address concerns about the availability of loans under the Federal Family Education Loan (FFEL) Program during the 2008–2009 academic year, the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA), and the Extension of Student Loan Purchase Authority which extended the program through the 2009–2010 academic year, provides the Department of Education (the Department) with temporary authority to purchase student loans from FFEL Program lenders. The documents included in this collection set forth the terms and conditions of the loan purchase program authorized by ECASLA and its extension, and collect the information from lenders that is required by the Department to administer the program.

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 3878. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue,

SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–132 Filed 1–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The 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 February 9, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 5, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Rural Education Achievement Program (REAP).

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 5,052.

Burden Hours: 4,830.

Abstract: This data collection is pursuant to the Secretary's authority under Part B of Title VI of the Elementary and Secondary Education Act (ESEA), to award funds under two grant programs designed to address the unique needs of rural school districts—the Small, Rural School Achievement Program (ESEA Section 6212) and the Rural and Low-Income School Program (ESEA Section 6221).

Under the Small, Rural School Achievement Program, the Secretary awards grants directly to eligible local educational agencies (LEAs) on a formula basis. Under the Rural and Low-income School Program, eligible school districts are sub-recipients of funds the Department awards to SEAs on a formula basis. For both grant programs, the Department awards funds based a determination of the eligibility of individual school districts and calculating formula allocations each eligible district should receive.

The Department has devised a two-tier strategy to accomplish the funding process for the REAP program: (1) the Department collects from SEAs the information the Department needs to make eligibility and funds allocation determinations, and (2) LEAs submit applications for grant funding.

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 3904. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–179 Filed 1–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Homeless Education Disaster Assistance Program (CFDA No. 84.383A)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice inviting applications.

SUMMARY: The Homeless Education Disaster Assistance program is a new, one-year program authorized under the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. This program provides assistance to local educational agencies (LEAs) or consortia of LEAs located within the same State whose enrollment of homeless students has increased as a result of a natural disaster that occurred in calendar year 2008 (2008).

DATES: *Application Deadline:* February 9, 2009, 4:30:00 p.m. Eastern time.

SUPPLEMENTARY INFORMATION: Under this program, the Department will award funds directly to eligible LEAs based on demonstrated need. (Except where specifically noted, the term *LEA* as used in this notice refers to a single LEA or a consortium of LEAs located in the same State.) In determining an LEA's need for assistance, the Department will consider the number of students enrolled in the LEA in kindergarten through grade twelve who became homeless as a result of a natural disaster (as defined elsewhere in this notice) that occurred in 2008. To be eligible for funding under this program, an LEA (individually or in consortium) must have at least fifty of these homeless students enrolled.

The LEA must use program funds to support activities that are allowable under section 723(d) of the McKinney-

Vento Homeless Assistance Act (42 U.S.C. 11433(d)). The services provided must comply with paragraphs (2) and (3) of section 723(a) of that law, and the LEA must comply with paragraphs (3) through (7) of section 722(g) of the law. The LEA may use program funds to assist any homeless individual, of school or pre-school age in the LEA, and not just those students who became homeless as a result of a natural disaster. The LEA may use the funds to support future activities, as well as to reimburse itself for costs incurred in carrying out activities during 2008 or 2009, designed to help homeless students enroll in, attend, or succeed in school. The funds will remain available for obligation by an LEA through September 30, 2010.

Eligible Applicants: Under this program, eligible applicants are LEAs that have a total of at least fifty students enrolled in one or more grades, kindergarten through grade twelve, who became homeless as a result of a natural disaster that occurred during 2008. Due to the limited amount of funding available under this program, only LEAs or consortia that meet this minimum threshold are eligible for a grant.

Required submission of eligibility information: As part of its application, the LEA must submit data, for which it has verifiable and auditable documentation, on the number of students enrolled in kindergarten through grade twelve in the LEA who became homeless as a result of a natural disaster that occurred during 2008. If a group of LEAs applies for these funds as a consortium, the LEA members of the group must designate one member to submit with the application data on the number of students enrolled in kindergarten through grade twelve in all of the consortium member LEAs and who became homeless as a result of a natural disaster that occurred in 2008. For purposes of this program, the count of enrolled students who became homeless as a result of a natural disaster that occurred in 2008 can include: Students already enrolled in the LEA who became homeless due to a natural disaster, or students made homeless by a natural disaster who are identified as such at the time of enrollment in the LEA.

Determination of award amount: Congress has appropriated $15 million for this program. The Department will award these funds, based on demonstrated need, to eligible LEAs that submit applications that meet the requirements of this notice and of the application package. Each LEA will receive a proportionate share of funds based on the number of students enrolled in the LEA in kindergarten through grade twelve who became homeless as a result of a natural disaster that occurred in 2008. Specifically, the Department will calculate each LEA's award amount based on the quotient obtained by dividing the number of its students enrolled in kindergarten through grade twelve who became homeless as a result of a natural disaster that occurred in 2008 by the total number of such students for all eligible LEAs submitting an application.

For consortia of LEAs that apply for funds, the Department will treat each consortium as a single LEA when determining grant award amounts. The designated LEA that submits an application to the Department on behalf of the consortium members must (a) distribute any funds received by the consortium to each member LEA based on its proportionate share of the total number of children made homeless as a result of a natural disaster in 2008 for the consortium as a whole, or (b) distribute the funds based on an alternative need-based method agreed upon in writing by all member LEAs.

Definition of natural disaster: For purposes of this program, a *natural disaster* is defined as a disaster for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974. Those disasters are listed on the Web site of the Federal Emergency Management Agency (FEMA) at *http://www.fema.gov/news/disasters.fema?year=2008.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 98, and 99.

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

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed program requirements. Section 437(d)(2) of the General Education Provisions Act (20 U.S.C. 1232(d)(2)), however, allows the Secretary of Education to exempt from rulemaking requirements regulations where the Secretary determines that conducting rulemaking would cause extreme hardship to the intended beneficiaries of the program or programs affected by the regulations.

The Secretary has determined that conducting rulemaking for the Homeless Education Disaster Assistance program, including rulemaking on an LEA's eligibility for assistance and the process for allocating funds, would cause extreme hardship to the beneficiaries of the program. LEAs throughout the country have needs and expenses related to educating students who became homeless as a result of natural disasters that occurred in 2008. It is essential, therefore, that the Department award funding under the program at the earliest possible date. Furthermore, the legislation authorizing the program recognizes the need for timely awards and directs the Department to make grants to LEAs on the basis of demonstrated need within 120 days of the date of enactment of that legislation. LEAs need sufficient time to collect and submit data that demonstrate their need for assistance. In order to avoid harm and hardship to applicants under the program, and to the students they are serving, the Secretary is waiving rulemaking for this program.

Application and Submission Information: To receive funding, an eligible LEA must submit an application electronically by the deadline established in this notice. Submission of an electronic application involves the use of the Department's Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system.

You can access the electronic application for the Homeless Education Disaster Assistance program at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding the information to include in your application.

The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m., Sunday (Washington, DC time). Any modifications to these hours are posted on the e-grants Web site.

FOR FURTHER INFORMATION CONTACT: Mr. John McLaughlin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C130, Washington, DC 20202. Telephone: (202) 260–0826 or via e-mail at *john.mclaughlin@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 this notice in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

Electronic Access To This Document: You may view this document, as well as other Department of Education documents 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. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

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

Program Authority: Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 at Div. B, Title I, Chapter 7, Pub. L. 110–329, 122 Stat. 3595 (Sept. 30, 2008).

Dated: January 6, 2009.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–237 Filed 1–8–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Notice of Request for Public Comment on Proposed Working Group Policy

AGENCY: United States Election Assistance Commission.

ACTION: Notice: Request for public comment.

SUMMARY: The EAC seeks public comment on a proposed policy entitled ''Proposed Working Group Policy.'' This policy is designed to set procedures and requirements for the formation and use of working groups to assist the United States Election Assistance Commission in developing proposed policies, including advisories, guidance, opinions, regulations and rules regarding the implementation of the Help American Vote Act (HAVA) and the National Voter Registration Act of 1993 (NVRA). EAC issues this notice according to a policy adopted on September 18, 2008 that requires EAC to provide notice and an opportunity for public comment on, among other things, advisories being considered for adoption by the U.S. Election Assistance Commission.

DATES: Comments must be received by 5 p.m. EST on February 9, 2009.

ADDRESSES: Comments may be submitted: Via e-mail at *havainfo@eac.gov*, Via mail addressed to the U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 1100, Washington, DC 20005, or by fax at 202/566–3127. Commenters are encouraged to submit comments electronically and include ''Working Group Policy'' in the subject line, to ensure timely receipt and consideration.

Person to Contact for Information: Bryan Whitener, Telephone: (202) 566–3100.

SUPPLEMENTARY INFORMATION: The following is the complete text of the proposed Working Group Policy the EAC is seeking public comment on. The proposed policy may also be viewed on the EAC Web site at *http://www.eac.gov*.

Proposed Working Group Policy

I. Purpose

This document sets policy concerning the use, makeup and administration of working groups. For the purposes of this policy, a working group is a collection of persons with unique experience and expertise gathered to provide their individual opinions on matters impacting EAC's mission. Working groups do not vote or otherwise provide a consensus opinion on matters presented. They are assembled either to provide individual advice on a common issue or exchange information. Working groups are not permanent and meet only for a limited purpose and time.

The United States Election Assistance Commission (EAC) believes that seeking diverse input from qualified individuals is critical to developing sound public policy. As EAC works meet its mission under the Help America Vote Act of 2002 (HAVA) and the National Voter Registration Act of 1993 (NVRA) the agency must utilize the experience of technical experts, election administrators and nongovernmental organizations in developing its policies.

II. Roles and Responsibilities

The Executive Director is hereby directed to develop internal procedures concerning the use, make-up, administration and product of working groups. These procedures must reflect and implement the policy goals adopted in this directive.

III. Membership, Use and Product of Working Group

Diversity of Opinion and Membership. The membership of EAC working groups shall reflect the diversity of opinion on a given issue. This commitment to diversity of opinion requires EAC staff to seek out new voices in the debate. Therefore, when reasonable, EAC will openly recruit candidates to be considered and may limit participation of an individual or organization in consecutive working groups. EAC has various important constituencies that should be represented on working groups formed under this policy. These may include state and local election officials, state and local legislative bodies and nongovernmental organizations. EAC working groups must include a fairly balanced membership. Members of the working group should represent a cross-section of the election or other communities that are directly affected by the topic under consideration and academics and/or technical experts who are uniquely qualified as appropriate to the nature and functions of the working group. The reasonable credibility of the individual and the organization represented will be considered in the selection process.

Limited Use. Working groups should only be used in the development of EAC policy or other matters where gathering of a variety of technical expertise or stakeholder opinions are essential to meeting agency objectives. Other determining factors for the creation of a working group shall include EAC's strategic plan and its annual operating budget, goals and objectives. The creation of working groups shall be subject to the approval of the Executive Director. Any request for a working group must be submitted to the Executive Director in writing and identify the need for the working group, the proposed charge of the working group, the identification of the various opinions or interests that must be represented, a proposed composition of the group, an approximate length of time that the working group will be in place.

Group Focus. Any working group established by the EAC must be provided a clear focus in the form of a written agenda or group mandate. Staff must be assigned to the group to facilitate discussion, maintain group focus and document opinion or facts expressed.

Publication of Working Group Discussion Points. In reporting on the activities of a working group, the EAC shall capture the opinions or facts expressed by the working group and make that information available to the Commissioners and EAC program staff for use in making a final policy determination. This information will also be made available to the public.

Gracia Hillman,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. E9–197 Filed 1–8–09; 8:45 am]

BILLING CODE 6820–KF–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0290; FRL–8760–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS—Other Solid Waste Incineration Units (Renewal), EPA ICR Number 2163.03, OMB Control Number 2060–0563

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0290, 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 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0290, which is available for public viewing either online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

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—Other Solid Waste Incineration Units (Renewal).

ICR Numbers: EPA ICR Number 2163.03, OMB Control Number 2060–0563.

ICR Status: This ICR is scheduled to expire on March 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS)—Other Solid Waste Incineration (OSWI) units were proposed on December 8, 2004, and promulgated on December 16, 2005. These regulations apply to very small municipal waste combustion units and institutional waste incineration units. A new incineration unit subject to this subpart should meet one of the two criteria: (1) Commenced construction after December 9, 2004; or (2) commenced reconstruction or modification on or after June 16, 2006.

Owners or operators of the affected facilities must make a one-time-only report of the date of construction or reconstruction, notification of the actual date of startup, notification of any physical or operational change to existing facility that may increase the rate of emission of the regulated pollutant, notification of initial performance test, and results of initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction, or any period during which the monitoring system is inoperative. Performance tests are the Agency's records of a source's initial capability to comply with emissions standards and not the operating conditions under which compliance was to achieve. Annual and semiannual reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements and retain the file for at least five years following the collection of such measurements, maintenance reports, and records.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart EEEE, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 Number for EPA regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average zero hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and 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. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of other solid waste incineration units.

Estimated Number of Respondents: 0.

Frequency of Response: Initially, annually and semiannually.

Estimated Total Annual Hour Burden: 0.

Estimated Total Annual Cost: $0.

Changes in the Estimates: There are no changes in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. At present, there are no OSWI units that are currently subject to the regulations, and it is estimated that no new units are expected to be constructed or operated over the next three years. It is assumed that potential respondents would use alternative methods of waste disposal that are more economical, e.g. landfills, rather than replacing existing OSWI units. No respondent or agency burdens or costs have been estimated and no annual burden is expected.

Dated: January 5, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–206 Filed 1–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8589–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 6, 2008 (97 FR 27647).

Draft EISs

EIS No. 20080380, ERP No. D–AFS–K65348–CA, Tahoe National Forest Motorized Travel Management, Implementation, Sierra Nevada Mountains, Nevada, Placer, Plumas, Sierra and Yuba Counties, CA.

Summary: EPA expressed environmental concerns about the continued use of routes in areas containing Naturally Occurring Asbestos and impacts to water quality, meadows, and riparian areas. To address these concerns, EPA recommends that the final EIS address current roads and trails with known impacts, eliminating the addition of routes on land ''most likely'' to contain naturally occurring asbestos, and detail on meeting TMDL requirements and monitoring and enforcement commitments. Rating EC2.

Final EISs

EIS No. 20080420, ERP No. F–BLM–K08066–CA, Sunrise Powerlink Transmission Line Project, Proposed Land Use Plan Amendment, Construction and Operation of a New 91-mile 500 kilovolt (kV) Electric Transmission Line from Imperial Valley Substation (in Imperial Co. near the City of El Centro) to a New Central East Substation (in Central San Diego County) Imperial and San Diego Counties, CA.

Summary: EPA continues to have environmental concerns about adverse impacts to water resources, air quality and the disclosure of costs and benefits associated with the various alternatives.

EIS No. 20080467, ERP No. F–AFS–L65499–WA, The Summit at Snoqualmie Master Development Plan (MPD), Proposal to Ensure Long-Term Economic Viability, Mt. Baker-Snoqualmie/Okanogan-Wenatchee National Forests, King and Kittitas Counties, WA.

Summary: The Final EIS adequately addresses EPA's environmental concerns about wetlands, water quality, and habitat conductively with mitigation and avoidance of significant impacts. Additionally, the Final EIS presents metrics for restoration outcomes and emphasizes the importance of meeting monitoring requirements. EPA has no concerns about the implementation of the proposed project.

EIS No. 20080471, ERP No. F–AFS–J65518–SD, South Project Area, Proposes Multiple Resource Management Actions, Selected Alternative 3, Hell Canyon Ranger District, Black Hills National Forest, Custer County, SD.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080512, ERP No. F–USN–A11080–00, Atlantic Fleet Active Sonar Training Program, To Provide Mid- and High-Frequency Active Sonar Technology and the Improved Extended Echo Ranging (IEER) System during Atlantic Fleet Training Exercises, Along the East Coast of the United States (U.S.) and in the Gulf of Mexico.

Summary: No formal comment letter was sent to the preparing agency.

Dated: January 6, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–211 Filed 1–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8589–03]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 12/29/2008 Through 01/02/2009 Pursuant to 40 CFR 1506.9.

EIS No. 20080543, Draft EIS, NRC, NY, Generic—License Renewal of Nuclear Plants, Supplement 38 to NUREG–1437, Regarding Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, NY, *Comment Period Ends:* 03/11/2009, *Contact:* Andrew Stuyvenberg 301–415–4006.

EIS No. 20080544, Draft EIS, FHW, MO, MO–63 Corridor Improvement Project, To Correct Roadway Deficiencies, Reduce Congestion and Provide Continuity along the MO–63 Corridor on the Existing Roadway and on New Location, Osage, Maries and Phelps Counties, MO, *Comment Period Ends:* 03/02/2009, *Contact:* Peggy Casey 573–636–7104.

EIS No. 20090000, Final EIS, COE, FL, South Florida Water Management District (SFWMD) Project, Propose to Construct and Operate Stormwater Treatment Areas (STAs) on Compartments B and C of the Everglades Agriculture Area, U.S. Army COE Section 404 Permit, Palm

Beach and Hendry Counties, FL, *Wait Period Ends:* 02/09/2009, *Contact:* Tori White 561–472–3517.

Amended Notices

EIS No. 20080484, Draft EIS, NOA, AK, Bering Sea Chinook Salmon Bycatch Management, Establish New Measures to Minimize Chinook Salmon Bycatch, To Amend the Fishery Management Plan, Implementation, Bering Sea Pollock Fishery, AK, *Comment Period Ends:* 02/23/2009, *Contact:* Gretchen Harrington 907–586–7228.

Revision to FR Notice Published 12/05/2008: Extending Comment Period from 02/03/2009 to 02/23/2009.

Dated: January 6, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–212 Filed 1–8–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: January 14, 2009–10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

(1) Budget Status Report.

(2) Docket No. 02–15 Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.

Closed Session

(1) FMC Agreement No. 201199: Port Fee Services Agreement.

(2) FMC Agreement No. 011223–043: Transpacific Stabilization Agreement.

(3) Staff Briefing Regarding Global Economic Downturn and Potential Impact on Stakeholders.

(4) Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–408 Filed 1–7–09; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through February 28, 2012, the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its regulations under the Fair Packaging and Labeling Act (''FPLA''). That clearance expires on February 28, 2009.

DATES: Comments must be filed by February 9, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Fair Packaging & Labeling Regs, PRA Comments, P074200'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*)—and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-FPLAregs*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-FPLAregs*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov*to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Fair Packaging & Labeling Regs, PRA Comments, P074200'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326-2841.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein. 44 U.S.C. 3506(c)(2)(A).

On October 10, 2008, the Commission sought public comments concerning the proposed collection of information. *See* 73 FR 60286. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the Commission is providing this second opportunity for public comment while seeking OMB clearance for the FPLA regulations. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before February 9, 2009.

The FPLA, 15 U.S.C. 1451-1461, was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 CFR Parts 500 - 503, establish requirements for the manner and form of labeling applicable to manufacturers, packagers, and distributors of ''consumer commodities.''[2] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 7,570,740 total burden hours (solely relating to disclosure[3])

As in the past, Commission staff has used Census data[4] to estimate the number of companies subject to the FPLA. Staff conservatively estimates[5] that approximately 757,074 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 7,570,740 hours.

Estimated annual cost burden: $158,985,540 (solely relating to labor costs)

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $55), plus two hours of specialized clerical support[6] (at an estimated average hourly rate of $25), and seven hours of clerical time per covered entity (at an estimated average hourly rate of $15), for a total of $158,985,540 ($210 blended labor cost per covered entity x 757,074 entities).[7]

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course of business the information that the statute and regulations require be placed on packages and labels.

William Blumenthal

General Counsel

FR Doc. E9–178 Filed 1–8–09: 8:45 am]

Billing code 6750–01–S

[2] ''Consumer commodity'' means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.'' 16 CFR 500.2(c). For the precise scope of the term's coverage *see* 16 CFR 500.2(c); 503.2; 503.5. *See* also (*http://www.ftc.gov/os/statutes/fpla/outline.html*).

[3] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate ''cents off,'' ''introductory offer,'' and/or ''economy size'' claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

[4] Staff has drawn upon the U.S. Census Bureau's 2002 economic census, the most recent census available providing data for purposes of staff's instant estimates. *See* (*http://www.census.gov/econ/census02/guide/SUBSUMM.HTM*) and (*http://www.census.gov/prod/ec02/ec0231sg1.pdf*) (Table 2).

[5] Although the estimates are non-rounded figures, they remain estimates as they are the sum total of projected industry codes subject to the FPLA. But, even allowing for industries that may apply, the Census data do not separately break out non-household products from household use and, accordingly, overstate what is actually subject to the FPLA.

[6] ''Specialized clerical support'' consists of graphic design specialists, working by computer to design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations.

[7] Based generally on the National Compensation Survey: Occupational Earnings in the United States, 2007, U.S. Department of Labor, Bureau of Labor Statistics (August 2008) (''BLS National Compensation Survey'') (citing the mean hourly earnings for management occupations, legal occupations/lawyers, and assorted clerical positions), available at (*http://www.bls.gov/ncs/ocs/sp/nctb0300.pdf*). Clerical estimates are derived from the above source data, applying roughly a mid-range of mean hourly rates for potentially applicable clerical types, *e.g.*, computer operators, data entry and information processing workers.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–249]

Announcement of Final Priority Data Needs for Two Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the final priority data needs for two priority hazardous substances (see Table 1) as part of the continuing development and implementation of the ATSDR Substance-Specific Applied Research Program (SSARP). The notice also serves as a continuous call for voluntary research proposals.

The exposure and toxicity priority data needs in this notice were distilled from the data needs identified in ATSDR's toxicological profiles by the logical scientific approach described in a decision guide published in the **Federal Register** on September 11, 1989 (54 FR 37618). The priority data needs represent essential information to improve the database for conducting public health assessments. Research to address these priority data needs will help to determine the types or levels of exposure that may present significant risks of adverse health effects in people exposed to the hazardous substances.

The priority data needs announced in this notice reflect the opinion of ATSDR, in consultation with other federal programs, about the research needed pursuant to ATSDR's authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

(Superfund), or CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)]. The needs identified here do not represent the priority data needs for any other agency or program.

Consistent with section 104(i)(12) of CERCLA as amended [42 U.S.C. 9604(i)(12)], nothing in this research program shall be construed to delay or otherwise affect or impair the President, the Administrator of ATSDR, or the Administrator of the Environmental Protection Agency (EPA) from exercising any authority regarding any other provision of law, including the Toxic Substances Control Act of 1976 (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or the response and abatement authorities of CERCLA.

ATSDR worked with other federal programs to determine common substance-specific data needs and mechanisms to implement research that may include authorities under TSCA and FIFRA, private-sector voluntarism, or the direct use of CERCLA funds.

Table 1 presents the priority data needs for acrolein and barium, two priority substances included in the ATSDR Priority List of Hazardous Substances (73 FR 12178, March 6, 2008). These priority data needs were initially announced by ATSDR in the **Federal Register** on September 8, 2006 (71 FR 53102). The public was invited to comment on these data needs for these two substances during a 90-day period. No public comments were received. These priority data needs and accompanying documents were reviewed by EPA and the National Institute of Environmental Health Sciences (NIEHS), and will be addressed by the mechanisms described in the ''Implementation of Substance-Specific Applied Research Program'' section of this **Federal Register** Notice.

TABLE 1—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS FOR TWO PRIORITY HAZARDOUS SUBSTANCES

Substance	Priority data needs
Acrolein	Exposure levels in humans living near hazardous waste sites and other populations.
	Exposure levels in children.
	Dose-response data for chronic duration [1] via inhalation exposure.
Barium	Dose-response data for acute duration [2] via oral exposure.

[1] 365 days or more.
[2] 14 days or less.

The substance-specific priority data needs were based on and determined from information in corresponding ATSDR toxicological profiles. Background technical information and justification for the priority data needs in this notice are in the priority data needs documents, available on ATSDR's Web site at *http://www.atsdr.cdc.gov/pdns/*. Printed copies are also available by written request from ATSDR (see **ADDRESSES** section of this notice).

Voluntary Research. This notice also serves as a continuous call for voluntary research proposals. Private-sector organizations may volunteer to conduct research to address specific priority data needs in this notice by submitting a letter of intent to ATSDR (see **ADDRESSES** section of this notice). A Tri-Agency Superfund Applied Research Committee (TASARC), comprised of scientists from ATSDR, the National Toxicology Program (NTP), and EPA will review all proposals.

DATES: The ATSDR voluntary research program is a continuous program, and private-sector organizations can volunteer to fill identified data needs from now until ATSDR announces that other research has been initiated for a specific data need.

ADDRESSES: The priority data needs are available on ATSDR's Web site at *http://www.atsdr.cdc.gov/pdns/*. Private-sector organizations interested in volunteering to conduct research to fill identified priority data needs should write to Nickolette Roney, Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333; e-mail: *NRoney@cdc.gov*. Information about pertinent ongoing or completed research that may fill priority data needs cited in this notice should be similarly addressed. Also, use the same address to request printed copies of the priority data needs documents.

FOR FURTHER INFORMATION CONTACT: Nickolette Roney, Applied Toxicology Branch, Division of Toxicology and Environmental Medicine, ATSDR, 1600 Clifton Road, NE., Mailstop F–32, Atlanta, Georgia 30333; e-mail: *NRoney@cdc.gov*; telephone: (770) 488–3332; fax: (770) 488–4178.

SUPPLEMENTARY INFORMATION:

Background

CERCLA, as amended by SARA [42 U.S.C. 9604(i)], requires that ATSDR (1) develop jointly with EPA a list of hazardous substances found at National Priorities List (NPL) sites (in order of priority), (2) prepare toxicological profiles of these substances, and (3) ensure the initiation of a research program to address identified priority data needs associated with the substances.

The SSARP was initiated in 1991. A list of priority data needs for 38 priority hazardous substances was announced for public comment in the **Federal Register** on October 17, 1991 (56 FR 52178) and was published in final form on November 16, 1992 (57 FR 54150). In 1997, after releasing for public comment, ATSDR finalized the priority data needs for a second list of 12 substances and that priority data needs list was announced in the **Federal Register** on July 30, 1997 (62 FR 40820). ATSDR then identified priority data needs for a third list of 10 hazardous substances; this list was released as a draft for public comment and published in its final form on April 29, 2003 (68 FR 22704). On September 8, 2006 (71 FR 53102), ATSDR released for public comment the priority data needs for the two hazardous substances that are the subject of this final notice.

The ATSDR SSARP supplies the necessary information to improve the database to conduct public health assessments. The link between research and public health assessments and the process for distilling priority data needs from the data needs identified in associated ATSDR toxicological profiles are described in the ATSDR ''Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles'' (54 FR 37618, September 11, 1989).

Implementation of Substance-Specific Applied Research Program

In Section 104(i)(5)(D), CERCLA states that Congress believes the costs for conducting this research program should be borne by the manufacturers and processors of the hazardous substances found under the Toxic Substances Control Act of 1976 (TSCA); by registrants under the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA); or by cost recovery from responsible parties under CERCLA. To execute this statutory intent, ATSDR developed a plan whereby parts of SSARP are being conducted through regulatory mechanisms (TSCA/FIFRA), private-sector voluntarism, and the direct use of CERCLA funds.

CERCLA also requires that ATSDR consider recommendations of the Interagency Testing Committee, established under section 4(e) of TSCA, for the types of research to be done. ATSDR actively participates on this committee. Federally funded projects that collect information from 10 or more respondents and that are funded by

cooperative agreements are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services regulations (45 CFR part 46) regarding the protection of human subjects. The applicants must ensure that the project will be subject to initial and continuing review by the appropriate institutional review committees. Overall, by providing additional scientific information for the risk assessment process, data generated from this research will support other researchers who are conducting human health assessments involving these two substances.

The mechanisms for implementing SSARP are discussed next. The status of SSARP in addressing priority data needs of the first 60 priority hazardous substances through these mechanisms was described in a **Federal Register** Notice on December 13, 2005 (70 FR 73749).

A. TSCA/FIFRA

In developing and implementing SSARP, ATSDR and EPA established procedures to identify priority data needs of common interest to multiple federal programs. Where practicable, these data needs will be addressed through a program of toxicologic testing under TSCA or FIFRA. This part of the research will be conducted according to established TSCA/FIFRA procedures and guidelines.

B. Private-Sector Voluntarism

As part of SSARP, on February 7, 1992, ATSDR announced a set of proposed procedures for conducting voluntary research (57 FR 4758). Revisions based on public comments were published on November 16, 1992 (57 FR 54160). ATSDR strongly encourages private-sector organizations to propose research to address priority data needs at any time until ATSDR announces that research has already been initiated for a specific priority data need. Private-sector organizations may volunteer to conduct research to address specific priority data needs identified in this notice by submitting a letter of intent.

The letter of intent should be a brief statement (1–2 pages) that identifies the priority data need(s) to be filled and the methods to be used. TASARC will review these proposals and recommend to ATSDR the voluntary research projects that should be pursued—and how they should be conducted—with the volunteer organizations. ATSDR will enter into only those voluntary research projects that lead to high-quality, peer-reviewed scientific work. Additional details regarding the process for voluntary research are in the **Federal Register** Notices cited in this section.

C. CERCLA

Those priority data needs that are not addressed by TSCA/FIFRA or initial voluntarism will be considered for funding by ATSDR through its CERCLA budget. Much of this research program is envisioned to be unique to CERCLA—for example, research on substances not regulated by other programs or research needs specific to public health assessments. A current example of the direct use of CERCLA funds is a cooperative agreement with the Association of Minority Health Professions Schools (AMHPS) that supports the AMHPS Environmental Health, Health Services, and Toxicology Research programs.

Mechanisms to address these priority data needs may include a second call for voluntarism. Again, scientific peer review of study protocols and results would occur for all research conducted under this auspice.

ATSDR encourages private-sector organizations and other governmental programs to use ATSDR's priority data needs to plan their research activities.

Dated: January 6, 2009.

Ken Rose,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E9–189 Filed 1–8–09; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–262, CMS–10142 and CMS–R–137]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CY 2010 Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP) *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the formulary file, Plan Benefit Package (PBP) software, and supporting documentation as necessary. MA and PDP organizations will generate a formulary to illustrate their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, the PBP software will be used to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. CMS uses the formulary and PBP data to review and approve the plan benefit packages proposed by each MA and PDP organization.

CMS requires that MA and PDP organizations submit a completed formulary and PBP as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. *Form Number:* CMS–R–262 (OMB# 0938–0763); *Frequency:* Yearly; *Affected Public:* Business or other for-profits b. Not-for-profit institutions; *Number of Respondents:* 475; *Total Annual Responses:* 4987.5; *Total Annual Hours:* 12112.5.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of*

Information Collection: CY 2010 Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP). *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by CMS. MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year. CMS reviews and analyzes the information provided on the Bid Pricing Tool. Ultimately, CMS decides whether to approve the plan pricing (i.e., payment and premium) proposed by each organization. *Form Number:* CMS–10142 (OMB# 0938–0944); *Frequency:* Yearly; *Affected Public:* Business or other for-profits b. Not-for-profit institutions; *Number of Respondents:* 550; *Total Annual Responses:* 6050; *Total Annual Hours:* 42,350.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Internal Revenue Service (IRS)/Social Security Administration (SSA)/Centers for Medicare and Medicaid Services (CMS) Data Match and Supporting Regulations in 42 CFR 411.20–491.206 *Use:* Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits; it refers to those situations where Medicare assumes a secondary payer role to certain types of private insurance for covered services provided to a Medicare beneficiary.

Congress sought to reduce the losses to the Medicare program by requiring in 42 U.S.C. 1395y(b)(5) that the Internal Revenue Service (IRS), the Social Security Administration (SSA), and CMS perform an annual data match (the IRS/SSA/CMS Data Match, or ''Data Match'' for short). CMS uses the information obtained through Data Match to contact employers concerning possible application of the MSP provisions by requesting information about specifically identified employees (either a Medicare beneficiary or the working spouse of a Medicare beneficiary). This statutory data match and employer information collection activity enhances CMS's ability to identify both past and present MSP situations. *Form Number:* CMS–R–137 (OMB# 0938–0763); *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, farms, State, Local or Tribal Governments; *Number of Respondents:* 326,597; *Total Annual Responses:* 326,597; *Total Annual Hours:* 1,900,795.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on February 9, 2009: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: December 28, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–52 Filed 1–8–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10062, CMS–10275, and CMS–10137]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Diagnostic Data from Medicare Advantage Organizations for Risk Adjusted Payments: *Use:* CMS requires hospital inpatient, hospital outpatient and physician diagnostic data from Medicare Advantage (MA) organizations to continue making payment under the risk adjustment methodology as required by the Social Security Act, as amended by the Balanced Budget Act; the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act; and the Medicare Prescription Drug Benefit, Improvement and Modernization Act. CMS will use the data to make risk adjusted payment under Parts C. MA and MA–PD plans will use the data to develop their Parts C bids. As required by law, CMS also annually publishes the risk adjustment factors for plans and other interested entities in the Advance Notice of Methodological Changes for MA Payment Rates (every February) and the Announcement of Medicare Advantage Payment Rates (every April). Lastly, CMS issues monthly reports to each individual plan that contains the CMS-Hierarchical Condition Category (HCC) and RxHCC models' output and the risk scores and reimbursements for each beneficiary that is enrolled in their plan. *Form Number:* CMS–10062 (OMB# 0938–0878); *Frequency:* Quarterly; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 852; *Total Annual Responses:* 22,097,070; *Total Annual Hours:* 10,826.1.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* CAHPS Home Health Care Survey: *Use:* As part of the Department of Health and Human Services (DHHS) Transparency Initiative on Quality Reporting, CMS plans to implement a process to measure and publicly report home health care patient experiences through the CAHPS (Consumer Assessment of Healthcare

Providers and Systems) Home Health Care Survey. The Home Health Care CAHPS survey, as initially discussed in the May 4, 2007 **Federal Register** (72 FR 25356, 25452), is part of a family of CAHPS® surveys that ask patients about their health care experiences. The Home Health Care CAHPS survey, developed by the Agency for Healthcare Research and Quality (AHRQ), creates a standardized survey for home health patients to assess their home health care providers and the quality of their home health care. Prior to this survey, there was no national standard for collecting such information that would allow comparisons across all home health agencies.

AHRQ conducted a field test to determine the length and content of the Home Health Care CAHPS Survey. CMS has submitted the survey to the National Quality Forum (NQF) for consideration and approval in their consensus process. NQF endorsement represents the consensus opinion of many healthcare providers, consumer groups, professional organizations, purchasers, federal agencies, and research and quality organizations. The final survey has also been submitted to the Office of Management and Budget (OMB) for their approval under the Paperwork Reduction Act (PRA) process.

The survey captures topics such as patients' interactions with the agency, access to care, interactions with home health staff, provider care and communication, and patient characteristics. The survey allows the patient to give an overall rating of the agency, and asks if the patient would recommend the agency to family and friends.

CMS is beginning plans for implementation of Home Health Care CAHPS Survey. Administration of the survey will be conducted by multiple, independent survey vendors working under contract with home health agencies to facilitate data collection and reporting. Recruitment and training of vendors who wish to be approved to collect Home Health Care CAHPS data will begin in 2009. Home health agencies interested in learning about the survey and/or voluntarily participating in the survey are encouraged to view the Home Health Care CAHPS Web site: *http://www.homehealthCAHPS.org*. Information about the project can also be obtained by sending an e-mail to *HHCAHPS@rti.org*.

Home health agency participation in the Home Health Care CAHPS Survey is currently voluntary. *Form Number:* CMS–10275 (OMB# 0938–New); *Frequency:* Semi-annually, once and occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 2,706,000; *Total Annual Responses:* 2,706,000; *Total Annual Hours:* 541,200.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD); Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage; *Use* Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and under supporting regulations Subpart K of 42 CFR 423 entitled ''Application Procedures and Contracts with PDP Sponsors.''

Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application. The information will be collected under the solicitation of proposals from PDP, MA–PD, Cost Plan, PACE, and EGWP Plan applicants. The collected information will be used by CMS to: (1) Ensure that applicants meet CMS requirements, (2) support the determination of contract awards. *Form Number:* CMS–10137(OMB#: 0938–0936); *Frequency:* Reporting–Once; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 455; *Total Annual Responses:* 455; *Total Annual Hours:* 11,890.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by March 10, 2009:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 30, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–65 Filed 1–8–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0500]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 9, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX:

202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0572. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products (OMB Control Number 0910–0572)—Extension

FDA's final rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (the final rule), which published on January 24, 2006 (71 FR 3922), and was effective on June 30, 2006, amended FDA's regulations governing the format and content of labeling for human prescription drug and biological products to require that the labeling of new and recently approved products contain highlights of prescribing information, a table of contents for prescribing information, reordering of certain sections, minor content changes, and minimum graphical requirements. These revisions were intended to make it easier for health care practitioners to access, read, and use information in prescription drug labeling, to enhance the safe and effective use of prescription drug products, and reduce the number of adverse reactions resulting from medication errors due to misunderstood or incorrectly applied drug information.

A. Summary of Prescription Drug Labeling Content and Format Requirements That Contain Collections of Information

Section 201.56 (21 CFR 201.56) requires that prescription drug labeling contain certain information in the format specified in either § 201.57 (21 CFR 201.57) or § 201.80 (21 CFR 201.80), depending on when the drug was approved for marketing.

Section 201.56(a) sets forth general labeling requirements applicable to all prescription drugs. Section 201.56(b) specifies the categories of new and more recently approved prescription drugs subject to the revised content and format requirements in §§ 201.56(d) and 201.57. Section 201.56(c) sets forth the schedule for implementing these revised content and format requirements. Section 201.56(e) specifies the sections and subsections, required and optional, for the labeling of older prescription drugs not subject to the revised format and content requirements.

Section 201.57(a) requires that prescription drug labeling for new and more recently approved prescription drug products include ''Highlights of Prescribing Information.'' Highlights provides a concise extract of the most important information required under § 201.57(c) (the Full Prescribing Information (FPI)), as well as certain additional information important to prescribers. Section 201.57(b) requires a table of contents to prescribing information, entitled ''Full Prescribing Information: Contents,'' consisting of a list of each heading and subheading along with its identifying number to facilitate health care practitioners' use of labeling information. Section 201.57(c) specifies the contents of the FPI. Section 201.57(d) mandates the minimum specifications for the format of prescription drug labeling and establishes minimum requirements for key graphic elements such as bold type, bullet points, type size, and spacing.

Older drugs not subject to the revised labeling content and format requirements in § 201.57 remain subject to labeling requirements at § 201.80 (in the final rule, former § 201.57 was redesignated as § 201.80). Section 201.80(f)(2) requires that within 1 year, any FDA-approved patient labeling be referenced in the ''Precautions'' section of the labeling of older products and either accompany or be reprinted immediately following the labeling.

B. Estimates of Reporting Burden

The PRA information collection analysis in the final rule (71 FR 3922 at 3964 to 3967) (currently approved under OMB Control Number 0910–0572) estimated the reporting burden for a multi-year period. We are requesting that OMB extend approval for the information in this collection, as described below, which continue to be submitted to FDA during this multi-year period.

Annual Burden for Prescription Drug Labeling Design, Testing, and Submitting to FDA for New Drug Applications (NDAs) and Biologics License Applications (BLAs) (§§ 201.56 and 201.57) (Table 1)

New drug product applicants must: (1) Design and create prescription drug labeling containing Highlights, Contents, and FPI, (2) test the designed labeling (e.g., to ensure that the designed labeling fits into carton-enclosed products), and (3) submit it to FDA for approval. Based on the projected data estimated in the final rule, FDA estimates that it takes applicants approximately 3,349 hours to design, test, and submit prescription drug labeling to FDA as part of an NDA or BLA under the revised regulations. Approximately 85 applicants submit approximately 107 new applications (NDAs and BLAs) to FDA per year, totaling 358,343 hours.

Burden Associated with Labeling Supplements for Applications Approved Within 5 Years Prior to the Effective Date of the Rule (§ 201.57) (Table 2)

The final rule required that prescription drug applications approved during the 5 years before, or pending on, the effective date conform to format and content requirements at § 201.57. For these products, applicants must redesign and negotiate the labeling, including Highlights and Contents, test the redesigned labeling, and prepare and submit that labeling to FDA for approval. Based on the projected data estimated in the final rule, labeling supplements for a total of approximately 344 innovator products are expected to be submitted to FDA over a 5-year period (beginning in year 3 and ending in year 7 after the effective date of the final rule). Approximately 172 applicants submit these labeling supplements, and the time required for redesigning, testing, and submitting the labeling to FDA is approximately 196 hours per application, totaling 67,424 hours.

Burden Associated with Revised Labeling Efficacy Supplements Submitted on or After the Effective Date of the Rule (§§ 201.56(d) and 201.57) (Table 2)

Efficacy supplemental applications for older drugs submitted to FDA on or after the effective date of the final rule are subject to the content and format requirements of §§ 201.56(d) and 201.57. To meet these requirements, applicants must revise the existing labeling for these products. Each year an increasing number of innovator drug labeling will have been revised, and over time, very few efficacy supplements independently will generate labeling revisions. Based on the projected data estimated in the final rule, the number of affected efficacy supplements over 10 years, beginning with year 3, is 186, with a decreasing number each year over the period. Approximately 172 applicants will

trigger approximately 186 efficacy supplements, each one requiring approximately 196 hours to revise the labeling in the application, totaling 36,456 hours. (As stated in the final rule, in addition to this burden, a minimal annual reporting burden (fewer than 7) will continue indefinitely).

Burden Associated with Revised Labeling for Efficacy Supplements for Generic Drug Products (§ 201.57) (Table 2)

Based on the projected data estimated in the final rule, beginning in year 3 and continuing throughout the 10-year period analyzed, approximately 42 generic applicants per year must submit labeling supplements. Approximately 336 already approved generic drug applications must submit labeling supplements over the 10-year period after the effective date of the rule. The time required to revise and submit this labeling to FDA is approximately 27 hours per application, totaling 9,072 hours. (As stated in the final rule, in addition to this burden, a minimal annual reporting burden associated with a very small number of generic applications referencing older drugs may continue indefinitely).

C. Capital Costs

As discussed in the final rule, a small number of carton-enclosed products may require new packaging to accommodate longer inserts. As many as 5 percent of the existing products affected by the final rule (i.e., products with new efficacy supplements, products approved in the 5 years prior to the effective date of the rule, and affected abbreviated new drug applications) may require equipment changes at an estimated cost of $200,000 each product.

In the **Federal Register** of September 29, 2008 (73 FR 56592), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received relating to the paperwork.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR NEW DRUG APPLICATIONS[1]

Category (21 CFR Section)	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Annual Burden for Labeling Requirements in §§ 201.56 and 201.57	85	1.26	107	3,349	358,343
Total					358,343

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDENS FOR LABELING REVISIONS TO ALREADY-APPROVED DRUG PRODUCTS[1]

Category (21 CFR Section)	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Burden associated with revised labeling for applications approved within 5 years prior to June 30, 2006 (§ 201.57)	172	2	344	196	67,424
Burden associated with revised labeling for efficacy supplements submitted on or after June 30, 2006 (§§ 201.56(d) and 201.57)	172	1.08	186	196	36,456
Burden associated with revised labeling for efficacy supplements for generic drug products (§ 201.57)	42	8	336	27	9,072
Total					112,952

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 24, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–175 Filed 1–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0657]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on

the information collection provisions of the guidance document entitled ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use.''

DATES: Submit written or electronic comments on the collection of information by March 10, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use (OMB Control Number 0910–0583—Extension)

Since May 29, 1992, when FDA issued a policy statement on foods derived from new plant varieties, FDA has encouraged developers of new plant varieties, including those varieties that are developed through biotechnology, to consult with FDA early in the development process to discuss possible scientific and regulatory issues that might arise (57 FR 22984). The guidance entitled ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use'' continues to foster early communication by encouraging developers to submit to FDA their evaluation of the food safety of their new protein. Such communication helps to ensure that any potential food safety issues regarding a new protein in a new plant variety are resolved early in development, prior to any possible inadvertent introduction into the food supply of material from that plant variety.

FDA believes that any food safety concern related to such material entering the food supply would be limited to the potential that a new protein in food from the plant variety could cause an allergic reaction in susceptible individuals or could be a toxin. The guidance describes the procedures for early food safety evaluation of new proteins in new plant varieties, including bioengineered food plants, and the procedures for communicating with FDA about the safety evaluation.

The respondents to this collection of information are developers of new plant varieties intended for food use.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
First four data components	20	1	20	4	80
Two other data components	20	1	20	16	320
Total					400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates the annual total hour burden for this collection of information to be 400 hours. This estimate is based on early food safety evaluations submitted in the past 3 years. FDA's estimate of the time that it would take a respondent to prepare the data components of the early food safety evaluation submission is based on the agency's experience with similar submissions.

Completing an early food safety evaluation for a new protein from a new plant variety is a one-time burden (one evaluation per new protein). Based on its experience over the past 3 years, FDA estimates that approximately 20 developers will choose to complete an early food safety evaluation for their new plant protein. Many developers of novel plants may choose not to submit an evaluation because the field testing of a plant containing a new protein is conducted in such a way (e.g., on such a small scale, or in such isolated conditions, etc.) that cross-pollination with traditional crops or commingling of plant material is not likely to be an issue. Also, other developers may have previously communicated with FDA about the food safety of a new plant protein, for example, when the same protein was expressed in a different crop.

The early food safety evaluation for new proteins includes six main data components. Four of these data components are easily and quickly obtainable, having to do with the identity and source of the protein. FDA estimates that completing these data components will take about 4 hours per

evaluation. In table 1 of this document, row 1 shows that for 20 evaluations, the total burden for these 4 data components is 80 hours.

Two data components ask for original data to be generated. One data component consists of a bioinformatics analysis which can be performed using publicly available databases. The other data component involves ''wet'' lab work to assess the new protein's stability and the resistance of the protein to enzymatic degradation using appropriate in vitro assays (protein digestibility study). The paperwork burden of these two data components consists of the time it takes the company to assemble the information on these two data components to submit to FDA. We estimate that these two data components will take 16 hours to complete (8 hours for each component). In table 1 of this document, row 2 shows that for 20 evaluations, the total burden for these two data components is 320 hours.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–213 Filed 1–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0081] (formerly Docket No. 2006D–0297)

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex on Test for Extractable Volume of Parenteral Preparations General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 2: Test for Extractable Volume of Parenteral Preparations General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Test for Extractable Volume of Parenteral Preparations General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health

Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of December 17, 2007 (72 FR 71417), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 2: Test for Extractable Volume of Parenteral Preparations General Chapter.'' The notice gave interested persons an opportunity to submit comments by February 15, 2008.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 2: Test for Extractable Volume of Parenteral Preparations General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in June 2008.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Test for Extractable Volume of Parenteral Preparations General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: December 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–155 Filed 1–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0306] (formerly Docket No. 2007D–0459)

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex on Test for Particulate Contamination: Subvisible Particles General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 3: Test for Particulate Contamination: Subvisible Particles General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Test for Particulate Contamination: Subvisible Particles General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or

Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–1), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

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SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of December 17, 2007 (72 FR 71416), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 3: Test for Particulate Contamination: Subvisible Particles General Chapter.'' The notice gave interested persons an opportunity to submit comments by February 15, 2008.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 3: Test for Particulate Contamination: Subvisible Particles General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in June 2008.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Test for Particulate Contamination: Subvisible Particles General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/guidelines.htm*.

Dated: December 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–214 Filed 1–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov and http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug

Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016. (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc. A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891 x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521 (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory will be voluntarily withdrawing from the NLCP on January 9, 2009:

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E9–176 Filed 1–8–09; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2462–08; DHS Docket No. USCIS–2008–0076]

RIN 1615–ZA80

Change in Filing Location for EB–5-Related Petitions and Applications and Regional Center Proposals

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This Notice announces the requirement that petitions and applications related to the Alien Entrepreneur (EB–5) immigrant classification, and Regional Center Proposals under the EB–5 Immigrant Investor Pilot Program, must be filed at the California Service Center (CSC). Currently, EB–5-related petitions and applications are filed at either the Texas Service Center (TSC) or the CSC, depending on where the alien's commercial enterprise is located. Regional center proposals are being submitted to the Chief of USCIS Service Centers at USCIS Headquarters. The change to one filing location for EB–5-related petitions, applications, and regional center proposals announced by this Notice is necessary to improve the efficiency in the processing of EB–5-related filings.

DATES: This Notice is effective January 26, 2009 for the filing of Forms I–526, I–829, and Forms I–485 based on an approved Form I–526. This Notice is effective January 26, 2009 for the filing of Regional Center Proposals under the Immigrant Investor Pilot Program.

FOR FURTHER INFORMATION CONTACT: Joseph P. Whalen, Adjudications Officer, Service Center Operations, EB–5 Investor Program, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–8355.

SUPPLEMENTARY INFORMATION:

I. Background

A. EB–5 Immigrant Classification

The employment creation immigrant classification (referred to as the ''Employment Based (EB–5)'' immigrant classification) allows qualifying aliens, and any accompanying spouses and children, to obtain lawful permanent resident (LPR) status if the qualifying aliens have invested, or are actively in the process of investing, $1 million in a new commercial enterprise. *See* Immigration and Nationality Act (INA) secs. 203(b)(5)(A) and (C), 8 U.S.C. 1153(b)(5)(A) and (C). Their investment must benefit the U.S. economy and create full-time jobs for 10 or more qualifying employees. INA sec. 203(b)(5)(A)(ii), 8 U.S.C. 1153(B)(5)(A)(ii). If the investment is in a rural area or an area that has experienced high unemployment (referred to as ''Targeted Employment Area''), the required capital investment amount is $500,000 rather than $1 million. INA sec. 203(b)(5)(C)(ii), 8 U.S.C. 1153(b)(5)(C)(ii); 8 CFR 204.6(f)(2). Also, under the Immigrant Investor Pilot Program, qualifying aliens may meet the job creation requirement through the creation of 10 indirect jobs. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, sec. 610(c), Public Law 102–395, 106 Stat. 1874 (1992), 8 U.S.C. 1153 note. To qualify for the relaxed job creation requirement, an alien must invest in a new commercial enterprise that is located in a geographical region of the United States covered by a ''regional center'' (defined in 8 CFR 204.6(e)) approved by USCIS for participation in the pilot program. This pilot program is set to expire on March 6, 2009. *See* Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Div. A, sec. 144, Public Law 110–329, 122 Stat. 3574, 3581 (2008). USCIS approves a regional center based on the submission of a proposal which successfully:

- Describes how the regional center will promote economic growth in a particular geographical region of the United States;
- Describes how jobs will be indirectly created;
- Specifies the amount and source of capital committed to the regional center;
- Describes the manner in which the regional center will have a positive impact on the economy; and is
- Supported by economically or statistically valid forecasting tools. 8 CFR 204.6(m)(3).

Obtaining LPR status under the EB–5 immigrant classification is a three step process, as follows:

(1) The alien must first be classified as an alien entrepreneur. This step requires the alien to obtain an approval of a Form I–526, ''Immigrant Petition by Alien Entrepreneur.'' *See* 8 CFR 204.6(a).

(2) The alien then applies to become a conditional resident on the basis of the approved Form I–526 petition. If the alien resides in the United States, he or she must obtain a grant of a Form I–485, ''Application to Register Permanent Residence or Adjust Status'' from USCIS to become a conditional resident. *See* 8 CFR 245.1(a). If the alien resides outside of the United States, he or she must obtain an immigrant visa issued by the Department of State (DOS) and gain admission to the United States on this basis. Foreign Affairs Manual 9 FAM 42.32(e) N12. After completing one of these steps, the alien will obtain conditional resident status. INA section 216A(f)(1), 8 U.S.C. 1186b(f)(1).

(3) The last step to obtaining LPR status is triggered 90 days before the second anniversary of the alien entrepreneur's conditional resident status. INA section 216A(d)(2), 8 U.S.C. 1186b(d)(2). During this 90-day period, the alien entrepreneur must submit to

USCIS a Form I–829, ''Petition by Entrepreneur to Remove Conditions.'' 8 CFR 216.6(a)(1). Failure to timely submit Form I–829 or to obtain a removal of conditions may result in termination of conditional resident status and USCIS taking action to place the alien and accompanying dependents in removal proceedings. 8 CFR 216.6(a)(5).

B. Filing Locations

The regulations provide that EB–5 petitions (Forms I–526 and I–829) must be filed with the service center having jurisdiction over the area in which the new commercial enterprise is or will be principally doing business. 8 CFR 204.6(b); 8 CFR 216.6(a)(2). Currently, the Texas and California Service Centers have jurisdiction to adjudicate EB–5 I–526 and I–829 petitions. 63 FR 67135 (Dec. 4, 1998). EB–5-related Forms I–485 must be filed at Texas Service Center (TSC), regardless of where the alien resides. *See* Instructions to Form I–485, p. 6.

For proposals submitted by regional centers under the Immigrant Investor Pilot Program, the regulations provide that proposals must be submitted to the ''Assistant Commissioner for Adjudications,'' a position held at the Headquarters of the former Immigration and Naturalization Service (INS). However, this position was rendered obsolete following the abolishment of INS in March 2003. *See* 6 U.S.C. 291; Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002). No parallel position is present in USCIS. In the absence of further guidance, regional centers wishing to participate in the Immigrant Investor Pilot Program have been submitting their proposals to the Chief of Service Center Operations.

In an effort to improve the consistency and timeliness of EB–5-related adjudications, USCIS has determined that it is necessary to consolidate such adjudications under the jurisdiction of the CSC. USCIS has established a unit at the CSC comprised of specially-trained adjudicators dedicated to EB–5 adjudications. The deciding official will be the Director of the CSC. By consolidating adjudications at the CSC, USCIS believes that it will be able to reduce overall processing times and better monitor EB–5-related adjudications.

II. Filing Location Change

Beginning on January 26, 2009, Forms I–526, I–829, and I–485 (EB–5-related only), and regional center proposals under the Immigrant Investor Pilot Program must by filed at the following address:

For Direct Mail:

U.S. Citizenship and Immigration Services, California Service Center, ATTN: EB–5 Processing Unit, P.O. Box 10526, Laguna Niguel, CA 92607–0526.

For non-United States Postal Service (USPS) deliveries (e.g. private couriers): U.S. Citizenship and Immigration Services, California Service Center, ATTN: EB–5 Processing Unit, 24000 Avila Road, Room, 2nd Floor, Laguna Niguel, CA 92677.

For a 30-day period, until February 9, 2009, Forms I–526, I–829, and I–485 (EB–5-related only) received by the TSC will be considered properly filed, assuming all other filing requirements have been met. The TSC will transfer such forms to the CSC for adjudication. Likewise, for a 30-day period, until February 9, 2009, Immigrant Investor Pilot Program regional center proposals received by USCIS Headquarters will be considered properly filed. Such proposals will be transferred to the CSC for adjudication. After the 30-day transition periods, any Forms I–526, I–829, and I–485 (EB–5-related only) or regional center proposals that are received at a location other than the address specified in this Notice will be rejected and returned with directions to re-file at the appropriate address.

Any Forms I–526, I–829, and I–485 (EB–5-related only) at the TSC for which no adjudicative action has commenced as of January 26, 2009 will be forwarded to the CSC. In addition, any regional center proposals for which no adjudicative action has commenced as of January 26, 2009 will be forwarded to the CSC.

III. Paperwork Reduction Act

USCIS is amending the instructions to the Forms I–485, I–526 and I–829 to reflect the new filing location. Accordingly, USCIS has submitted Information Correction Worksheets (OMB 83–C) to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The instruction changes will not impose any new reporting or recordkeeping requirements. The OMB control number for these collections are contained in 8 CFR 299.5, Display of control numbers.

Dated: January 5, 2009.

Michael Aytes,

Acting Deputy Director, U.S. Citizenship and Immigration Services.

[FR Doc. E9–231 Filed 1–8–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–01]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

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

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 30, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–31391 Filed 1–8–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0337; 20124–11130000–C4]

Endangered and Threatened Wildlife and Plants; Mexican Wolf (Canis lupus baileyi) Conservation Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; draft conservation assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the

availability of the Draft Mexican Wolf Conservation Assessment (draft assessment) for public review and comment. The draft assessment provides scientific information relevant to the conservation of the Mexican wolf (*Canis lupus baileyi*) in Arizona and New Mexico as a component of the Service's gray wolf (*Canis lupus*) recovery efforts. Not required by the Endangered Species Act (Act), the draft assessment is a non-regulatory document that does not require action by any party. We solicit review and comment from the public on this document.

DATES: To ensure consideration, we must receive any comments from interested parties no later than March 10, 2009.

ADDRESSES: You may obtain a paper or electronic copy of the draft assessment by contacting John Slown, Biologist, New Mexico Ecological Services Field Office, 2105 Osuna, NE., Albuquerque, NM 87113; telephone: 505/761–4782, facsimile 505/346–2542, e-mail: *John_Slown@fws.gov*. The draft assessment is also available online at: *http://www.fws.gov/southwest/es/mexicanwolf/*.

You may submit written comments on the draft assessment by any one of the following means: (1) By U.S. mail to John Slown at the Albuquerque address above; (2) by fax to the number above, or (3) e-mail to *mexwolfdca@fws.gov*. We must receive comments by the date in **DATES**.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for more information on the draft assessment to John Slown, Biologist, at the Albuquerque address above; telephone: 505/761–4782.

SUPPLEMENTARY INFORMATION: We announce the availability of the Draft Mexican Wolf Conservation Assessment (draft assessment) for public review and comment. The draft assessment provides scientific information relevant to the conservation of the Mexican wolf (*Canis lupus baileyi*) in Arizona and New Mexico as a component of the Service's gray wolf (*Canis lupus*) recovery efforts. Not required by the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Act) the draft assessment is a non-regulatory document that does not require action by any party. We solicit review and comment from the public on this document.

Listed Entity

The Mexican wolf was listed as an endangered subspecies of gray wolf in 1976 (41 FR 17736, April 28, 1976). In 1978, the Service listed the gray wolf species in North America south of Canada as endangered, except in Minnesota where it was listed as threatened (43 FR 9607, March 9, 1978). The 1978 rangewide listing of the gray wolf species subsumed the subspecies listing; however, the preamble to the rule continued to recognize the Mexican wolf as a valid biological subspecies for purposes of research and conservation (43 FR 9607). After the 1978 listing of the gray wolf in the U.S. Code of Federal Regulations (CFR), the 50 CFR 17.11(h) List of Endangered and Threatened Wildlife did not explicitly refer to an entity called the ''Mexican wolf.'' Due to the Mexican wolf's previous listed status as a subspecies, we have continued to refer to the gray wolf in the southwestern United States as the ''Mexican wolf.'' Today, the gray wolf is listed as threatened in the Great Lakes and remains endangered throughout the coterminous United States and Mexico, except where designated as non-essential experimental populations (59 FR 60266, November 22, 1994, and 63 FR 1752, January 12, 1998).

Background

The conservation and recovery of species is one of the primary goals of our endangered species program. The Mexican wolf historically inhabited the southwestern United States and portions of Mexico until it was virtually eliminated in the wild by private and governmental predator eradication efforts in the late 1800s and early to mid-1900s. Conservation and recovery efforts to ensure the survival of the Mexican wolf were initially guided by the 1982 Mexican Wolf Recovery Plan (U.S. Fish and Wildlife Service 1982) (recovery plan), which recommended the establishment of a captive breeding program and the reintroduction of Mexican wolves to the wild. Both of these recommendations have been implemented, and today an international captive breeding program houses more than 300 wolves, and a wild population of approximately 52 wolves (as of the official 2007 end-of-year count) inhabits Arizona and New Mexico.

Although the 1982 recovery plan was instrumental in guiding the inception of the Mexican wolf program in the Southwest, the plan requires updating to provide current guidance for the reintroduction and recovery effort. We have initiated revisions to the 1982 plan, but have been unable to finalize a revision due to various logistical constraints. We are working to resolve these constraints to reinitiate a full revision of the recovery plan, and are undertaking this conservation assessment as an interim step.

The draft assessment provides the type of information typically contained in a recovery plan, including the listing history of the Mexican wolf and gray wolf, current species' biology and ecology, an assessment of current threats to the Mexican wolf in the wild, and an overview and assessment of current conservation and recovery efforts. However, the draft assessment is not intended to serve as a revised recovery plan for the Mexican wolf. The assessment does not contain recovery criteria, site-specific management actions, or time and cost estimates, the three statutorily required elements of a recovery plan (16 U.S.C. 1533(f)(1)(B)), nor does it contain recommendations for the future of our Mexican wolf program in the Southwest. Social and economic aspects of wolf conservation are not addressed in the document. It is a non-regulatory document intended solely as a compilation of current scientific information relevant to Mexican wolf conservation that may be used by any interested party. We intend to use the document as one of many information sources guiding our continuing conservation and recovery efforts in the Southwest.

Public Comments Solicited

We seek public comments on the draft assessment. General comments in support of or against wolf recovery or reintroduction are not solicited at this time. All comments and information we receive by the date specified in **DATES** will be considered prior to the approval of the final Mexican Wolf Conservation Assessment. Concurrent with public review, the Service is soliciting peer review of the draft assessment from persons with expertise in wolf conservation and related disciplines. All comments, including names and addresses, will become part of the supporting record.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials received will be available for public inspection, by appointment, during normal business hours at New Mexico Ecological Services Field Office in Albuquerque, New Mexico (*see* **ADDRESSES**).

If you wish to provide comments and/or information, you may submit your comments and materials by any one of several methods (*see* **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include ''Attn: Draft Conservation Assessment,'' your full name, and your return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly by calling our New Mexico Ecological Services Field Office (*see* **ADDRESSES**).

References

All literature referenced in the draft assessment is available for viewing, by appointment, at New Mexico Ecological Services Field Office during normal business hours (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2008.

Nancy J. Gloman,

Acting Regional Director, Region 2.

[FR Doc. E9–298 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0314; 40136–1265–0000–S3]

Atchafalaya National Wildlife Refuge, St. Martin and Iberville Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Atchafalaya National Wildlife Refuge (NWR). We provide this notice in compliance with our CCP policy to advise other agencies, tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by February 23, 2009. A public meeting will be held during the scoping phase of the CCP development process. The date, time, and place for the meeting will be announced in the local media.

ADDRESSES: Comments, questions, and requests for information should be sent to: Tina Chouinard, Natural Resource Planner, Hatchie National Wildlife Refuge, 6772 Highway 76 South, Stanton, Tennessee 38069.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Natural Resource Planner; Telephone: 731/780–8208; Fax: 731/772–7839; E-mail: *tina_chouinard@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Atchafalaya NWR in St. Martin and Iberville Parishes, Louisiana.

This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing to the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System is established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for State, Tribal, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Atchafalaya NWR. Special mailings, newspaper articles, and other media outlets will be used to announce opportunities for input throughout the planning process.

We will conduct the environmental assessment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Atchafalaya NWR is located in the lower Atchafalaya Floodway in St. Martin and Iberville Parishes, Louisiana. The name originated from its location within the Atchafalaya River Basin. Atchafalaya NWR is bounded on the north by U.S. Highway 190, on the south by Interstate 10, on the west by the Atchafalaya River, and on the east by the East Atchafalaya Protection Levee. Atchafalaya NWR is part of the Southeast Louisiana NWR Complex.

The Atchafalaya River Basin, located in south-central Louisiana, is a natural alluvial flood plain of the Atchafalaya River. The Atchafalaya River headwaters begin at Old River near Simmesport and flow to the Gulf of Mexico 140 miles to the south.

In order to provide for safe passage of major floods in the lower Mississippi River system below Old River, the Army Corps of Engineers (Corps) modified a portion of the natural Atchafalaya River Basin to convey flood water in excess of the capacity of the levied Mississippi River. The Atchafalaya River Basin Floodway was formed by constructing protection levees to the east, west, and parallel to the Atchafalaya River channel. In addition to the Atchafalaya River, two artificial intakes, the Morganza Floodway and the West Atchafalaya Floodway, have been provided to divert excess flood waters of

the levied river channels into the Atchafalaya River Basin. The Atchafalaya River Basin Floodway is 65 miles long, 15 miles wide, and lies on either side of the Atchafalaya River from Krotz Springs, Louisiana, to Morgan City, Louisiana. This floodway is a southern extension of the Morganza and West Atchafalaya Floodways at the lower end of the Atchafalaya River Basin. Flow is discharged into the Atchafalaya Bay and Gulf of Mexico through the lower Atchafalaya River at Morgan City and through an artificial channel (known as the Wax Lake Outlet) about 10 miles west of Morgan City.

The Atchafalaya River Basin has been described as the greatest river swamp in the United States. It encompasses more than one-half million acres of wetlands that may produce as much wildlife as any area in the country. The basin provides habitat for a diversity of wildlife species. Its waters also support a tremendous sport and commercial fisheries' resource.

For years there was dispute over the conservation of the basin. Flood control, agriculture, energy development, recreation, and other interests in the basin were difficult to reconcile. All parties involved developed an agreement to resolve the major disputes. The agreement, which is incorporated in a feasibility study developed by the Corps for the basin, calls for specific flood control measures, water flow rates, and the purchase of flowage and conservation easements designed to keep the basin in a natural state, while providing navigation and flood protection for surrounding communities.

The agreement also calls for the acquisition and management of 90,000 acres within the basin for public access. The Dow Chemical Company donated 40,000 acres. The acquisition of the remaining 50,000 acres is to be split between the State of Louisiana and the Federal Government.

The Louisiana Department of Wildlife and Fisheries (LDWF) purchased 11,780 acres on September 13, 1983, and created the Sherburne Wildlife Management Area. In the 1984 Supplemental Appropriations Act (Pub. L. 98–396) passed by Congress and signed into law by President Reagan, a total of $10 million from the Land and Water Conservation Fund was appropriated to the Service to acquire lands and waters in the Atchafalaya River Basin in accordance with statutory authority applicable to the Fish and Wildlife Act of 1956. The land was purchased from the Iberville Land Company.

Atchafalaya NWR was established in 1986, when 15,220 acres in the basin, as directed by Public Law 98–548, were purchased. Since 1989, the Corps has purchased 37,000 acres of fee title land adjacent to and within the Atchafalaya NWR, which brought the current acreage among all three agencies to 64,000. The Corps is in the process of purchasing more land to add to the system.

Under the Cooperative Agreement (Contract No. 14–16–0004–86–946), all of the public access lands are managed by the LDWF. Since the Federal and State lands share common boundaries, LDWF technical and field personnel manage the wildlife on both the wildlife management area and the refuge. Service personnel are responsible for all forest management and issuance of special use permits.

Approximately 12 percent of the refuge is inundated open water, with isolated cypress trees and willow stands. Bottomland hardwood forest is the primary habitat. Self-guided tours can be accessed by auto, boat, or foot. Traditional use of the area is hunting, which follows the State's annual season dates and specific regulations. Camping is allowed nearby on the State's Sherburne Wildlife Management Area.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: December 5, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E9–186 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a proposed new information collection and request for comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB a new information collection request (ICR) for approval of the paperwork requirements for the Study on Arsenic and Uranium in Bedrock Wells of East Central Massachusetts (MASSWELL).

DATES: You must submit comments on or before February 9, 2009.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of Interior via e-mail [*OIRA_DOCKET@omb.eop.gov*]; or fax (202)395–6566; and identify your submission as 1028–NEW. Please also submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970)226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW, MASSWELL in the subject line.

FOR FURTHER INFORMATION PLEASE CONTACT: John A. Colman, U.S. Geological Survey, 10 Bearfoot Road, Northborough, Massachusetts 01532 (mail); at 508–490–5027 (telephone); or *jacolman@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: *Title:* Study on Arsenic and Uranium in Bedrock Wells of East Central Massachusetts.

OMB Control Number: 1028–NEW.

Abstract: The U.S. Geological Survey (USGS) and the Massachusetts Department of Environmental Protection (MDEP) are conducting the study with assistance of staff from the Massachusetts Department of Public Health, Bureau of Environmental Health (MDPH/BEH) to assess: (1) The number of private wells containing raw-water concentrations of arsenic or uranium that are greater than the current drinking water standards and (2) the degree to which bedrock units can be associated with concentrations of uranium and arsenic. This information will help guide future water-supply development and well-water testing. It will tell local health officials where the areas of concern are in their communities, and provide background concentrations by rock type for use in identifying contamination from human sources.

We will protect information from respondents considered proprietary

under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Affected Public: Individual and household residents.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time collection.

Estimated Number and Description of Respondents: 1000 private well owners in East Central Massachusetts.

Estimated Number of Annual Responses: 800.

Estimated Annual Burden Hours: Approximately 133 hours.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: In the August 27, 2008 FR Notice (73 FR 50641) we estimated that the time to take the survey and collect the water sample would be 30 minutes. Based on peer-reviewer comments we have revised the estimated burden for this collection to be approximately 5 minutes to take the survey and 5 minutes to locate and collect the water needed for the sample. The total estimate is now 10 minutes per response.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

USGS Information Collection Clearance Officer: Phadrea D. Ponds 970–226–9445.

Dated: December 3, 2008.

Peter K. Weiskel,

Associate Director, USGS Massachusetts-Rhode Island Water Science Center.

[FR Doc. E9–180 Filed 1–8–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Renewal of Information Collection for Tribal Self-Governance, 25 CFR Part 1000

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of information collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments from the public on a renewal of an information collection from Indian tribes participating in and Indian tribes seeking to participate in the Tribal Self-Governance, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number, 1076–0143, will be used to meet reporting requirements of the Tribal Self-Governance Act and implement requirements for entry into a pool of qualified applicants to be selected to begin participation in Tribal Self-Governance. The information collection requirements are periodically reviewed because the number of Indian tribes participating in Tribal Self-Governance increases over time and the number of Indian tribes requesting to be selected to begin participation in Tribal Self-Governance may vary over time. This action is being taken to make sure that the requirements are not burdensome.

DATE: Submit comments on or before March 10, 2009.

ADDRESSES: Send comments to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355–G–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: The collection is required by 25 U.S.C. 458dd, which requires the Secretary of the Interior to submit a written report to Congress regarding the administration of Title IV, Tribal Self-Governance, under Public Law 93–638, as amended. The report is required to: (1) Identify the relative costs and benefits of Self-Governance; (2) identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance tribes and their members; (3) identify the funds transferred to each Self-Governance tribe and the corresponding reduction in the Federal bureaucracy; (4) include the separate views of the tribes; and (5) include the funding formula for individual tribal shares of Central Office funds, together with the comments of affected Indian tribes. Respondents are asked to respond to the annual request for information in 90 days.

In addition, the collection is required for tribes who request to be placed in a pool of qualified applicants and selected to participate in Tribal Self-Governance under 25 U.S.C. 458bb. The Act authorizes the Director, Office of Self-Governance to select up to 50 new tribes per year from an applicant pool to participate in Tribal Self-Governance. The qualified applicant pool consists of each tribe that: (1) Successfully completes a planning phase; (2) has requested participation in Tribal Self-Governance by resolution or other official action by the tribal governing body; and (3) has demonstrated, for the previous three fiscal years, financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in the required annual audit of the self-determination contracts of the tribe.

Request for Comments: The Bureau of Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 355–G, during the hours of 9 a.m.–5 p.m., EST Monday through Friday

except for legal holidays. Please note that all comments received will be available for public review for 2 weeks after comment period closes. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0143.

Type of review: Renewal.

Title: Tribal Self-Governance Program, 25 CFR Part 1000.

Brief Description of Collection: The collection involves a voluntary submission by respondents and is intended to inform Congress of activities undertaken under Tribal Self-Governance. It also involves a mandatory submission by respondents who request to be selected to begin participation in Tribal Self-Governance.

Respondents: Tribes and tribal consortia wishing to enter into a self-governance compact and funding agreement.

Number of Respondents: 106.

Estimated Time per Response: 42 Hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 11,202.

Dated: December 17, 2008.

Sanjeev "Sonny" Bhagowalia,

Chief Information Officer—Indian Affairs.

[FR Doc. E9–169 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2010 or Calendar Year 2010

AGENCY: Office of Self-Governance, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 2, 2009, deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2010 or calendar year 2010.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 2, 2009.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355–G–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

25 CFR parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2010 and calendar year 2010. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2010 or calendar year 2010 must respond to this notice, except for those tribes/consortia which are: (1) Currently involved in negotiations with the Department; (2) one of the 96 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 24, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.

[FR Doc. E9–194 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Muckleshoot Indian Tribe, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Acting Deputy Assistant Secretary for Policy and Economic Development made a final agency determination to acquire approximately 22.00 acres of land into trust for the Muckleshoot Indian Tribe, Washington on December 12, 2008. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1. The duties of the Assistant Secretary—Indian Affairs were delegated to the Acting Deputy Assistant Secretary for Policy and Economic Development on May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirements of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On December 12, 2008, the Acting Deputy Assistant Secretary for Policy and Economic Development decided to accept approximately 22.00 acres of land into trust for the Muckleshoot Indian Tribe, Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 22.00 acres are located within the exterior boundaries of the Muckleshoot Indian

Reservation, Washington. The property will be used for the Muckleshoot Bingo and additional parking for the Muckleshoot Casino.

The Wynn Property is described as follows:

PARCEL A (202105–9021–02)

The West half of the Southeast quarter of the Southwest quarter of Section 20, Township 21 north, Range 5 East, W.M., records of King County, Washington; EXCEPT county road; AND EXCEPT portion taken for state highway.

PARCEL B (292105–9059–08)

That portion of the Northeast quarter of the Northwest quarter, lying northerly of Enumclaw-Franklin-Howard Road, in Section 29, Township 21 North, Range 5 East, W.M., in King County, Washington.

The Casino Parking Lot Property is described as follows:

PARCEL A

The north 97.95 feet of the following described property:

That portion of the west half of the southeast quarter of Section 20, Township 21 north, Range 5 east, W.M., in King County, Washington, described as follows: Beginning at the intersection of a line which is 330 feet northerly of and concentric with the center line of Primary State Highway Number 5 revised, with the east line of the southwest quarter of the southeast quarter of said Section 20; thence northerly along said east line 225 feet; thence west 30 feet to the TRUE POINT OF BEGINNING of the tract herein described; thence continuing west 120 feet; thence north parallel with the east line of said west half of the southeast quarter, 217.95 feet; thence east 120 feet to a point on a line 30 feet west of the east line of said west half of the southeast quarter; thence south 217.95 to the TRUE POINT OF BEGINNING. EXCEPT that portion of any lying within Dogwood Street Southeast.

PARCEL B

That portion of the west half of the southeast quarter of Section 20, Township 21 north, Range 5 east, W.M., in King County, Washington described as follows:

Beginning at the intersection of a line which is 330 feet northerly of and concentric with the center line of Primary State Highway Number 5 revised, with the east line of the southwest quarter of the southeast quarter of said Section 20; thence northerly along said east line 285 feet; thence west 30 feet to the TRUE POINT OF BEGINNING of the tract herein described; thence continuing west 120 feet; thence north parallel with the east line of said west half of the southeast quarter, 60 feet; thence east 120 feet to a point on a line 30 feet west of the east line of said west half of the southeast quarter; thence south 60 feet to the TRUE POINT OF BEGINNING. EXCEPT that portion if any lying within Dogwood Street Southeast.

PARCEL C

That portion of the west half of the southeast quarter of Section 20, Township 21 north, Range 5 east, W.M., in King County, Washington, described as follows:

Beginning at the intersection of a line which is 330 feet northerly of and concentric with the center line of Primary State Highway Number 5 revised, with the east line of the southwest quartet of the southeast quarter of said Section 20; thence northerly along said east line 225 feet; thence west 30 feet to the TRUE POINT OF BEGINNING of the tract herein described; thence continuing west 120 feet; thence north parallel with the east line of said west half of the southeast quarter, 60 feet; thence east 120 feet to a point on a line 30 feet west of the east line of said west half of the southeast quarter; thence south 60 feet to the TRUE POINT OF BEGINNING. EXCEPT that portion if any lying within Dogwood Street Southeast.

PARCEL D

That portion of the southwest quarter of the southeast quarter of Section 20, Township 21 north, Range 5 east, W.M., in King County, Washington, described as follows:

Beginning at the intersection of the west line of the southwest quarter of the southeast quarter of Section 20, Township 21 north, Range 5 east, W.M., in King County, Washington, with the northerly line of Primary State Highway Number 5 Revision, according to the plan on file in the Office of State Highway Department approved June 17, 1941; thence easterly along said northerly line 60 feet; thence north 20°31′ east, perpendicular with the tangent of said highway, 280 feet, more or less, to a line which is concentric with and 330 feet northerly of the center line of said highway; thence easterly along said concentric line to the east line of said southwest quarter of the southeast quarter and the TRUE POINT OF BEGINNING of the tract of land herein described; thence northerly along said east line 225 feet; thence due west 330 feet; thence due south to a line, which is concentric with and 330 feet northerly of the center line of said Primary State Highway No. 5; thence easterly along said concentric line to the TRUE POINT OF BEGINNING; EXCEPT the east 30 feet thereof.

Dated: December 22, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E9–183 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–066–09–1610–DR–024E]

Notice of Availability of the Record of Decision for the Upper Missouri River Breaks National Monument Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) and Approved Resource Management Plan (RMP) for the Upper Missouri River Breaks National Monument located in the Lewistown Field Office, Montana. The Montana State Director signed the ROD, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD and Approved RMP are available upon request from the Field Manager, Lewistown Field Office, Bureau of Land Management, 920 Northeast Main Street, P.O. Box 1160, Lewistown, MT 59457–1160 or via the internet at *http://www.blm.gov/mt/st/en/fo/lewistown_field_office/um_rmp_process.html*.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, Project Manager, Bureau of Land Management, 920 Northeast Main Street, P.O. Box 1160, Lewistown, MT 59457; or by telephone at (406) 538–1924.

SUPPLEMENTARY INFORMATION: The Upper Missouri River Breaks National Monument is located in northcentral Montana in Blaine, Chouteau, Fergus, and Phillips Counties. The planning area addressed in the Approved RMP comprises about 375,000 acres of public land and about 396,000 acres of federal minerals administered by the BLM Lewistown Field Office. The State of Montana and Blaine, Chouteau, Fergus, and Phillips Counties participated in development of the plan as cooperating

agencies. The RMP addressed the following six major questions: (1) How will human activities and uses be managed? (2) What facilities and infrastructure are appropriate to provide visitor interpretation and administration of the Monument? (3) How will the BLM manage resource uses and protect the biological, historical, cultural, and visual values of the Monument? (4) How will Monument management be integrated with other agency and community plans? (5) How will transportation and access be managed? (6) How will Monument management affect economic and social conditions in the area?

The Approved RMP was prepared under the authorities of the Federal Land Policy and Management Act (FLPMA) of 1976 and the National Environmental Policy Act (NEPA) of 1969. The Approved RMP is nearly identical to the Proposed Plan (Alternative F) presented in the 2008 Proposed RMP/Final EIS. All decisions covered by the ROD are either land use planning decisions that were protestable under the planning regulations (43 CFR part 1610), or implementation decisions that are now appealable under the regulations discussed below.

The BLM received 45 protest letters during the 30-day protest period provided for the Proposed RMP/Final EIS in accordance with 43 CFR 1610.5–2. In response to the protests, the BLM Director decided to prohibit the personal collection of invertebrate fossils, petrified wood, and plant material except that managers and staff shall facilitate access to public lands for the purposes of Native American religious and traditional uses, such as gathering natural resources (BLM Manual 8120—Tribal Consultation under Cultural Resources .06.D. The Director also clarified the decision to carry forward the Cow Creek ACEC designation, adopted by reference the new transportation management terminology in Washington Office IM 2006–173, and made a few other minor adjustments and corrections. All of these changes are identified in the Modifications and Clarifications section of the ROD.

The Governor of the State of Montana, in his letter dated March 31, 2008, recommended six changes to the plan but did not identify any inconsistencies between the Proposed RMP and officially approved or adopted state or local plans, policies, and/or programs. All of the recommendations were considered previously in the public process and development of the Proposed RMP.

The following decisions are subject to a separate appeals process: (1) All road designations; (2) all backcountry airstrip designations; (3) limiting the group to 20 boaters launching from Coal Banks or Judith Landing from June 15 to August 1; (4) the 2-night camping limit at Level 2 sites from June 15 to August 1, and (5) the motorized watercraft restrictions on the Upper Missouri National Wild and Scenic River. These decisions are implementation decisions and are appealable under 43 CFR part 4, subpart E. They are contained in the section Decisions Subject to a Separate Appeals Process of the ROD. Any party adversely affected by these five decisions may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal should state the specific road, airstrip, and/or river segment, as identified in the Record of Decision and Approved RMP, on which the decision is being appealed. The appeal must be filed with the Lewistown Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Authority: 43 U.S.C. 1712; 42 U.S.C 4332.

Gene R. Terland,

Montana State Director.

[FR Doc. E9–228 Filed 1–8–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan and Environmental Impact Statement, Tumacacori National Historical Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan (GMP), Tumacacori National Historical Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is preparing an environmental impact statement for a general management plan for Tumacacori National Historical Park, Arizona. The environmental impact statement will be approved by the Director, Intermountain Region.

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the park over the next 15 to 20 years.

The clarification of what must be achieved according to law and policy will be based on review of the park's purpose, significance, special mandates, and the body of laws and policies directing park management. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, and development that would be appropriate in the future. A range of reasonable management alternatives will be developed through this planning process and will include, at a minimum, a no-action and a preferred alternative.

The NPS is required to prepare a GMP for all NPS units. A GMP was completed for the park in 1996, but it does not address the lands added to the park in 2002 or current NPS park planning standards or NPS management policies.

Issues to be addressed will include but are not limited to the following: The management of lands added to the park in 2002, as well as visitor use, facilities, access, interpretation, natural and cultural resources, and park operations in the park as a whole.

A scoping newsletter will be prepared that describes the issues identified to date. Copies of the newsletter may be obtained in April at the Tumacacori National Historical Park Visitor Center 1891 East Frontage Road, Tumacacori, Arizona 85640, Phone: 520–398–2341, the park Web site *http://www.nps.gov/tuma,* or on the Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/tuma.*

DATES: Any comments on the scope of issues to be addressed in the plan should be submitted no later than 120 days after publication of this notice. In addition to the newsletter, public meetings regarding the general management plan will be held during the scoping period. Specific dates, times, and locations will be made available in the local media, on the National Park Service Planning, Environment, and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/tuma*), or by contacting the Superintendent of Tumacacori National Historical Park.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov/tuma,* at the Tumacacori National Historical Park Visitor Center, 1891 East Frontage Road, Tumacacori, Arizona 85640, Phone: 520–398–2341.

FOR FURTHER INFORMATION CONTACT: Lisa Carrico, Superintendent, P.O. Box 8067, Tumacacori, Arizona 85640, Phone:

520–398–2341 or by e-mail at *TUMA_Superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Public and agency involvement will be solicited at several key steps in the planning process including initial scoping, alternatives development, and the draft plan. If you wish to comment on any issues associated with the plan, you may submit your comments to the planning team by any one of several methods. You may mail comments to Tumacacori National Historical Park, Office of the Superintendent, P.O. Box 8067, Tumacacori, Arizona 85640. You may also comment via the Internet at *http://parkplanning.nps.gov/tuma.* Finally, you may hand-deliver comments to the park headquarters at 1895 East Frontage Road, Tumacacori, Arizona 85640. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. In addition, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 3, 2008.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

Editorial Note: This document was received in the Office of the Federal Register on Friday, January 2, 2009.

[FR Doc. E9–27 Filed 1–8–09; 8:45 am]

BILLING CODE 4312–DR–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0008]

Civil Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved information collection; Claim for Damage, Injury, or Death.

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 215, page 65883–65884, on November 5, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Claim for Damage, Injury, or Death.

(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number: CIV SF 95. Civil Division, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: Business or other for-profit, not-for-profit institutions, and State, Local, or Tribal Governments. Abstract: This form is utilized by those persons making a claim against the United States Government under the Federal Tort Claims Act.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that there will be 100,000 respondents who will each require 6 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual burden hours to complete the certification form is 600,000 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–135 Filed 1–8–09; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 29, 2008, a proposed Consent Decree in *United States* v. *Amana Co. L.P., et al.,* Civil Action No. 08-cv-6000 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought reimbursement of response costs incurred in connection with property known as the Novak Sanitary Landfill Superfund Site (the ''Site''), located in South Whitehall Township, Lehigh County, Pennsylvania. The Consent Decree obligates the Settling Defendants to reimburse $862,050 of the United States' past response costs paid in connection with the Site from January 10, 1998 through September 30, 2006, and all response costs paid or to be paid after that date.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the Consent Decree. Comments should be addressed to the 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. *Amana Co. L.P., et al.,* Civil Action No. 08-cv-6000, D.J. Ref. 90–11–2–976/1.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region 3. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 (@ 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Bob Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. E9–188 Filed 1–8–09; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Proposed Notice of Withdrawal of Protective Claim and Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that the United States proposes to enter into a Notice of Withdrawal of Protective Claim and Settlement Agreement with Delta Air Lines, Inc. (''Delta''), pursuant to CERCLA and in accordance with Delta's Plan of Reorganization entered by the United States Bankruptcy Court for the Southern District of New York under chapter 11 of title 11 of the United States Code, Case No. 05–17923.

The proposed agreement provides the United States Environmental Protection Agency (''EPA'') with an allowed general unsecured claim of $31,063 in the Delta Bankruptcy action for Delta's share of EPA's response costs at the Hows Corner Superfund Site in Plymouth, Maine. The agreement further provides for the withdrawal of the United States protective claim for environmental cleanup at the Operating Industries, Inc. Superfund Site (''OII Site'') in Monterey Park, California, upon the effectiveness of an agreement between Delta and the Steering Committee of potentially responsible parties at the OII Site with respect to the Steering Committee's claim in the Bankruptcy action relating to Delta's share of certain clean-up obligations at the OII Site.

The Department of Justice will receive comments relating to the proposed agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Delta Air Lines, Inc.*, DOJ Ref. No. 90–11–2–156/16.

The proposed Agreement may be examined at the Region 1 Office of the United States Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023 and the Region 9 Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the proposed agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $1.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–154 Filed 1–8–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Immigration Practitioner Complaint Form.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 215, page 65884–65885 on November 5, 2008, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may also be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–44, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary*: Individuals who wish to file a complaint against an immigration practitioner authorized to appear before the Board of Immigration Appeals and the immigration courts. *Other:* None. *Abstract:* The information on this form will be used to determine whether or not, assuming the truth of the factual allegations, the Office of General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete the form annually with an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1000 total burden hours associated with this collection annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 5, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–133 Filed 1–8–09; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 5, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Training Administration.

Type of Review: Revision of a Currently Approved Collection.

Title of Collection: Migrant and Seasonal Farmworker (MSFW) Monitoring Report and One-Stop Career Center Complaint/Referral Record.

OMB Control Number: 1205–0039.

Agency Form Numbers: ETA 8429 and ETA 5148.

Affected Public: Individuals and households and State, Local or Tribal Governments.

Total Estimated Number of Respondents: 2,194.

Total Estimated Annual Burden Hours: 1,566.

Total Estimated Annual Costs Burden: $0.

Description: These forms are necessary as part of Federal regulations at 20 CFR Parts 651, 653 and 658. The Form ETA 5148 collects data which are primarily used to monitor and measure the extent and effectiveness of State Workforce Agencies' service delivery to migrant and seasonal farm workers (MSFWs). The Form ETA 8429, the One-Stop Career Center Compliance Referral Record, is used to collect and document complaints filed by MSFWs and non-MSFWs regarding service delivery. For additional information, see related notice published at Volume 73 FR 37499 on July 01, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–207 Filed 1–8–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0053]

Nationally Recognized Testing Laboratories; Satellite Notification and Acceptance Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Implementation of the Satellite Notification and Acceptance Program.

SUMMARY: This notice announces OSHA's implementation of the ninth supplemental program under its Nationally Recognized Testing Laboratory (NRTL) Program. This supplemental program is the Satellite Notification and Acceptance Program (SNAP), and participation by NRTLs in the SNAP is voluntary. The SNAP Description for this program specifies the conditions under which NRTLs may use SNAP sites to perform equipment testing and certification functions.

DATES: The SNAP will become effective on May 11, 2009.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 2008, OSHA published in the **Federal Register** a notice proposing the SNAP, and requested public comment on the proposal (73 FR 21378). OSHA made the proposed SNAP Description available on its Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html,* but did not provide this document in the published proposal. OSHA received seven comments to the proposal, and has made a number of revisions to the proposed SNAP based on these comments.

The SNAP will become the ninth supplemental program available to NRTLs under the NRTL Program. In general, supplemental programs permit an NRTL to use the services of other facilities to test and certify products used in the workplace. OSHA formally established the initial eight supplemental programs after publishing a description of these programs in the **Federal Register** (60 FR 12980, March 9, 1995). The current notice sets forth the criteria and conditions that an NRTL must meet to use the SNAP.

To use a supplemental program, an NRTL must receive approval from OSHA and, once approved, the supplemental program becomes a part of the NRTL's scope of recognition. In general, each NRTL is approved by OSHA for a scope of recognition that identifies the following three elements: (1) The types of products the NRTL may approve, (2) the NRTL's ''recognized sites,'' that are the NRTL's wholly owned sites that can perform the full range of product-testing and -certification activities necessary in approving those products, and (3) ''supplemental programs,'' that, unlike the other two elements, are optional. Through these programs, an NRTL can use other resources in performing activities necessary for product testing and certification. OSHA maintains a Web page for each NRTL describing its scope of recognition.

For more information about supplemental programs and the NRTL Program in general, see the 1995 **Federal Register** notice cited above, and Chapters 1 and 2 of the NRTL Program Directive (hereafter, ''the NRTL Directive''; CPL 01–00–003—CPL 1–0.3 (''NRTL Program Policies, Procedures, and Guidelines'')), which is available on OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.* This site also provides a listing of the types of products that OSHA requires to be approved by NRTLs and the regulations of the NRTL Program (29 CFR 1910.7)

II. Summary and Analysis of Comments

OSHA provided 30 days for the public to submit comments on the proposed SNAP, with the comment period ending on May 21, 2008 (73 FR 21378, April 21, 2008). We received seven comments—six from currently recognized NRTLs, and one from an independent consultant who is a former staff member of OSHA's NRTL Program. In the remainder of this section, we discuss the comments made on the key conditions described for the proposed SNAP.

A. *Limiting use of an NRTL's mark to wholly owned SNAP sites.* In the notice proposing the SNAP, OSHA stated that it ''would allow SNAP sites that are wholly owned by the NRTL to authorize the use of the NRTL's mark.'' (Ex. OSHA–2007–0053–0001, p. 21380.) OSHA proposed this condition because it believes that NRTLs must retain control of this final step of their product-approval process. This step identifies them as the entity that tested and approved a product for use in the workplace. However, several commenters opposed this condition. For example, the Canadian Standards Association (CSA) stated that this condition was ''overly restrictive and could prevent expansion of SNAP internationally.'' (Ex. OSHA–2007–0053–0007.) Underwriters Laboratories (UL) noted that this condition could weaken the approval process because a majority-owned SNAP site would lack ''authority to grant or withdraw use of the NRTL['s] mark.'' In addition, UL noted that the ''[a]uthorization to use the mark is an administrative, not technical, task that follows the critical technical review and decision on certification.'' Thus, if maintained as a final and administrative step, allowing a majority-owned site to grant the mark would not compromise the testing and certification process. UL also commented that this condition would make auditing the entire process impractical because ''OSHA must audit 2 separate sites to review the complete certification process.'' (Ex. OSHA–2007–0053–0006.) These comments made clear that OSHA does not have to limit the authorization function to SNAP sites owned solely by an NRTL, especially when the decision on certification can occur at a majority-owned site. Thus, OSHA removed this condition from the SNAP.

B. *Definition of SNAP sites.* OSHA proposed that NRTLs, or organizations in which NRTLs have a majority interest, own or lease SNAP sites. Several NRTLs stated that this condition eliminated the option of using sites owned or leased by their parent company. (See Exs. OSHA–2007–0053–0002 and –0003.) Intertek Testing Services NA (ITSNA) also noted that current NRTL Program policy (paragraph X, Appendix C, NRTL Directive) allows NRTLs to either wholly own or ''organizationally encompass'' their recognized sites. Thus, the policy does not require the NRTL to demonstrate ownership of sites that are organizationally encompassed. (Ex. OSHA–2007–0053–0003.) This comment indicated that OSHA should allow NRTLs to similarly encompass their SNAP sites or allow SNAP sites that are not majority-owned by the NRTL. NSF International (NSF) pointed out that the majority-ownership condition makes it impossible to have SNAP sites in foreign countries that do not permit majority ownership by outside entities. (OSHA–2007–0053–0009.)

OSHA proposed the majority-ownership condition to ensure that NRTLs would have administrative and operational control over the SNAP site. OSHA believes that this condition would maintain the same degree of control that NRTLs must now exercise over their recognized sites. This policy specifies that the NRTL must wholly own or ''organizationally encompass'' its recognized sites, and ''have administrative and operational control over these sites.'' (As explained below, the term ''organizationally encompass,'' when used in this context, is equivalent to the NRTL completely owning the site's legal entity.) The policy also states that ''the NRTL must clearly demonstrate control in its operating policies and procedures and quality assurance program documentation.''

OSHA requires this policy largely to ensure that a site that it recognizes as part of the NRTL (*i.e.*, a recognized site) constitutes the NRTL's technical capabilities, which is necessary to determine that the NRTL meets the capability requirements under 29 CFR 1910.7. However, as explained in the notice proposing the SNAP, a SNAP site's technical capabilities are not considered in making this

determination. Thus, majority-ownership ensures that NRTLs maintain administrative and operational control over their SNAP sites, thereby providing NRTLs the flexibility under SNAP to conduct their certification activities at more locations than had been previously possible.

As used in OSHA's policy on Sites, the term ''organizationally encompass'' means that a site is within the NRTL's organizational structure and subject to the NRTL's control. This term covers situations in which a state or region of a country issues a license to the NRTL that identifies its legal name, and allows it to establish an office or facility in this state or region to conduct business without requiring the NRTL to establish the office or facility as a subsidiary with a headquarters located outside the country. Because the site's legal entity is the NRTL, the entity is in effect wholly owned by the NRTL. Thus, the NRTL's control over a SNAP site would not diminish if OSHA permits an NRTL to establish a SNAP site that is organizationally encompassed by the NRTL. Therefore, the definition of a SNAP site in the final SNAP Description will provide for this option.

With respect to the comments suggesting that OSHA allow SNAP sites that are owned by the NRTL's parent company, ITSNA stated that it has ''significant experience'' that demonstrates ownership by ''a common parent'' of both the site and the NRTL ''can provide the same level of control'' as direct ownership of this site by the NRTL. (Ex. OSHA–2007–0053–0003, p. 2.) In reviewing this condition, OSHA agrees that the requisite control would exist provided that the NRTL's parent company wholly owns or organizationally encompasses the site, and delegates or otherwise assigns responsibility for the site's SNAP functions to the NRTL. This control must be demonstrated in the parent's and the NRTL's policies or procedures, as appropriate. Under these circumstances, OSHA would be assured that NRTLs exercise the same degree of control that OSHA now requires by NRTLs over their recognized sites. Accordingly, OSHA concludes that the NRTL has control of a SNAP site wholly owned or organizationally encompassed by the NRTL's parent company when the parent company delegates to the NRTL operational and administrative control over the SNAP site or the functions performed on behalf of the NRTL at the site.

C. *Frequency of SNAP-site audits.* OSHA specified in the proposal that NRTLs must perform an initial audit to qualify a site for the SNAP, and then perform two program audits and one technical audit at the site each year. OSHA proposed these conditions to ensure that NRTLs timely identified nonconforming situations at SNAP sites. OSHA plans to audit each SNAP site every two years and, therefore, is relying on adequate oversight by NRTLs to compensate for the reduced frequency of OSHA audits. This proposed condition seemed to be a reasonable safeguard for assuring the NRTLs could resolve problems before serious consequences arose. Several commenters opposed this condition as excessive, and unnecessary for proper oversight. (See Exs. OSHA–2007–0053–0003, –0004, –0009.) In reviewing this condition, OSHA concludes that the distinction drawn between program and technical audits is somewhat artificial, and that some of those audits may overlap. Thus, OSHA believes that it would be adequate for NRTLs to perform a minimum of two audits of each SNAP site on a yearly (12-month) cycle, provided that each audit reviews all of the site's SNAP operations, both technical (*e.g.*, staff competence, equipment, facilities) and programmatic (*e.g.*, quality-control procedures, internal audits, control of the certification mark). However, if the site only performs SNAP product testing and no ''SNAP function'' (both described later in this notice), then the NRTL must perform a minimum of one audit of the SNAP site, provided that the audit reviews all of a SNAP sites testing activities. This frequency is consistent with the current practice specified by OSHA for regular internal audits by NRTLs of their testing processes.

D. *Location of auditors.* OSHA proposed that the program auditor for SNAP sites be located at the SNAP headquarters of the NRTL, which would need to be located at a recognized site. OSHA proposed this condition because it believed that the headquarters would have experienced and well qualified auditors available, and using a centralized pool of auditors would maintain the continuity and reliability of audits. In addition, locating the NRTL's auditors at a central location would facilitate access to the NRTL auditors and their reports by OSHA auditors, especially when OSHA auditors conduct annual audits at the NRTL's SNAP headquarters. NSF believed that staff located at other sites are as qualified to conduct audits as auditors from the SNAP headquarters of the NRTL. (Ex. OSHA–2007–0053–0009.) Several commenters raised concerns about the burden imposed on auditors having to travel to many distant SNAP sites from an NRTL's headquarters. (Exs. OSHA–2007–0053–0003 and –0009.) Based on this travel burden, ITSNA recommended that auditors be located at the NRTLs' regional headquarters.

After reviewing these comments, OSHA believes that locating auditors at a recognized site, as well as at the NRTL's SNAP headquarters, will not compromise the effectiveness of the audits. Accordingly, OSHA finds that an NRTL can exercise adequate oversight over its SNAP sites when the auditors of these sites report their findings to the NRTL's SNAP headquarters, and when OSHA annually audits any of these locations annually. OSHA also is assuring the effectiveness of the audits by requiring that auditors be located at any recognized site, and by requiring the auditors at these sites to forward audit records to the SNAP headquarters of the NRTL and to keep a copy of the audit report at the auditor's location.

E. *Independence of NRTL's SNAP auditors.* OSHA proposed that an NRTL's SNAP auditors must be in an organizational unit that is separate from the NRTL's operations, and that the unit must report directly to a senior executive of the NRTL. OSHA proposed this condition to ensure that SNAP auditors were independent of an NRTL's operational units, and that auditing units had authority to compel operational units to conform with the prescribed SNAP conditions. Two commenters opposed this condition. (Exs. OSHA–2007–0053–0007 and –0008.). The first commenter believed this condition was inappropriate because auditing units may report to a team of executives instead of one executive, while the second commenter noted that the executive structure envisioned in the proposal may not exist in many NRTL organizations. OSHA agrees with these comments, and revised the condition to specify that SNAP auditors cannot be under the control or direction of any SNAP site, and that auditors must report audit results from a SNAP site to the SNAP headquarters of the NRTL.

F. *Policies and procedures for SNAP operations.* Footnote 4 in the proposed SNAP Description states:

> For purposes of participating in SNAP and complying with the criteria in II.C and II.D of this description, any [NRTL may] use policies and procedures applicable to other aspects of its operations provided they meet or are tailored to meet the relevant criteria. Under such conditions, the NRTL would not need to develop separate policies and procedures for its participation in SNAP.

Thus, OSHA was trying to facilitate NRTLs' participation in the SNAP by permitting the NRTLs to adopt already-developed policies and procedures. In its comment, UL recommended revising this footnote to allow NRTLs to use ''*alternate* policies and procedures (*e.g., those applicable to other aspects of its operations*) provided they meet or are tailored to meet *or exceed (in an alternate way)* the relevant criteria.'' (Ex. OSHA–2007–0053–0007; emphasis in original noting revised language.) UL explained that the revisions would allow NRTLs to use ''individual level qualification'' for SNAP sites instead of site-level qualification. However, OSHA requires individual qualification under the proposed SNAP as a condition for qualifying a site. For example, paragraph II.C.2 of the proposed SNAP Description requires, ''Detailed criteria to grant a site's qualification, addressing both its capability to evaluate a product with respect to the requirements in a standard (*i.e.*, technical capability) and its capability to perform any of the proposed SNAP functions (*i.e.*, program capability).'' Such qualification must ensure that a site has properly qualified staff, equipment, and procedures to perform technical and program functions. OSHA is revising the proposed SNAP Description to clarify this point, while leaving the footnote in its proposed form.

G. *Other topics and issues.* CSA (Ex. OSHA–2007–0053–0007) noted that the proposed SNAP Description did not provide sufficient detail regarding the qualification and requalification requirements to ensure consistent application of the requirements. In response to this comment, OSHA will update the application format applicable for SNAP to specify the minimum documentation needed to apply, and the criteria OSHA will use to determine if the application is satisfactory.

ITSNA expressed concern that use of the term ''leased'' in the definition of SNAP in the proposed SNAP Description could be interpreted to exclude subleasing. (Ex. OSHA–2007–0053–0003.) To avoid confusion, OSHA is clarifying the definition to include subleasing and renting.

UL took exception to a statement in the preamble of the proposal that appeared to require NRTLs to issue the authorization of its mark ''simultaneously or concurrently with the final decision on certification.'' (Ex. OSHA–2007–0053–0007.) In taking exception to this statement, UL noted that ''there is no realistic way to concurrently or simultaneously decide and authorize.'' OSHA believes the preamble statement is ambiguous, and agrees with UL that authorization must follow the decision to certify a product, even if, as UL noted, authorization occurs immediately after the decision.

UL also opposed the condition in the proposed SNAP Description requiring NRTLs to post SNAP-site locations on the NRTLs' Web sites. (Ex. OSHA–2007–0053–0007.) In this regard, UL stated that the public will have difficulty understanding the differences between a SNAP site and an NRTL site, and that ''competitive issues between NRTLs using SNAP may arise regarding how their SNAP sites are referenced on their respective Internet sites.'' OSHA agrees that the public may not readily understand the differences between NRTL sites and SNAP sites, and that inconsistencies could arise among NRTLs in describing SNAP sites on their Web sites. Therefore, OSHA will remove this condition from the final SNAP Description, and will maintain on its Web site a list of NRTLs and their associated SNAP sites, as well as an explanation of how NRTLs and their recognized sites differ from SNAP sites.

Finally, UL noted that the proposed SNAP Description allowed SNAP sites to perform testing, which UL stated was not a SNAP function. (Ex. OSHA–2007–0053–0007.) However, OSHA proposed the SNAP to allow NRTLs to perform testing and certification functions at sites in countries that do not permit foreign entities to wholly own local businesses, provided the NRTL has qualified the sites as capable of performing specific product testing. OSHA revised the proposed SNAP Description to make clear that SNAP sites can perform testing when qualified by an NRTL to do so.

III. Key Elements of SNAP

With this **Federal Register** notice, OSHA announces implementation of the SNAP. Implementation of the SNAP will not change any of the requirements for NRTLs found under 29 CFR 1910.7, or any of OSHA's requirements governing product approval by NRTLs. OSHA will implement the SNAP through the NRTL Directive as part of its NRTL Program policy.

The SNAP will allow NRTLs to use SNAP sites to perform functions necessary for the NRTLs' testing and certification operations. To receive approval to participate in the SNAP, NRTLs must ensure that the SNAP sites meet the conditions specified in the SNAP Description. These conditions consist of controls and safeguards for ensuring the efficacy of the functions performed at SNAP sites. Accordingly, an NRTL must qualify a prospective SNAP site to ensure that the site can perform one or more functions or activities permitted under the SNAP Description. Also, OSHA will audit each SNAP site, as well as the NRTL's recognized site that centrally manages the NRTL's SNAP operations. If OSHA finds that an NRTL or a SNAP site is not in compliance with any condition specified in the SNAP Description, it may remove the NRTL or the SNAP site from the SNAP.

After reviewing the entire record, including the comments described above in section II of this notice (''Summary and Analysis of Comments''), OSHA determined that SNAP sites will be able to perform the following SNAP functions (paragraphs A to E) and product-testing activity (paragraph F):

A. *Qualify under Programs 2 through 7 and 9.*[1] Programs 2 through 7 address NRTLs' acceptance and use of testing data and product evaluations from other facilities that are not part of their corporate structure, specifically independent laboratories and product manufacturers. Under these programs, NRTLs must qualify each location (or site) that generates testing data or product evaluations. In qualifying such a facility, an NRTL must ensure that the facility meets the NRTL's internal criteria for conducting the tasks necessary to collect testing data and perform product evaluations.

Program 9 describes the procedures followed by NRTLs when using other facilities to perform specified services such as equipment calibration and follow-up inspections. NRTLs qualify each of these facilities to ensure that the facilities meet the NRTL's internal criteria for providing the specified services. Implementation of the SNAP will permit SNAP sites to qualify to perform functions described under Programs 2 through 7 and 9.

B. *Accept data under Programs 2 through 8.*[2] In accepting testing data or product evaluations under Programs 2 through 8, NRTLs must have appropriate technical personnel to review the adequacy and accuracy of the data and evaluations, as well as clear procedures for conducting these reviews. The SNAP will expand this capability from recognized sites to SNAP sites.

C. *Provide OSHA with access to original product-testing and -evaluation records.* AN NRTL must maintain, and make available to OSHA on request, the

[1] The NRTL Directive contains information about each of these programs.

[2] The NRTL Directive contains information about each of these programs.

original records resulting from its product testing and evaluation functions. These critical documents allow NRTLs to exercise quality control over product testing and evaluation functions, and permit OSHA to perform an accurate audit of these NRTL functions. SNAP sites must have the capability to maintain, and provide OSHA with access to, records of functions performed on behalf of NRTLs.

D. *Perform final technical reviews and make decisions on product certification.* Final technical reviews and subsequent decisions regarding product certification are the last functions performed in the technical process for product certification. To provide assurance that a product meets the relevant test standard(s), only a well qualified technical staff can perform these functions. As with recognized sites, SNAP sites can perform these functions only if they have demonstrated the capability of doing so.

E. *Authorize use of an NRTL's mark.* An NRTL's mark symbolizes the final decision to certify a product, and clearly identifies the NRTL as the source responsible for testing and certifying the product. While the SNAP will permit a SNAP site to authorize the mark of the NRTL for which it performs product-testing and -certification functions, the NRTLs must control the use of their marks and ensure that SNAP sites authorize this use only after the decision to certify a product.

F. *SNAP product-testing activity.* SNAP sites may perform product testing within the scope of recognition of the NRTL, provided that the NRTL qualifies the site as having the capability for this testing. This activity may be the only activity performed by a SNAP site, or supplement one or more SNAP functions.

IV. Submitting SNAP Applications

OSHA will begin accepting applications from NRTLs for the SNAP after its effective date of May 11, 2009. At that time, OSHA will invite NRTLs and NRTL applicants to apply for approval to participate in SNAP and establish SNAP sites. Prior to submitting a SNAP application, applicants should review the SNAP Description, which OSHA will make available on its Web site for the NRTL Program at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.* This Web site will contain instructions describing the information to submit in a SNAP application and will provide an application format that may be used for this purpose.

V. Authority and Signature

Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR 1911.

Signed at Washington, DC, on January 5th, 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–163 Filed 1–8–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of revisions to the program.

SUMMARY: This notice, which sets forth the basic philosophy and requirements of the Occupational Safety and Health Administration's Voluntary Protection Programs (VPP), revises VPP's traditional focus on individual fixed worksites by adding two new ways to participate: Mobile workforce and corporate. A significant reorganization of the program helps clarify the multiple participation options now available. Additional changes include: Greater flexibility in the VPP Demonstration Program; modified provisions concerning Star Program Rate Reduction Plans and 1-Year Conditional status; clarified requirements for Federal agency participants performing construction activities; and a new expectation concerning outreach and mentoring activities.

DATES: The revisions are effective 120 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N3700, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–2213. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web site, *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, and subsequently revised, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with significant management leadership and active employee involvement to prevent or control the safety and health hazards at the worksite. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

Continuous improvement is a well-established principle of VPP. Participants strive to make ongoing gains in performance and protective systems, and OSHA strives to improve the VPP, its policies and procedures, and its impact on workplaces throughout the United States.

The well documented success of VPP, the applicability of VPP principles to diverse industries and work situations, and the presence within its ranks of world-class models of safety and health excellence have produced a continuing stream of applications from small and large businesses and Federal agencies, both union and non-union. VPP, OSHA's premier recognition program, has become a powerful tool for reducing workplace injuries and illnesses.

VPP's original focus was on establishing effective safety and health management systems at individual fixed worksites where the employer had responsibility and authority to control safety and health. OSHA's experience with VPP Demonstration Programs and other cooperative programs, and the public comments on its proposal in the **Federal Register** to establish a VPP for Construction, 69 FR 53300, August 31, 2004, have demonstrated that the basic principles of site-based safety and health management apply equally well to workforces that move from one work project and location to another and whose employers may not have controlling authority for safety and health.

Therefore, VPP now changes from a primarily site-based program to one that welcomes applications from both individual fixed worksites and employers with mobile workforces. This change opens new opportunities for participation by exemplary employers in the construction industry plus mobile workforce employers in other industries. OSHA is pleased to extend the benefits of VPP to these employers and employees.

In addition to its efforts to make VPP eligibility more inclusive, OSHA has been experimenting with ways to make the VPP application and review process more efficient and less resource-intensive for applicants and the Agency. The VPP Corporate Pilot, operating since 2004, has tested new VPP processes for multi-facility applicants who demonstrate a strong commitment to employee safety and health and VPP. These applicants, typically large corporations or Federal agencies, have adopted VPP on a broad scale for protecting the safety and health of their employees.

OSHA has required VPP Corporate Pilot applicants and participants to have established, standardized corporate-level safety and health management systems that are effectively implemented organization-wide, as well as internal screening processes for evaluating their facilities' safety and health performance. Under the VPP Corporate Pilot, OSHA has offered streamlined processes to eliminate redundancies in application requirements and onsite review procedures while continuing to perform careful onsite reviews of all applicant facilities. The efficiencies tested successfully within this pilot have encouraged numerous multi-facility employers to make an organization-wide commitment to VPP. The lessons learned (discussed in Section II) now enable OSHA to add to VPP the new option of corporate participation.

Once the following revisions become effective, OSHA will move current participants in its VPP Mobile Workforce Demonstration for Construction and its VPP Corporate Pilot into the appropriate VPP program (Star or Merit) and way to participate (site-based, mobile workforce, or corporate).

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (hereinafter referred to as the OSH Act), was enacted ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *.''

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. The following are provisions which represent the legislative authority applicable to the Voluntary Protection Programs:

> ''* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;''
>
> ''* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;''
>
> ''* * * (5) * * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;''
>
> ''* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.''

C. States with OSHA-approved State Plans

As provided by Section 18 of the OSH Act, 26 States have received OSHA approval to operate their own occupational safety and health programs, which must be at least as effective as the Federal OSHA program. Twenty-two of these State Plans cover both private and public sector employees; four cover public sector only. The States have been encouraged to establish their own VPPs parallel to the Federal VPP. All States with OSHA-approved State Plans have established VPPs, submitted documentation, and received approval from OSHA.

State VPPs may contain different participation categories, processes, and criteria. Some States include programs that correspond to OSHA's current Star, Merit and Demonstration Programs. Some States already have expanded their construction industry VPP participation options.

When the following revisions become effective, all State Plans will be required to advise OSHA whether they intend to adopt similar changes to their current programs, including the addition of mobile workforce and corporate ways to participate. They will be asked to submit documentation on any revisions for OSHA review. OSHA will make available on its Web site summary information on the States' responses to this Federal Program Change.

II. Discussion of the Changes

A. Mobile Workforce Participation

The construction industry, traditionally one of the nation's most hazardous, has not been able to take full advantage of the benefits of VPP participation. There are multiple reasons for the industry's underrepresentation. These include:

- VPP eligibility requirements traditionally apply to fixed worksites ''controlled'' by the applicant. This alone rules out many trades-oriented employers acting as subcontractors, for example, plumbers, heating and ventilation workers, drywall installers, etc. Many of these employers, nevertheless, have exceptional safety and health management systems that proactively identify and protect their workers from hazards, regardless of where they are working.
- The short-term scope of some construction projects and the mobile nature of the construction workforce have limited construction industry participation in VPP.
- A construction site, with its often hazardous and frequently changing working conditions, presents unique challenges to the development and implementation of an effective safety and health management system.

OSHA, the Advisory Committee on Construction Safety and Health (ACCSH), and industry representatives agree that making VPP a feasible goal for small, medium, and large construction employers would encourage a greater number of them to implement effective safety and health management systems. In OSHA's experience, such systems are the best way to reduce work-related injuries, illnesses, and fatalities.

To that end, OSHA implemented two VPP Demonstration programs in 1998 to evaluate alternative VPP criteria that, if successful, could lead to greater construction participation. The Star Demonstration for Short-Term Construction Projects involved construction employers and subcontractors working at selected short-term worksites (12–18 months duration). The program tested alternative VPP eligibility requirements and procedures, and enabled OSHA to gain experience in how such companies ensure safe and healthful work environments at multiple, short-term construction sites. The Mobile Workforce Star Demonstration Program gave companies whose employees travel from one site to another and that typically do not ''control'' the worksite the opportunity to demonstrate their ability to provide high level safety and health protection for their mobile workforce. OSHA required participants in both programs to maintain all four of the safety and health management system elements of the traditional VPP—management leadership and

employee involvement, worksite analysis, hazard prevention and control, and safety and health training—at a level of excellence equal to VPP's Star Program.

The documented success of those demonstrations, and especially a modified demonstration within Region V's Cincinnati Area Office, led to meetings in 2003 and 2004 with construction employers, trade association representatives, and representatives of the Building and Construction Trades Department, AFL–CIO.

OSHA, convinced of the importance and feasibility of bringing more construction companies into VPP, proposed in **Federal Register** Notice 69 FR 53300, August 31, 2004, to establish a new VPP for Construction. The Agency asked for comments on its proposal from stakeholders and the general public.

OSHA received feedback from 18 commenters: two associations representing VPP participants; two national unions; one association of safety professionals; six trade associations representing construction industry employers; three VPP participating companies; one construction company outside VPP; and three private individuals. The numbered sections below review comments relevant to major issues, the Agency's subsequent decisionmaking, creation of the 2006 Mobile Workforce Demonstration for Construction, and VPP revisions contained in this notice.

Based on comments received in 2004 and further discussion within the Agency, OSHA chose to continue exploring alternative VPP policies and procedures for the construction industry in a new, nationwide VPP Mobile Workforce Demonstration for Construction, launched in 2006. OSHA welcomed applications from construction companies ranging from large, controlling general contractors to small specialty trade contractors whose employees moved frequently from site to site.

OSHA's various construction demonstrations have had the positive effect of increasing construction industry participation in VPP. The overall experience of these construction participants has been outstanding. Construction employers who have participated in VPP Demonstration Programs have achieved, as a group, Total Case Incidence Rates (TCIR) and Days Away/Restricted/Transfer (DART) rates 54 percent and 56 percent below published Bureau of Labor Statistics industry rates (2006 VADS, OSHA's VPP data system). Their injury and illness rate experience subsequent to entering VPP programs has been either on par or below the overall VPP average rates for general industry.

1. Safety and Health Management System

Several commenters voiced concern that the proposed safety and health management system for construction employers, which did not differ significantly from the comprehensive system required of site-based VPP participants, placed too great a burden on small construction companies and failed to recognize the construction industry's differences from other industries. Several commenters were particularly critical of requiring site implementation plans for every work project.

OSHA's VPP experience provides ample evidence that VPP's safety and health management system, which is performance-based and requires participants to identify their specific hazards, needs, and appropriate protective measures, provides sufficient flexibility and can be applied to any industry. The experience of the early construction demonstrations, as well as the ongoing experience of VPP's site-based construction participants, shows that even small construction companies are capable of working successfully with the VPP model, attaining VPP approval, and maintaining VPP-quality systems and performance. The 2006 Mobile Workforce Demonstration bears out this earlier experience: As of December 2007, 28 percent of all mobile workforce participants reported fewer than 100 employees including contractor/subcontractor employees (whose injury and illness experience is rolled up with regular employees).

OSHA did recognize that requiring individual, comprehensive site implementation plans might be an unnecessary and burdensome condition of participation, and the Agency eliminated this feature in the subsequent 2006 Demonstration Program. Moreover, OSHA decided to build additional flexibility and sensitivity to construction workplace conditions into the 2006 Demonstration by having applicants develop a unique Participation Plan. This plan was limited to addressing elements of the applicant's participation that differed in substance or emphasis from the traditional VPP requirements, such as different employee involvement strategies, baseline hazard analysis, and emergency response and evacuation procedures. The Participation Plan has been a valuable feature of the 2006 Demonstration and is now made part of the mobile workforce way to participate (VI.C.1.b.).

2. Geographic Boundary for Participation

Some commenters questioned the need for construction company participation boundaries defined by OSHA Region or Area Office. OSHA understands that mobile construction operations do not adhere to Federal agency boundaries. However, the Regions and Area Offices are best able to establish close working relationships with mobile workforce participants, and it is through these relationships that OSHA is able to provide the cooperative dialogue and support that is expected within VPP.

There may be companies whose very scattered work projects pose a barrier to their mobile workforce participation. Site-based participation may be appropriate for some of these companies. OSHA's experience indicates that the vast majority of construction employers, especially small employers whose operations tend to be more restricted geographically, will be able to identify and participate within what these revisions now identify as a Designated Geographic Area (DGA) (VI.C.1.c.). Multiple DGAs have been utilized successfully by several participants in the 2006 Demonstration to expand their participation to more than one OSHA Area Office or Region.

3. Onsite Evaluations

Most comments dealing with the onsite evaluation process for construction applicants/participants focused on:

- The number of different worksites/projects OSHA would evaluate during the approval process, and
- The frequency of reapproval visits.

The proposed tiered approach (2–25 sites = 2 visits; 26–99 sites = 3 visits; 100+ sites = 4 visits) elicited both positive and negative responses. Some commenters recommended more visits, some less, and some recommended OSHA visit a percentage of sites. After considerable discussion within the Agency, which included reference to OSHA's unsuccessful attempt to implement a similar tiered approach within the OSHA Strategic Partnership Program, OSHA decided to eliminate the tiered approach. In many instances, it would obligate OSHA to perform more inspection visits than a non-VPP participant typically would receive, an impractical consequence that OSHA Partnership personnel first reported.

In the 2006 Demonstration, OSHA tested a new approach that set a

minimum of one visit and gave Regional Administrators the responsibility and flexibility to decide, based on the complexity and scope of an applicant's operations, whether and how many additional sites should be visited.

Four commenters questioned OSHA's proposal to reevaluate construction participants on a 2-year cycle. They argued that the frequency of reevaluation should be consistent with the existing VPP reevaluation schedule, which calls for Star reevaluations every 3 to 5 years. In the subsequent 2006 Demonstration, OSHA adhered to the Demonstration Program requirement for reevaluation every 12 to 18 months. OSHA personnel administering the Demonstration found that a 12- to 18-month frequency is unnecessary and burdensome. However, OSHA does not believe that the site-based 3- to 5-year interval is appropriate, given the dynamic, frequently changing sites/projects and conditions of construction employers. OSHA has decided to reevaluate mobile workforce Star participants within 18 to 24 months of initial approval, and subsequently at no greater than 36-month intervals. While OSHA recognizes the value of consistency across the programs, and has built consistency into most areas of this revised VPP, the Agency believes this differing reevaluation schedule is most likely to ensure worker protection without overburdening the Agency and mobile workforce participants.

4. Union Support for Participation

The mobile workforce way to participate contains a requirement for documented union support that differs from the traditional, site-based requirement. This change is grounded in OSHA's experience with VPP construction applicants/participants.

When multiple unions represent employees at an applicant/participant site or within a DGA, OSHA's willingness to consider less than 100 percent union support first appeared in the proposal for a VPP for Construction, 69 FR 53300, August 31, 2004. OSHA sought public input on the complex question of how to assure union support when, ''At a typical construction project, multiple unions may represent workers, and different unions may represent workers at different phases of the project. Some unions may represent many workers, others only a few. Should OSHA require written support from some or all? What means should OSHA accept as demonstrations of support? Should the requirement be different for site-based applicants and [multi-site, mobile workforce] applicants? How should OSHA respond if one of multiple authorized representatives * * * subsequently withdraws support?''

OSHA received comments on this issue from nine respondents, including two associations that represent VPP participants and employer associations with both unionized and non-union member companies. At one end of the spectrum was the recommendation to drop the requirement for union support if the workforce is not fully unionized. At the other end of the spectrum was the recommendation to continue the current site-based requirement of 100 percent union support and thereby maintain consistency throughout the VPP. Other commenters suggested various degrees and methodologies of union support, depending on employer and worksite circumstances.

After considering these comments and further internal Agency discussion, OSHA, in its 2006 Mobile Workforce Demonstration for Construction, introduced a compromise provision: When a majority of employees are represented by unions, OSHA requires (in the Demonstration) signed statements of support from enough unions to represent a majority of all employees. This new approach continued to recognize the importance of union support for VPP while, at the same time, it recognized that obtaining 100 percent union support may not be feasible at construction worksites. The notion of fairness also entered into the decision to test an alternative requirement for union support. Many VPP supporters, within the Agency, at approved VPP sites, and elsewhere, have voiced concern over the years about the possibility of a small minority preventing the VPP participation desired by the majority.

OSHA's experience with the alternate union support requirement it has been testing in the 2006 Mobile Workforce Demonstration for Construction has been positive. There has been no problem implementing the new requirement. For some Demonstration participants, union support for participation within the participant's DGA has been obtained from the local building trades council. For other participants, union support has been obtained at the worksite level. OSHA has received no objections to this policy from affected unions or any other parties and now is applying it to the mobile workforce way to participate. The existing union support requirement will continue for site-based applicants/participants.

5. Extending Mobile Workforce Participation to All Industries

Over the years OSHA has been approached by various general industry employers who do not perform all of their work tasks at an individual fixed location. These include, but are not limited to, utilities, couriers, and maintenance contractors. The experiences of these employers have demonstrated to OSHA that it is possible for a general industry employer to maintain a VPP-quality safety and health management system for employees who complete some of their work tasks away from a fixed worksite. The positive experience of these participants, coupled with the experience of the 2006 Mobile Workforce Demonstration for Construction, demonstrates that both construction and general industry employers can successfully implement a safety and health management system that encompasses mobile employees. Therefore, the new VPP option of mobile workforce participation will be available to any eligible employer whose workers move from one work location to another and who meets VPP's rigorous requirements.

B. Corporate Participation

The continuing growth of VPP is a sign that businesses throughout the U.S. are recognizing the value of implementing effective safety and health management systems. As more companies come into VPP, ever greater numbers of participating employers and employees benefit from reduced injuries and illnesses and fewer workplace fatalities. VPP's success, however, means that more and more applications must be reviewed and onsite evaluations conducted. This has challenged OSHA resources and encouraged the Agency to seek ways to administer the program more efficiently.

Large employers who have committed to bringing multiple facilities into VPP have also experienced resource challenges as they prepare multiple individual applications that contain repetitive information and then undergo multiple onsite evaluations. Seeking new ways to ease the resource burden on these employers and also on OSHA, the Agency established the VPP Corporate Pilot in 2004.

Prior to 2004, several VPP stakeholders had independently discussed the burden of gathering and providing safety and health management system information that was universal to all of their sites and needed to be provided to OSHA each time a site applied for VPP. OSHA also

recognized this burden—the Agency repeatedly had to review similar or identical systems documentation when it reviewed applications from multiple facilities of a single large organization.

The 2004 VPP Corporate Pilot provided a means to eliminate the paperwork redundancies for both multi-facility applicants and OSHA reviewers. Carefully selected participants underwent in-depth reviews of their organization-wide safety and health management systems. An important element of the review was verification of the participant's active management commitment, not just to safety and health excellence, but specifically to VPP. Pilot applicants also were required to provide evidence of pre-screening and oversight of all facilities within their organization, to ensure that the safety and health management system was being implemented effectively.

Following the corporate-level evaluation of a pilot participant's safety and health management system, OSHA sent VPP teams to each applicant facility. The teams were able to focus on how managers and employees implemented the safety and health system. These site reviews, which typically were shorter in duration than normal VPP onsite evaluations, consisted of employee and management interviews, a site walkthrough, and a review of site-specific performance and systems documentation.

OSHA learned that by eliminating the repetitious review of safety and health management system documentation and focusing on system implementation, it could reduce the Agency resource expenditure for application and onsite review by 40 percent without affecting the quality of that review. Similarly, pilot participants reported resource savings of up to 50 percent in application preparation and time devoted to OSHA's onsite visits.

The pre-screening required of pilot participants involved corporate-level safety and health personnel performing audit activities at each applicant facility to ensure that the facilities were ready for VPP. Corporate personnel also reviewed their facilities' VPP applications for completeness and accuracy. These efforts produced impressive results: 94 percent of the 162 facilities undergoing onsite evaluations in the Corporate Pilot achieved Star approval, well above the 80 percent benchmark established for the pilot.

The pilot produced other, non-quantifiable results. Participants reported an increased consistency in implementation of their safety and health management system throughout their organization. OSHA also believes it has achieved a greater level of consistency across Regions in the procedures it uses to evaluate VPP applicants.

OSHA is also incorporating the concept of a Designated Geographic Area (DGA) into the corporate way to participate. Both the VPP Corporate Pilot and the Mobile Workforce Demonstration for Construction have relied on a two-step evaluation process in which the first step is an organizational safety and health management system review. This review is designed to determine if the applicant has a VPP-quality safety and health management system in place and the management commitment required to effectively implement the system at the worksite level. OSHA demonstrated that such a review is effective, whether the applicant's facilities are coming into VPP individually (site-based applicants) or as part of a DGA (mobile workforce applicants).

Incorporating the DGA concept into the corporate way to participate provides employers with additional flexibility with regard to the implementation and evaluation of their safety and health management system. OSHA recognizes that there are significant differences among the large employers willing to make the necessary commitment for corporate participation. These organizations may find it appropriate to seek participation at the individual site level, at multiple sites within a DGA, or both. Upon completing the corporate safety and health management system review, a participant can then choose either or both of the two participation options tested. That is, a participant can submit a streamlined application and undergo a streamlined onsite evaluation for an individual location, or a participant can seek participation by having OSHA visit a sampling of worksites within a DGA. In either case, the applicant site/DGA will be subject to the policies and requirements outlined in VI.B (site-based) or VI.C (mobile).

The successful experience of OSHA's VPP Corporate Pilot leads the Agency now to establish the new category of corporate participation. This corporate option is available for multiple-facility employers who have made a significant, organization-wide commitment to VPP and who have fixed locations, mobile workforces, or both.

C. Reorganizing the VPP Criteria

VPP policy and participant requirements historically focused on the three programs, Star, Merit, and Demonstration. For each of these programs there was only one way to participate, individual site-based participation. All safety and health management system requirements and injury and illness performance requirements were embedded within the Star Program. Merit and Demonstration Program provisions specified how system and performance requirements differed from Star.

The backbone of VPP remains its safety and health management system, and OSHA desires to emphasize this system's applicability and feasibility for all types of industries, workplaces, and program participants. Therefore, OSHA has created a specific section devoted to the VPP safety and health management system. Other than minor variations to accommodate the different ways to participate, the VPP safety and health management system elements and sub-elements remain consistent with past notices.

The addition of new ways to participate has prompted OSHA to restructure VPP to clarify participation options and procedures. Each way to participate is spelled out individually, with its unique features, requirements, and evaluation processes. This has resulted in what may appear to be unnecessary repetition within the Ways to Participate Sections VI.B., C., and D. However, OSHA believes that this format actually facilitates clarity. An interested employer can go to one place within the notice to review relevant information and requirements. OSHA hopes that its reorganization of VPP criteria, now Sections III through VIII, will help employers and employees identify the most appropriate way to participate and all related requirements of the selected participation option.

D. Demonstration Program Modification

OSHA no longer will require that all Demonstration Program participants maintain Star-level safety and health management systems and injury and illness performance levels. Participants will be required to adhere to the provisions of their particular demonstration. In no circumstance will a demonstration allow approval below the minimum Merit level requirements.

The basic intent of the Demonstration Program always has been to enable OSHA to test alternate requirements and procedures. The requirement for Star-level performance unnecessarily limits the flexibility OSHA needs. OSHA believes its frequent onsite visits to Demonstration participant sites and continuing review of participant self-evaluations, coupled with the new minimum performance requirements, provide sufficient oversight and needed flexibility. Any Demonstration

participants initially approved at the Merit level will be subject to VPP requirement for continuous improvement and the Merit requirement to achieve Star-level systems and performance.

E. Star Rate Reduction Plan and 1-Year Conditional Status

Over the years, OSHA has had difficulty implementing in a fair and consistent manner the program's provisions that apply when a Star participant's rates climb above required levels. Under current procedures, if a participant's 3-year injury and illness rates slip during the period between regularly scheduled OSHA reapproval visits, OSHA must place the participant on a 2-year rate reduction plan. If rates slip in a year when an OSHA team visits, OSHA must place the participant on 1-year conditional status, and may also require a 2-year rate reduction plan.

A problem arises when a participant fits the latter scenario but has no identifiable safety and health management system deficiency. Conditional status is inappropriate and, in fact, cannot be lifted within the required 1-year timeframe because the participant may need the allowed 2 years to return to Star-level rates.

Therefore, the change in these provisions is to correct an unintended consequence of current rules. OSHA now may require a 2-year rate reduction plan whenever a Star participant's rates exceed required minimum levels. OSHA now may impose 1-year conditional status when an OSHA onsite team identifies a deficiency in a Star participant's safety and health management system.

F. Federal Agency Construction Activities

When OSHA opened VPP participation to Federal agencies, the Agency did not anticipate that some applicant facilities might be engaged primarily in construction activities. This revision makes clear that all applicants primarily engaged in construction activities must follow OSHA's construction regulations and VPP's additional construction requirements. This includes the requirement to include in a participant's injury and illness rates the experience of all employees, including contractors.

G. Expectation of Continuous Improvement

The principle of continuous improvement is integral to the VPP experience. Participants' required annual self-evaluations are intended to measure success, identify ''what improvements can be made to make [the safety and health management system] even more effective'' (Appendix C, VPP Policies and Procedures Manual, OSHA Directive CSP 03–01–003), and determine goal modifications and needed and desirable changes. OSHA evaluation teams, during their periodic visits, verify this improvement and offer suggestions that will help participants create ever more effective employee protections.

Whenever OSHA officials describe VPP to interested parties, they stress that participants are expected to continuously improve. This principle, which is explicit in the VPP Policies and Procedures Manual, is now made explicit in this **Federal Register** notice in III.E. Additional Expectations.

H. Expectation of Outreach and Mentoring Activity

VPP has a long history of participants voluntarily reaching out to help other businesses, their industries and communities, and OSHA. Through mentoring, technical assistance, participation in training, presentations at conferences and other events, community service, and involvement in the VPP Special Government Employee Program, VPP participants have helped OSHA spread the message of effective safety and health management.

OSHA recognizes VPP participants as the best safety and health performers in the nation, the role models for others wishing to improve safety and health for their employees. It is through outreach and mentoring that VPP participants fulfill their responsibilities as role models and cooperative partners with OSHA.

The Gallup Organization, in its 2005 study commissioned by the Department of Labor, ''Evaluation of the Voluntary Protection Program,'' included measuring the overall impact of VPP participants' outreach and mentoring programs. The study found impressive benefits and accomplishments in this area. For example, Gallup conservatively estimated that VPP participants in 2004 had 2,365 people performing mentoring activities that touched more than 529,000 employees beyond VPP facilities. Gallup reported that, at the request of organizations other than OSHA, VPP participants conducted outreach activities at a cost of 30,000 hours in 2004. Responding to OSHA requests, participants conducted an additional 41,400 hours of activity that year.

Because of the need for such activity and participants' well-established track record, OSHA now believes that outreach and mentoring should be stated principles of VPP. Therefore, they are made explicit in this **Federal Register** notice in III.E. Additional Expectations.

III. The Voluntary Protection Programs

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that a multifaceted approach is the best way to accomplish all the goals of the OSH Act. Employer compliance with occupational safety and health standards, OSHA regulations, 29 CFR part 1960 for Federal agencies, and the general duty clause—all the requirements of the OSH Act—is essential. Regulations and enforcement alone, however, cannot replace the understanding of work processes, materials, and hazards that comes with employers' and employees' daily on-the-job experience and commitment to workplace safety and health. This knowledge, combined with an ability to evaluate and address hazards rapidly, enables employers and employees to take responsibility for their own safety and health in ways not available to OSHA.

OSHA's substantial experience with safety and health management systems has shown the value of a comprehensive, systematic approach to worker protection. The principles of safety and health management can effectively prevent hazards and protect workers, whether implemented for fixed worksites or mobile workforces. It is OSHA's policy, therefore, to promote safety and health management systems tailored to the needs of particular worksites and situations.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in comprehensive employer-provided, employee-participative occupational safety and health management systems in meeting the goal of the OSH Act ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *.'' This emphasis is demonstrated through assistance to employers in their efforts to reach the VPP level of systems and performance excellence; through cooperation among government, labor, and management to resolve safety and health problems; and through official recognition of employers and employees who together have developed and implemented excellent safety and health management systems. These systems provide the structures and strategies for preventing or controlling occupational hazards.

VPP participants are expected to effectively protect workers from the hazards of the workplace. They do this by meeting VPP's rigorous, time-testedcriteria for approval, continued participation, and continuous improvement. Employers who develop and implement VPP-quality systems not only are working to remain compliant with OSHA's rules, but also are striving to excel. They use flexible and creative strategies that go beyond OSHA's basic workplace requirements in a quest to provide the best feasible protection for their workers.

VPP participants serve as models for effective employee protection in their industries. Impressive reductions in injuries and illnesses—participants' rates are well below industry averages—are the most obvious evidence of VPP's success. Other performance measures, plus anecdotal evidence and participant testimonials, reveal significant cost savings, including workers' compensation cost reductions; reduced employee turnover; improvements in the quality of participants' products and services; and other benefits. Participants speak often of the ''cultural transformation'' that can occur during the process of preparing for application to VPP. These experiences are helping to convince skeptics that productivity, quality, profitability, and safety and health are complementary goals.

VPP participants enter into a new relationship with OSHA. In this innovative public/private partnership, cooperation and trust nourish improvements in safety and health, not just at VPP sites, but also beyond the worksite boundaries. VPP companies are afforded the opportunity to provide the Agency with input on safety and health matters. At the same time, the recognition and status gained by their participation in VPP, and their commitment to improving their industries and communities, enable them to accomplish a broad range of safety and health objectives. VPP participants mentor other worksites interested in improving their safety and health management systems; conduct safety and health training and outreach seminars; and hold safety and health conferences that focus on leading-edge safety and health issues. VPP participants also participate with OSHA on VPP onsite reviews through the innovative VPP Special Government Employee (SGE) Program. The SGE Program offers private and public sector safety and health professionals and other qualified participants the opportunity to exchange ideas, gain new perspectives, and grow professionally while serving as full-fledged team members on OSHA's VPP onsite evaluations.

One way OSHA recognizes VPP participants' safety and health excellence is by removing them from programmed inspection lists for the duration of their participation, unless they choose to remain on the lists. This helps OSHA to focus its enforcement inspections on establishments that are less likely to meet the requirements of the OSH Act. However, OSHA continues to investigate valid employee safety and health complaints, fatalities and catastrophes, and other significant events at VPP sites according to established Agency procedures.

Participation in any of the programs does not diminish existing employer and employee responsibilities and rights under the OSH Act and, for Federal agencies, under 29 CFR part 1960. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program do not assume the employer's statutory or common law responsibilities for providing safe and healthful workplaces; nor are employees or their representatives expected to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate. Compliance with OSHA's requirements and applicable laws remains mandatory. Initial achievement and then continuing maintenance of the VPP requirements are conditions of participation.

The Assistant Secretary for Occupational Safety and Health determines approval for initial participation in the VPP, advancement to the Star Program, all participation in Demonstration Programs, and termination from the VPP. The OSHA Regional Administrator who has jurisdiction over a participant determines approval for continuation in the Star (including 1-year Conditional Star participation) and Merit Programs.

B. Purpose of This Notice

This notice describes the Voluntary Protection Programs, VPP's constituent programs, the VPP Safety and Health Management System; how to apply; ways to participate and criteria for approval; participation decisions; and post-approval interactions.

C. Programs Within VPP

VPP consists of three programs: Star, Merit, and Demonstration.

- The Star Program recognizes employers and employees who demonstrate exemplary achievement in the prevention and control of occupational hazards through the development, implementation, and continuous improvement of their safety and health management systems.
- The Merit Program recognizes employers and employees who have developed and implemented good safety and health management systems but who must take additional steps to reach Star quality.
- The Demonstration Program recognizes employers and employees who operate effective safety and health management systems that differ from current VPP requirements. This program enables OSHA to test the efficacy of different approaches.

1. The Star Program

a. Purpose

The Star Program recognizes leaders in occupational safety and health who are successfully protecting workers from death, injury, and illness by implementing comprehensive and effective safety and health management systems. Star participants willingly share their experience and expertise, and they encourage others to work toward comparable success.

b. Experience Operating the Safety and Health Management System

All elements of a successful safety and health management system, as delineated in Section IV. below, must be operating for a period of not less than 12 months before Star approval.

c. Injury and Illness Performance Requirements

In order to qualify for the Star Program, applicants/participants must meet and maintain certain injury and illness rate requirements. For further specifics on these requirements, see the Injury and Illness Performance sections at VI.B., C., and D.

2. The Merit Program

a. Purpose

The Merit Program recognizes employers and employees in any industry who have implemented a safety and health management system that in one or more elements does not yet meet the level of development or performance required for the Star Program. If OSHA determines that an applicant has demonstrated the commitment and possesses the resources to achieve Star requirements within 3 years, then OSHA may approve Merit Program participation. As a condition of Merit participation, the applicant agrees to specified goals that,

when achieved, will raise performance to the Star level.

b. Experience Operating the Safety and Health Management System

To qualify for the Merit Program, an eligible applicant must have a written safety and health management system.

(1) The basic elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training) must all be operational or, at a minimum, in place and ready for implementation by the date of approval.

(2) The eligible applicant may not have met each of the specific Star-level requirements comprising each basic element. Participation in Merit is an opportunity for employers and their employees to work with OSHA to more fully develop their safety and health management system and improve its performance. The participant's safety and health management system must be at Star quality within 3 years. For Star quality system requirements, see IV. below.

c. Goals

In consultation with the applicant, OSHA will set goals intended to bring the safety and health management system and its performance up to Star level.

3. Demonstration Programs

a. Purpose

(1) Demonstration Programs provide the opportunity for organizations and/or worksites to demonstrate the effectiveness of alternative methods of achieving safety and health management system excellence that could modify current VPP requirements. OSHA may approve a Demonstration Program for such purposes as:

(a) Exploring the application of VPP in industries where OSHA lacks substantial experience;

(b) Testing alternative application and approval protocols that may expand VPP eligibility or serve other program objectives;

(c) Demonstrating the feasibility of joint Federal agency oversight of VPP applicants/participants, including joint evaluations, in the area of workplace safety and health.

(2) A Demonstration Program also may be used to test the potential for a new program within VPP or another cooperative initiative.

b. Program Development and Approval

(1). OSHA will develop the basic parameters of a Demonstration Program at the National Office or Regional level and will include a clear outline of specific requirements.

(2) The decision to implement a Demonstration Program must be approved by the Assistant Secretary before any applicants are considered for participation.

c. Requirements for Demonstration Programs

(1) Safety and Health Management System Requirements. Demonstration Program applicants must have a safety and health management system that, at a minimum, addresses the basic VPP elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training), plus 29 CFR part 1960 requirements for Federal agencies and 29 CFR 1926.20 requirements for construction applicants. How the applicant implements these elements may be the subject of demonstration.

(2) Applicants must demonstrate to the Assistant Secretary's satisfaction that the alternative approach shows reasonable promise of being successful and of leading to changes in VPP requirements.

(3) Injury/Illness Performance Requirements. A Demonstration Program's injury/illness rate requirements will depend on the specific provisions of the Demonstration.

d. Preapproval Onsite Evaluation

(1) Purpose. The preapproval onsite review, which OSHA conducts in a non-enforcement capacity, is a review of the applicant's safety and health management system and the effectiveness of the alternate criteria being demonstrated. It is conducted to:

(a) Verify the information supplied in the application concerning qualification for VPP;

(b) Identify the strengths and weaknesses of the applicant's safety and health management system and evaluate its adequacy to address hazards and to ensure compliance with all OSHA requirements;

(c) Determine how effectively the applicant has implemented its safety and health management system;

(d) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant; and

(e) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

(2) Duration and Scope. The duration and scope of the preapproval onsite evaluation will depend on the specific provisions of the demonstration. OSHA expects that the onsite evaluation normally will include document review, walkthrough, and management and employee interviews. For more information on what OSHA looks for during onsite evaluations, see the Preapproval Onsite Review sections at VI.B., C., and D.

e. Term of Participation

Applicants may be approved to a Demonstration Program for the period of time specified in the particular program. The term normally will not exceed 5 years.

f. Periodic Reevaluation

(1) Purpose. Onsite reevaluation of Demonstration Program participants is intended to:

(a) Determine continued qualification for the Demonstration Program;

(b) Document results of Demonstration Program participation in terms of the evaluation criteria and other noteworthy aspects of the participant's safety and health management system;

(c) Ensure that the demonstration aspects of the program continue to be effective and protect employees; and

(d) Identify any problems that have the potential to adversely affect continued Demonstration Program qualification and determine appropriate follow-up actions.

(2) Frequency. OSHA will reevaluate Demonstration Program participants every 12 to 18 months.

(3) Duration and Scope. See III.C.3.d.(2) above.

g. Approval and Transition of Demonstration Program Participants to Another VPP Program

(1) Approval to another VPP program is contingent upon:

(a) Successful demonstration of the alternatives tested within the Demonstration Program;

(b) A decision by the Assistant Secretary that changing VPP requirements to allow inclusion of these alternative provisions is desirable and will result in a continuing high level of worker protection. Once the Assistant Secretary decides to change VPP requirements, the changes will be effective on the date announced to the public.

(c) OSHA's satisfaction that the participant meets all requirements of the VPP program to which it is transitioning.

(2) When the VPP changes become effective, a Demonstration participant may be approved to another program within VPP without submitting a new

application or undergoing further onsite review, provided that the approval occurs no later than 18 months following the last OSHA onsite evaluation under the Demonstration Program. If more than 18 months have elapsed, OSHA must conduct an onsite evaluation prior to recommending the participant's approval to another program.

h. Demonstration Termination

(1) OSHA will terminate a Demonstration Program for the following reasons:

(a) The Demonstration is likely to endanger participating workers;

(b) It is unlikely that the Demonstration will result in participants' approval to another VPP program, creation of a new program, or other VPP changes; or

(c) The Demonstration period has expired.

(2) When a Demonstration Program ends, any participants not approved to another program within VPP will be terminated.

D. Guiding Principles

The following essential principles underlie all VPP participation. An applicant/participant's failure to adhere to these principles is grounds for disapproval or termination.

1. Safety and Health Management System Excellence

VPP applicants and participants must demonstrate, in the development and ongoing implementation of their safety and health management systems, a level of excellence commensurate with the rigorous standards and performance requirements embodied within VPP. VPP-quality safety and health management systems effectively identify, analyze, and prevent/control hazards, thereby ensuring the protection of employees and the prevention of workplace injuries and illnesses.

2. Cooperative Relationship

Based on the intent and history of VPP, OSHA expects participants to work cooperatively and proactively with the Agency, both in the resolution of safety and health problems and in the promotion of effective safety and health management systems. This cooperation is founded in an essential trust among labor, management, and OSHA. Applicants often report that the experience of developing and implementing a VPP-quality safety and health management system, with its emphasis on active management leadership and meaningful employee involvement, is a powerful catalyst for strengthening cooperation and trust. OSHA facilitates cooperation by designating a contact person, usually the Regional VPP Manager, who coordinates each approved participant's contact with the Agency.

3. Employee Support for VPP Participation

a. Any application received by OSHA must reflect the support of applicant's employees.

b. When an applicant's employees are unionized,

(1) The applicant may be required to provide evidence of support from applicable collective bargaining representatives. For specific requirements concerning union support for VPP participation, see the Eligibility sections at VI.B., C., and D.

(2) Unions retain the right to withdraw support at any time. In such event, OSHA will reevaluate the participant's continuing qualification. If a union's withdrawal of support results in a participant no longer meeting the VPP eligibility requirements of VI.B., C., or D., OSHA will ask the participant to withdraw or will terminate the participant from VPP.

4. Compliance with the OSH Act

All VPP applicants and participants will comply with the OSH Act, OSHA requirements, and in the case of Federal agencies, 29 CFR part 1960. Any deficiencies related to compliance that are uncovered through OSHA onsite reviews, self-inspections, employee reports, accident investigations, process hazard reviews, annual self-evaluations, or any other means must be corrected promptly. OSHA expects applicants/participants to provide effective interim protection as necessary to keep employees safe while corrections are being made.

5. OSHA History

If an applicant has been inspected by OSHA within the 36-month period preceding application, the inspection, abatement, and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health. Which aspects of an applicant's history OSHA will examine depends on how the applicant proposes to participate, that is, site-based, mobile workforce, or corporate participation. For further specifics, see the Eligibility sections at VI.B., C., and D.

6. Assurances

Applications to VPP must be accompanied by certain assurances describing what the applicant agrees to do if OSHA approves the application. Some of these assurances apply across the entire VPP. Others differ slightly, depending on how the applicant proposes to participate, that is, site-based, mobile workforce, or corporate participation. See the Assurances sections at VI.B., C., and D.

E. Additional Expectations

The following provisions reflect longstanding aspects of VPP participation that further define OSHA's expectations for VPP participants:

1. Continuous Improvement

VPP participants must demonstrate continuous improvement in the operation and impact of their safety and health management systems. Annual VPP self-evaluations help participants measure success, identify areas needing improvement, determine needed changes, and track the implementation of these changes. OSHA onsite evaluation teams verify this improvement.

2. Outreach

OSHA expects its VPP participants to serve as models of safety and health excellence in their industries and their communities. This can be accomplished in a variety of ways, including

a. Mentoring other worksites interested in improving safety and health;

b. Participating and giving presentations at safety and health conferences; training initiatives; meetings of labor, industry and government groups; and other outreach opportunities;

c. Serving as Special Government Employees on VPP onsite evaluation teams; and

d. Sharing best practices and success stories.

F. Recognition

When OSHA approves an applicant for participation in the VPP, the Agency recognizes that the applicant is providing, at a minimum, the basic elements of ongoing, systematic protection of workers in accordance with rigorous VPP criteria. This protection makes general schedule inspections unnecessary. Therefore, the employer's approved site(s) are removed from OSHA's programmed inspection lists (unless the participant chooses not to be removed). OSHA also publicizes VPP participants' successes in a variety of ways, including stories on the Agency's Web site, *http://www.osha.gov*; press releases and other Agency media; and recognition during Agency officials' speeches and presentations.

The VPP symbols of recognition are plaques of approval and program flags. The participant also may choose to use the VPP logo on such items as letterhead, shirts, and mugs.

IV. The VPP Safety and Health Management System

This section sets forth the elements and sub-elements of the comprehensive workplace safety and health management system required of VPP participants.

A. Management Leadership and Employee Involvement

Each applicant must be able to demonstrate top-level management leadership in its safety and health management system. Management systems for comprehensive planning must address protection of worker safety and health. Employees must be meaningfully involved in the safety and health management system.

1. Commitment to Safety and Health Protection

Authority and responsibility for employee safety and health must be integrated with the overall management system of the organization and must involve employees. This commitment includes:

a. Policy. Clearly established policies for worker safety and health protection that have been communicated to and understood by employees; and

b. Goal and Objectives. Established and communicated goals for the safety and health management system and results-oriented objectives for meeting the goals, so that all members of the organization understand the results desired and the measures planned for achieving them, especially those factors that directly apply to them.

2. Commitment to VPP Participation

Management must clearly demonstrate commitment to meeting and maintaining the requirements of the VPP.

3. Planning

Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

4. Written Safety and Health Program

All critical elements of a basic safety and health management system must be part of the written program. These critical elements are management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training. Federal agencies' written programs must also meet the requirements of 29 CFR part 1960, and construction companies' written programs must also meet the requirements of 29 CFR 1926.20. All aspects of the safety and health management system must be appropriate to the size of the worksite(s) and the type of industry. For small businesses, OSHA may waive some formal requirements, such as certain written procedures or documentation, where the effectiveness of the systems has been evaluated and verified. OSHA will decide waivers on a case-by-case basis.

5. Management Leadership

Managers must provide visible leadership in implementing the safety and health management system. This must include:

a. Establishing clear lines of communication with employees;

b. Setting an example of safe and healthful behavior;

c. Creating an environment that allows for reasonable employee access to top site management;

d. Ensuring that all workers at the site, including contract workers, are provided equally high quality safety and health protection;

e. Clearly defining responsibility in writing, with no unassigned areas. Each employee, at any level, must be able to describe his/her responsibility for safety and health;

f. Assigning commensurate authority to those who have responsibility;

g. Affording adequate resources to those who have responsibility and authority. This includes such resources as time, training, personnel, equipment, budget, and access to information and experts, including appropriate use of certified safety professionals (CSP), certified industrial hygienists (CIH), other licensed health care professionals, and other experts as needed, based on the risks at the site; and

h. Holding managers, supervisors, and non-supervisory employees accountable for meeting their safety and health responsibilities. In addition to clearly defining and implementing authority and responsibility for safety and health protection, management leadership entails evaluating managers and supervisors annually, and operating a documented system for correcting deficient performance.

6. Employee Involvement

The site culture must enable and encourage effective employee involvement in the planning and operation of the safety and health management system and in decisions that affect employees' safety and health. The requirement for employee participation may be met in a variety of ways, as long as employees have at least three active and meaningful ways to participate in safety and health problem identification and resolution. This involvement must be in addition to the individual right to notify appropriate managers of hazardous conditions and practices and to have issues addressed. Examples of acceptable employee involvement include but are not limited to the following:

a. Participating in ad hoc safety and health problem-solving groups;

b. Participating in audits and/or worksite inspections;

c. Participating in accident and incident investigations;

d. Developing and/or participating in employee improvement suggestion programs;

e. Training other employees in safety and health;

f. Analyzing job/process hazards;

g. Acting as safety observers; and

h. Serving on safety and health committees constituted in conformance to the National Labor Relations Act.

7. Contract Worker Coverage

All contractors and subcontractors, whether at general industry, construction, maritime, or Federal agency VPP sites, must follow worksite safety and health rules and procedures applicable to their activities while at the site.

a. In addition to ensuring that contractors follow site safety and health rules, VPP participants are expected to encourage their contractors to develop and operate effective safety and health management systems.

b. To this end, participants must have in place a documented oversight and management system for contractors that ensures the contractors' employees are provided effective protection and that drives improvement in contractor safety and health. Such a system should ensure that safety and health considerations are addressed during the contractor selection process and when contractors are onsite.

8. Self-Evaluation of the Safety and Health Management System

The applicant must have a system for annually evaluating the organization's safety and health efforts. This system will judge success in meeting goals and objectives, and will assist those responsible to determine and implement changes for continually improving worker safety and health protection.

a. The system must provide for an annual written narrative report with recommendations for timely improvements, assignment of responsibility for those improvements, and documentation of timely follow-up action or the reason no action was taken.

b. The evaluation must assess the effectiveness of all elements described in Section IV and any other elements of the applicant's safety and health management system.

c. The evaluation may be conducted by competent site, corporate, or other persons who are trained and/or experienced in performing such evaluations. The evaluation should follow the format established by OSHA.

B. Worksite Analysis

The successful management of workplace hazards begins with a thorough understanding of all hazardous situations to which employees may be exposed and the ability to recognize and correct all hazards as they arise. This requires:

1. Procedures to ensure analysis of all newly acquired or altered facilities, processes, materials, equipment, and/or phases before use begins, to identify hazards and the means for their prevention or control.

2. Comprehensive safety and health surveys, at intervals appropriate for the nature of workplace operations, which include:

a. Identification of safety hazards accomplished by an initial comprehensive baseline survey and then subsequent surveys as needed;

b. Identification of health hazards and employee exposure levels accomplished through an industrial hygiene sampling rationale and strategy. Sampling rationale should be based on data including reviews of work processes, material safety data sheets, employee complaints, exposure incidents, medical records, and previous monitoring results. The sampling strategy should include baseline and subsequent surveys that assess employees' exposure through screening and full-shift sampling when necessary; and

c. The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results.

3. Routine examination and analysis of safety and health hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This may include job hazard analysis and/or process hazard review. In construction, the emphasis must be on special safety and health hazards of each craft and each phase of work.

4. A system for conducting, as appropriate, routine self-inspections that follows written procedures or guidance and that results in written reports of findings and tracking of hazard elimination or control to completion.

a. For general industry and maritime applicants/participants under the site-based way to participate, these inspections must occur no less frequently than monthly and must cover the entire worksite at least quarterly;

b. For construction sites opting for the site-based way to participate and for all applicants/participants under the mobile workforce way to participate, these inspections must cover the entire worksite at least weekly and must involve trained employees.

5. A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and tracking of hazard elimination or control to completion.

6. An accident/incident investigation system that includes written procedures or guidance, with written reports of findings and hazard elimination or control tracking to completion. Investigations are expected to seek out root causes of the accident or event and to cover ''near miss'' incidents.

7. A system to analyze trends through a review of injury/illness experience and hazards identified through inspections, employee reports, accident investigations, OSHA logs, and/or other means, so that patterns with common causes can be identified and the causes eliminated or controlled.

C. Hazard Prevention and Control

Site hazards identified during the hazard analysis process must be eliminated or controlled by developing and implementing the systems discussed at IV.C.2. below and by using the hierarchy provided at IV.C.3. below.

1. The hazard controls a site chooses to use must be:

a. Understood and followed by all affected parties;

b. Appropriate to the hazards of the site;

c. Equitably enforced through a clearly communicated, written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and non-supervisory employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures;

d. Written, implemented, and updated by management as needed, and must be used by employees; and

e. Incorporated in training, positive reinforcement, and correction programs.

2. The required systems of hazard prevention and control are:

a. A system for initiating and tracking hazard elimination or control in a timely manner;

b. A written system for, and ongoing documentation of, the monitoring and maintenance of workplace equipment such as preventive and predictive maintenance, to prevent equipment from becoming hazardous;

c. An occupational health care program that uses licensed health care professionals to assess employee health status for prevention, early recognition, and treatment of illness and injury; and that provides, at a minimum, access to certified first aid and cardiopulmonary resuscitation (CPR) providers, physician care, and emergency medical care for all shifts within a reasonable time and distance. Occupational health care professionals should be used as appropriate to accomplish these functions; and

d. Procedures for response to emergencies on all shifts. These procedures must be written and communicated to all employees; must list requirements for personal protective equipment, first aid, medical care, and emergency egress; and must include provisions for emergency telephone numbers, exit routes, and training drills including, at a minimum, annual evacuation drills.

3. The following hierarchy should govern actions to eliminate or control hazards, with a. being the most desirable:

a. Engineering controls are the most reliable and effective type of controls. These are design changes that directly eliminate (ideally) or limit the severity and/or likelihood of the hazard, for example, reduction in pressure/amount of hazardous material, substitution of less hazardous material, reduction of noise produced, fail-safe design, leak before burst, fault tolerance/redundancy, ergonomics, etc. This category also includes protective safety devices such as guards, barriers, interlocks, grounding and bonding systems, pressure relief valves to keep pressure within a safe limit, etc. These latter types of controls, although not as reliable as true engineering controls, typically seek to reduce indirectly the likelihood of the hazard. These controls are often linked with caution and warning devices like detectors and alarms that are either automatic (do not

require a human response) or manual (require a human response);

b. Administrative controls that significantly limit daily exposure to hazards by control or manipulation of the work schedule or manner in which work is performed, e.g., job rotation;

c. Work Practice controls, a type of administrative control that includes workplace rules, safe and healthful work practices, and procedures for specific operations. Work Practice controls modify the manner in which an employee performs assigned work. This modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

d. Personal protective equipment (PPE).

D. Safety and Health Training

Training is necessary to reinforce and complement management's commitment to prevent exposure to hazards. All employees must understand the hazards to which they may be exposed and how to prevent harm to themselves and others from such hazard exposure. Effective training enables employees to accept and follow established safety and health procedures. Training for safety and health must ensure that:

1. Managers and supervisors understand their safety and health responsibilities (see IV.A.) and are able to carry them out effectively;

2. Managers, supervisors, and non-supervisory employees (including contract employees) are made aware of hazards, and are taught how to recognize hazardous conditions and the signs and symptoms of workplace-related illnesses;

3. Managers, supervisors, and non-supervisory employees (including contractor employees) learn the safe work procedures to follow in order to protect themselves from hazards, through training provided at the same time they are taught to do a job and through reinforcement;

4. Managers, supervisors, non-supervisory employees (including contractor employees), and visitors on the site understand what to do in emergency situations; and

5. Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, and how to maintain it; and employees use it properly.

V. Application for VPP

A. General

VPP accepts applications from private sector general industry, maritime, and construction employers subject to the Occupational Safety and Health Act, and from Federal agencies subject to 29 CFR part 1960. The VPP applicant must provide OSHA with information that illustrates an effective safety and health management system.

There is no VPP application form. OSHA prepares, keeps current, and makes available to all interested parties application guidelines that explain the information to be submitted for OSHA review.

There is no single correct way to meet VPP requirements. OSHA expects to see a system that works for the applicant's specific work activities and hazards. OSHA encourages applicants to use as much existing material as possible; there is no need to create a large quantity of new documents.

B. Content

1. Eligible applicants must provide all information described in the most current version of the relevant application instructions.

2. OSHA will request amendments to submitted applications when the application information is insufficient to determine eligibility for onsite review.

3. Materials needed to document the safety and health management system that may involve trade secrets or employee privacy interests must not be included in the application. Instead, such materials must be described in the application and provided only for viewing at the site during an application assistance visit and/or during the preapproval onsite review.

C. Submission

The application and copies must be submitted to the appropriate OSHA Offices, as specified in the application instructions. OSHA normally will require applications be submitted electronically (on a CD or by e-mail), but this requirement may be waived depending on circumstances particular to the program, the applicant, or the OSHA Office.

D. Acceptance of Application

1. OSHA conducts an initial review of each application to determine whether it meets VPP criteria that can be substantiated by the applicant's written safety and health management system and supporting documentation. The applicant will be given the opportunity to improve its application by submitting amended or additional materials.

2. If the application is incomplete, and if after notification the applicant has not responded within 90 days to OSHA's request for more information, the Agency will consider the application unacceptable and will return it to the applicant. The applicant may reapply when its application is complete.

E. Withdrawal of Application

1. Any applicant may withdraw a submitted application at any time. When the applicant notifies OSHA of its desire to withdraw, OSHA will delete any electronic application materials it holds, and will return to the applicant any materials held in hard-copy format.

2. Once an application has been withdrawn, a new submission of an application is required to be considered for VPP approval.

F. Public Access

The following documents will be maintained by OSHA for public access beginning on the day the applicant attains VPP approval and continuing for so long as the approved participant remains in VPP:

1. In the National Office: Participant general information from the application; OSHA's preapproval report and subsequent evaluation reports; the Regional Administrator's or Director of Cooperative and State Programs' recommendation to the Assistant Secretary; and the Assistant Secretary's and Regional Administrator's approval letters.

2. The National Office also will maintain the complete application and related correspondence and amendments submitted by corporate applicants.

3. In the Regional Office: For all VPP applicants except corporate, the complete VPP application and amendments; preapproval report and subsequent evaluation reports; the Regional Administrator's recommendation to the Assistant Secretary via the Director of Cooperative and State Programs; the Assistant Secretary's and Regional Administrator's approval letters; any communications related to the Area Office removing the approved participant from the general inspection list; and related correspondence.

VI. Ways to Participate

A. Overview

1. This section details the three primary ways in which businesses and other organizations can participate in

VPP: Site-based, mobile workforce, and corporate. The general principles and features of VPP-quality safety and health management systems are generally consistent for all types of participation. These principles can be found in IV. above.

2. There are some differences, however, in the details and implementation of these systems, and how OSHA will evaluate applicants/participants. These differences will depend on whether employees work at a single fixed site or move from one work project to another, and also whether an employer is applying individually or through a broader corporate commitment to VPP. OSHA therefore offers, at VI.B., C., and D. below, slightly differing requirements for the three participation options.

3. Demonstration Programs may present unique features, requirements, and processes that do not fit into a clear-cut VPP category (way to participate, Star or Merit Program). For this reason, Demonstration Programs are not addressed in this Ways to Participate section. Parties interested in a Demonstration Program should refer to III.C.3. above and the specific provisions of the Demonstration announced by OSHA.

B. Site-Based Participation

1. Purpose

Site-based participation continues VPP's traditional acceptance of applications from fixed worksites and some long-term construction sites.

2. Eligibility

a. General. OSHA welcomes site-based VPP participation and accepts VPP applications from the owners and site officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions of:

(1) Private-sector fixed worksites in general industry and the maritime industry;

(2) Construction worksites/projects that will have been in operation for at least 12 months at projected time of approval and that expect to continue in operation for at least an additional 12 months; and

(2) Federal-sector fixed worksites.

OSHA also welcomes applications from:

(3) Resident contractors at participating VPP sites for the contractors' operations at those VPP sites. However, resident contractors participating at two or more VPP sites may be eligible for and prefer the mobile workforce way to participate (see VI.C.1.a.(2)); and

(4) Resident contractors at non-participating sites for the contractors' operations at those sites, so long as the resident contractors are part of a larger organization approved to participate under the corporate option (see VI.D. below).

b. Unionized Sites. At fixed worksites with employees organized into one or more collective bargaining units, the authorized representative for each collective bargaining unit must either:

(1) Sign the application or

(2) Submit a signed statement indicating that the collective bargaining agent supports or is not opposed to VPP participation.

Without such concurrence from all such authorized agents, OSHA will not accept the application.

c. OSHA History. In addition to the general requirement concerning an applicant's inspection history (see III.D.5.), the following applies to site-based participation: The fixed worksite's history must include no open investigations and no pending or open contested citations or notices under appeal at the time of application, and no affirmed willful violations during those prior 36 months.

3. Assurances

Site-based applications must include certain assurances describing what the applicant agrees to do if OSHA approves the application. The applicant must assure that:

a. Applicant will comply with the OSH Act and, in the case of Federal agencies, 29 CFR part 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review or enforcement inspection, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary to keep employees safe while corrections are being made.

b. Applicant will correct any site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review. The correction period will be determined by the VPP team leader and will not exceed 90 days.

c. Applicant, following approval, will continue to meet and maintain the requirements of the elements. Site-based applicants whose primary activity is construction will continue to meet and maintain the construction requirements of the elements.

d. All employees, including newly hired employees and contractor/subcontractor employees when they reach the site, will have the VPP explained to them, including employee rights under the program and under the OSH Act or 29 CFR part 1960.

e. All employees engaged in safety and health activities, including those specifically given safety and health duties as part of applicant's safety and health management system, will be protected from discriminatory actions resulting from their activities/duties, just as Section 11(c) of the OSH Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

f. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. At unionized sites, this requirement may be met through employee representative access to these results.

g. To enable OSHA to determine initial and continued VPP approval, applicant will maintain and make available for OSHA review the information listed below:

(1) Written safety and health management system;

(2) All documentation listed at VI.B.6.d. below; and

(3) Any agreements between management and the authorized collective bargaining agent(s) concerning safety and health.

h. Applicant will make available to OSHA any data necessary to evaluate the achievement of individual Merit or One-Year Conditional goals not listed above.

i. Each year by February 15, each site-based participant will send to its designated OSHA VPP contact (see VIII.A. below):

(1) The site's total recordable case incidence rate (TCIR) for injuries and illnesses of all employees including temporary employees for the previous calendar year and

(2) The site's incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) of all employees including temporary employees for the previous calendar year.

(3) Contractor data, the requirements for which differ for construction and non-construction participants.

(a) Fixed worksite participants whose primary activity is construction will include in the above rates and data required in VI.B.3.i.(4) below the experience of all employees including temporary employees and contractor/subcontractor employees.

(b) Fixed worksite participants whose primary activity is not construction will send to the designated OSHA VPP contact site data on each applicable contractor's employees. Applicable

contractors are those employers who have contracted with the site to perform certain jobs and whose employees worked a total of 1,000 or more hours in at least 1 calendar quarter at the worksite.

The data will consist of the site's TCIR and DART rate for each applicable contractor's employees; total number of cases from which these two rates were derived; hours worked; and estimated average employment for the past full calendar year.

(4) Each site will also submit:

(a) The total number of cases for each of the above two rates;

(b) Hours worked;

(c) Estimated average employment for the past full calendar year;

(d) A copy of the most recent annual self-evaluation of the site's safety and health management system; and

(e) A description of any worksite success stories, for example, reductions in workers' compensation rates, increases in employee involvement in the program, etc.

j. Whenever significant organizational or ownership changes occur, the site will provide OSHA within 60 days a new Statement of Commitment signed by management and, when applicable, authorized collective bargaining agents.

k. Whenever a change occurs in union representation/status, the participant must notify the OSHA Regional Administrator in writing within 60 days. The Regional Administrator will determine what steps, if any, must be taken to reaffirm VPP support.

4. Injury and Illness Performance

In determining a site's qualification for the Star or Merit Program, OSHA considers the most recent 3-year recordable injury and illness experience and compares that experience with industry averages published by the Bureau of Labor Statistics (BLS). Some sites may use an alternative calculation of injury and illness experience based on the best 3 out of the most recent 4 years (see c. below). The following provisions govern the injury and illness performance requirements for site-based Star and Merit approval.

a. Star Rate Requirements

(1) General industry, maritime, and Federal agency (however, see Note below) site-based applicants at the time of approval must meet the following employee performance criteria. Employees include all regular site employees, including temporary and contractor employees who are regularly intermingled with the owner's employees and under direct supervision by management.

Note: Any Federal agency or other site-based applicant whose work is primarily construction in nature must meet the performance criteria for site-based construction applicants. See VI.B.4.a.(2) below.

Two rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses at the most precise level published by BLS. OSHA will compare the two site rates against the single year that is most advantageous to the site out of the last 3 published years. These rates are:

(a) The 3-year total recordable case incidence rate (TCIR), a single rate that reflects 3 years of total recordable injuries and illnesses, and

(b) The 3-year incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate).

(2) The construction site-based applicant, including certain Federal agencies and other applicants (see Note at VI.B.4.a.(1) above), at the time of approval must meet the following criteria:

(a) The site for which VPP application is being made must have been in operation for at least 12 months.

(b) OSHA will consider the applicant's TCIR and DART rate dating from time of application back to site inception but in no instance greater than 3 years (or 4 years if using the alternative method of calculating rates, VI.B.4.c.). These two rates must include all workers of all contractors/subcontractors and must be below the national average for the type of construction at the site according to the most appropriate and representative NAICS code. The site's NAICS code is determined by the type of construction project, not individual trades.

b. Merit Rate Requirements

(1) For general industry, maritime, and Federal agencies, if the applicant's 3-year TCIR and/or the applicant's 3-year DART rate for the last 3 calendar years prior to approval does not meet the Star rate requirements (VI.B.4.a.), the applicant must have a plan to achieve Star rate requirements within 2 years. It must be statistically possible to achieve this goal.

(2) For the construction industry and other applicants whose primary work activity at the site is construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry, at the most precise published level. OSHA will compare the two company-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years.

c. Alternative Rate Calculation

Some applicants, usually smaller worksites with limited numbers of employees and/or hours worked, may use an alternative method for calculating incidence rates. The alternative method allows the applicant to use the best 3 out of the most recent 4 years' injury/illness experience.

(1) To determine whether the applicant qualifies for the alternative calculation method, do the following:

(a) Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate (TCIR) for the employer assuming that the employer had two cases during the year;

(b) Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and

(c) If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method.

(2) If the applicant qualifies for the alternative calculation method, the best 3 of the last 4 calendar years may be used to calculate both 3-year rates (specified in VI.B.4.a. and b. above).

5. Additional Safety and Health Management System Requirements

For site-based construction applicants/participants and others whose primary work activity is construction, the following applies in addition to the safety and health management system annual self-evaluation requirements found at IV.A.8. above:

The self-evaluation must be conducted annually and immediately prior to completion of construction. The final evaluation is to determine what has been learned about safety and health activities that can be used to improve the participant's safety and health management system at other sites. If a participant does not provide this final evaluation, OSHA will not consider subsequent VPP applications from the participant.

6. Preapproval Onsite Review of Site-Based Applicants

a. Purpose. The preapproval review, which OSHA conducts in a non-enforcement capacity, is a review of the site's safety and health management system. It is conducted to:

(1) Verify the information supplied in the application concerning qualification for VPP;

(2) Identify the strengths and weaknesses of the applicant's safety and health management system, and evaluate its adequacy to address the site's hazards;

(3) Determine whether the applicant's safety and health management system meets the requirements for Star or Merit approval;

(4) Determine how effectively the applicant has implemented its safety and health management system;

(5) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant;

(6) Determine whether the applicant is in compliance with OSHA regulations; and

(7) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

b. Preparation. The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader; a back-up team leader (when needed); and health, safety, and other specialists as required by the size of the site and the complexity of its operations.

c. Duration. The time required for the preapproval onsite review will depend upon the size of the site and the complexity of its operations. Preapproval reviews usually average 4 days onsite, but may be shorter or longer based on the decision of the Regional Administrator or Regional VPP Manager.

d. Scope. All preapproval onsite reviews follow a three-pronged strategy that assesses a site's safety and health management system by means of document review, site walkthrough, and employee and management interviews.

The onsite review will include a review of injury, illness, and fatality records; recalculation and verification of the TCIR and the DART rate (the two rates submitted with the application); a general assessment of safety and health conditions to determine if the safety and health management system adequately protects workers from the hazards at the site; verification of compliance with OSHA and VPP requirements; and verification that the safety and health management system described in the application has been implemented effectively.

The review will include random formal and informal interviews with relevant individuals such as members of any safety and health committees, management personnel, randomly selected non-supervisory employees, union representatives, and contract workers.

Onsite document review will entail examination of the following records (or samples) if they exist and are relevant to the application or to the safety and health management system. (OSHA will accommodate trade secret concerns to the extent feasible.)

(1) Written safety and health management system;

(2) Management statement of commitment to safety and health and union statement of support if applicable;

(3) The OSHA Form 300 log (or a successor OSHA form) for the site and for all site contractor employees who are required to report;

(4) Safety and health manuals;

(5) Safety rules, emergency procedures, and examples of safe work procedures;

(6) The system for enforcing safety rules;

(7) Reports from employees of safety and health problems and documentation of management's response;

(8) Self-inspection procedures, reports, and correction tracking;

(9) Accident investigation reports and analyses;

(10) Safety and health committee minutes;

(11) Employee orientation and safety training programs and attendance records;

(12) Baseline safety and industrial hygiene exposure assessments and updates;

(13) Industrial hygiene monitoring records, results, exposure calculations, analyses, and summary reports;

(14) Annual safety and health management system self-evaluations, site audits, and, when needed to demonstrate that VPP criteria are being met, corporate audits that a site voluntarily chooses to provide in support of its application. The review of evaluative documents needed to establish that the site is meeting VPP requirements will cover at least the last 3 years and will include records of follow-up activities stemming from self-evaluation recommendations;

(15) Preventive maintenance program and records;

(16) Accountability and responsibility documentation, for example, performance standards and appraisals;

(17) Contractor safety and health programs, including applicable contractor injury and illness data that non-construction site-based participants must maintain (see VI.B.3.i.(3));

(18) Occupational health care programs and records;

(19) Available resources devoted to safety and health;

(20) Hazard and process analyses;

(21) Process Safety Management (PSM) documentation, if applicable;

(22) Employee involvement activities; and

(23) Other records that provide relevant documentation of VPP qualifications.

7. Term of Participation

a. Star Program. A site-based participant's term of participation in the Star Program is open-ended so long as the participant:

(1) Continues to maintain its excellent safety and health management system as evidenced by favorable reevaluation by OSHA every 30 to 60 months; and

(2) Submits the annual information required, including annual rates data and program self-evaluation (see VI.B.3.i.).

b. Merit Program. Site-based participants in the Merit Program are approved for a period of time agreed upon in advance of approval but not to exceed 3 years. The term will depend upon how long it is expected to take the applicant to accomplish the goals for Star participation. Merit participation terminates at the end of the term unless approval for a second term is recommended and is approved by the Assistant Secretary. Approval for a second term will be recommended only when unanticipated unique circumstances slow the participant's progress toward accomplishing the goals.

Note: For site-based construction participants in both the Star and Merit Programs, participation ends with the completion of construction work at the site.

c. Demonstration Programs. See III.C.3.e.

8. Periodic Reevaluation of Site-Based Participants—Star Program

a. Purpose. OSHA periodically conducts onsite reevaluations of Star participants to:

(1) Determine continued qualification for the Star Program;

(2) Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health management system; and

(3) Identify any problems that have the potential to adversely affect

continued qualification and determine appropriate follow-up actions.

b. Frequency. OSHA will conduct the first reevaluation within 30 to 42 months of the initial Star approval or, in the case of a Demonstration Program site that has been approved to Star, within 30 to 42 months of the last Demonstration evaluation. Subsequently, all site-based Star participants will be reevaluated at no greater than 60-month intervals. The identification of potentially serious safety and health risks may create the need for more frequent evaluation.

c. Scope. OSHA's reevaluation of site-based Star Program participants will consist mainly of an onsite visit similar in scope to the preapproval review described in VI.B.6.d. OSHA will review the documentation of system implementation since preapproval review or since the previous evaluation.

(1) The evaluation will include a review of employee incidence rates and supporting data specified at VI.B.4.

(2) For non-construction site-based participants, the review of applicable contractor data (see VI.B.3.i.(3)) will be part of OSHA's evaluation of the effectiveness of the site's contractor oversight and management system. For construction site-based participants, the performance of all contractors will be part of OSHA's evaluation (see VI.B.4.).

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of site-based Star Program participants:

(1) Continued compliance with the program requirements and continuous improvement in the safety and health management system;

(2) Satisfaction and continuing demonstrated commitment of employees and management;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee involvement provisions within the safety and health management system.

9. Periodic Reevaluation of Site-Based Participants—Merit Program

a. Purpose. OSHA periodically conducts onsite reevaluations of Merit participants to:

(1) Determine continued qualification for the Merit Program, or determine whether the participant may be approved to the Star Program;

(2) Determine whether adequate progress has been made toward the agreed-upon Merit goals;

(3) Identify any problems in the safety and health management system or its implementation that need resolution in order to continue qualification or meet agreed-upon goals;

(4) Document system improvements and/or improved results; and

(5) Provide advice and suggestions for needed improvements.

b. Frequency. OSHA will conduct the first reevaluation of a site-based Merit participant within 24 months (18 months is recommended) of approval. The site may request an earlier reevaluation if it believes it has met Star Program qualifications.

c. Scope. OSHA's reevaluation of site-based Merit participants will consist mainly of an onsite visit similar in scope to the preapproval review described at VI.B.6.c–d. OSHA will review documentation of system implementation since the preapproval review or the previous evaluation. The reevaluation will include a review of TCIR and DART rates for both the site and its applicable contractor employees as described at VI.B.4.

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of site-based Merit Program participants:

(1) Continued adequacy of the safety and health management system to address the hazards of the workplace;

(2) Comparison of employer and contractor rates to the industry averages;

(3) Satisfaction and continuing demonstrated commitment of employees and management;

(4) Nature and validity of any complaints received by OSHA;

(5) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation;

(6) The effectiveness of employee involvement provisions within the safety and health management system; and

(7) Progress made toward goals specified in the preapproval or previous evaluation report.

10. Periodic Reevaluation of Site-Based Participants—Demonstration Program

See III.C.3.f.

C. Mobile Workforce Participation

1. Purpose and Distinguishing Features

a. Mobile workforce participation is intended for:

(1) Applicants/participants whose employees move physically from one work project to another; and

(2) Applicants/participants whose employees work as resident contractors at two or more fixed locations.

b. Participation Plan. Each applicant will develop a unique Participation Plan that includes a discussion of safety and health management system elements that differ in substance or emphasis from the basic system requirements provided at IV above. This may include, for example, management leadership and employee involvement strategies that ensure employee protection, such as employees' ability to leave the worksite if unsafe conditions exist; hazard analysis that uses historical sampling data for a baseline; emergency response policies and evacuation procedures appropriate to construction and other mobile workforce projects; and other alternative approaches to safety and health.

c. Designated Geographic Area (DGA). OSHA, after consulting with an applicant and considering the applicant's preference, will define a geographic area for VPP participation. The DGA will enable the applicant to achieve VPP participation and receive OSHA recognition for all its temporary work projects and resident contractor work projects in the designated area. This contrasts with site-based participation described at VI.B. above.

(1) A DGA cannot be smaller than an OSHA Area Office boundary and cannot exceed an OSHA Regional Office boundary.

(2) OSHA will provide procedures for mobile workforce applicants seeking to participate in, and approved participants seeking to expand into, more than one Region.

(3) The DGA will become part of the applicant's Participation Plan.

2. Eligibility

a. General. OSHA welcomes mobile workforce VPP participation and accepts VPP applications from:

(1) Private sector employers at various organizational levels in the construction industry, general industry, and the maritime industry; and

(2) Federal agency employers at various organizational levels.

b. Designated Geographic Area (DGA). The DGA will define the physical boundaries of the applicant's VPP participation. See VI.C.1.c. above.

(1) At time of application, the applicant must have at least one active work project within the DGA.

(2) If the applicant has only one active work project within the DGA at time of application, applicant must have at least one additional work project scheduled to begin during the coming 12 months.

c. Unionized Workforce

(1) When, at the time of application, a majority of an applicant's employees and contractor/subcontractor employees are represented by unions, the applicant

must provide to OSHA signed documentation that the unions either support VPP participation or are not opposed to participation.

(2) OSHA expects each applicant to determine whether the requirement for union support applies. Calculate the percentage of employees (including temporary employees) and contractor/subcontractor employees who are represented by unions at the time of VPP application. Then use the chart below.

If . . .	Then . . .
Majority of employees are represented by unions	Signed statement(s) required. Must be obtained from enough unions to represent a majority of all employees.
Some employees but less than a majority of all employees are represented by unions	No statement of union support required.
No employees are represented by unions	Requirement not applicable.

(3) An applicant required to obtain union support must obtain support from the authorized bargaining agents at its sites within the DGA; individual local unions that represent the applicant's employees; *or,* when appropriate, blanket support from a local, regional, or national industry council. Without such concurrence, OSHA will not accept the application.

(4) Where documented union support for VPP participation is not required, OSHA still will evaluate, through onsite interviews, employees' support for participation. A lack of employee support, for any reason, will impact OSHA's decision on the applicant's qualification. See Guiding Principles, Employee Support for Participation, III.D.3.

d. OSHA History

In addition to the general requirement concerning an applicant's inspection history (see III.D.5.), the following applies to mobile workforce participation:

The applicant's history within the DGA must include no open investigations and no pending or open contested citations or notices under appeal at the time of application, and no affirmed willful violations during those prior 36 months.

3. Assurances

Mobile workforce applications must include certain assurances describing what the applicant agrees to do if OSHA approves the application. The applicant must assure that:

a. Applicant will comply with the OSH Act and, in the case of Federal agencies, 29 CFR part 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review or enforcement inspection, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

b. Applicant will correct any site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review. The correction deadline:

(1) Will depend on the length of the work project and the nature of the deficiency;

(2) Will be determined by the OSHA VPP team leader; and

(3) In no instance will exceed 30 days.

c. The systems and procedures of the safety and health management system are in place and effectively implemented at all work projects, and management provides effective oversight, to assure VPP-quality safety and health protection throughout the DGA.

d. Applicant, following approval, will continue to meet and maintain the requirements of the elements.

e. All employees, including newly hired employees and contractor/subcontractor employees, will have the VPP explained to them before they perform any work. This explanation will include employee rights under the program and under the OSH Act or 29 CFR part 1960.

f. All employees engaged in safety and health activities, including those specifically given safety and health duties as part of applicant's safety and health management system, will be protected from discriminatory actions resulting from their activities/duties, just as Section 11(c) of the OSH Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

g. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. For a unionized workforce, this requirement may be met through employee representative access to these results.

h. To enable OSHA to determine initial and continued VPP approval, applicant will maintain and make available for OSHA review the information listed below:

(1) Written safety and health management system;

(2) All documentation listed at VI.C.6.e–f. below; and

(3) Any agreements between management and the authorized collective bargaining agent(s) concerning safety and health.

i. Applicant will make available to OSHA any data necessary to evaluate the achievement of individual Merit or One-Year Conditional goals and not listed above.

j. Each year by February 15, each mobile workforce participant will send to its designated OSHA VPP contact (see VIII.A. below):

(1) The DGA's total recordable case incidence rate (TCIR) for injuries and illnesses for the previous calendar year; and

(2) The DGA's incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) for the previous calendar year.

(3) The participant will also submit:

(a) The total number of cases for each of the above two rates;

(b) Total hours worked;

(c) Estimated average employment for the past full calendar year;

(d) A copy of the most recent annual self-evaluation of the participant's safety and health management system; and

(e) A description of any success stories, for example, reductions in workers' compensation rates, increases in employee involvement in the program, etc.

k. Whenever significant organizational or ownership changes occur, the mobile workforce participant will provide OSHA within 60 days a new Statement of Commitment signed by management and, when applicable, any authorized collective bargaining agents.

l. The percentage of employees represented by unions may change. Therefore, an approved mobile workforce participant will report to OSHA, as part of its annual evaluation, any change in this percentage that

would have the effect of changing the participant's union support requirement.

m. When OSHA needs to visit a particular work project that the mobile workforce applicant/participant does not control, the applicant/participant will inform and should gain written permission from the controlling employer (for example, the general contractor) for OSHA to enter.

(1) In these instances, OSHA will provide reasonable notice prior to its visit.

(2) Should the controlling employer refuse permission for OSHA to enter, OSHA may consider visiting a different work project.

n. Project Lists

(1) Prior to OSHA's VPP preapproval onsite evaluation visit and subsequent reevaluation visits, the applicant/participant will provide OSHA with a list including addresses of all active work projects;

(2) If the applicant/participant is a controlling employer at any work projects within the DGA, it will provide OSHA with a list including addresses of all such active work projects and all such work projects scheduled or expected for the next 12 months;

(a) Applicant/participant will submit this list annually as part of the self-evaluation due by Feb. 15;

(b) For the purpose of VPP, a controlling employer is any entity at a work location (such as a general contractor or manager at a construction project) that controls project/site operations and has ultimate responsibility for assuring safe and healthful work conditions at the project/site.

4. Injury and Illness Performance

In determining a mobile workforce applicant's qualification for the Star or Merit Program, OSHA considers the most recent 3-year recordable injury and illness experience for all work conducted within the DGA (including work conducted by contractors/subcontractors) and compares that experience with industry averages published by the Bureau of Labor Statistics. Some applicants may use an alternative calculation of injury and illness experience based on the best 3 out of the most recent 4 years (c. below). The following provisions govern the injury and illness performance requirements for mobile workforce Star and Merit approval. They also address a temporary policy that allows applicants who do not maintain sufficient contractor/subcontractor data to phase in their reporting of this required data.

a. Star Rate Requirements

The mobile workforce applicant at the time of approval must meet the following employee performance criteria for the company's workforce within the DGA.

(1) The workforce consists of all employees over whom the applicant has responsibility and authority for safety and health, including regular hires plus temporary, contractor, and subcontractor employees. The term ''combined workforce rates'' as used here means injury and illness rates calculated from data that combine an applicant's regular workforce (which includes temporary employees) and its contractor/subcontractor employees.

(a) It is the applicant's responsibility to maintain records of hours worked by contractor/subcontractor employees under its control within the DGA plus any recordable injuries and illnesses these employees may experience.

(b) However, see VI.C.4.d. below for a phase-in of this combined workforce rate requirement.

(2) Two combined workforce rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses at the most precise level published by the Bureau of Labor Statistics (BLS). OSHA will compare the two DGA-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years. These rates are:

(a) The 3-year total recordable case incidence rate (a single rate that reflects 3 years of total recordable injuries and illnesses), and

(b) The 3-year incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate).

b. Merit Rate Requirements

If an applicant's 3-year TCIR and/or the applicant's 3-year DART rate for the last 3 calendar years prior to approval does not meet the Star rate requirements (immediately above), the applicant must have a plan to achieve Star rate requirements within 2 years. It must be statistically possible to achieve this goal.

c. Alternative Rate Calculation

Some applicants, usually smaller employers with limited numbers of employees/contractors/subcontractors and/or hours worked, may use an alternative method for calculating incidence rates. The alternative method allows the applicant to use the best 3 out of the most recent 4 years' injury/illness experience.

(1) To determine whether the applicant qualifies for the alternative calculation method, do the following:

(a) Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;

(b) Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and

(c) If the hypothetical rate (based on two cases) is equal to or higher than the BLS national average for the employer's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method.

(2) If the applicant qualifies for the alternative calculation method, the best 3 of the last 4 calendar years may be used to calculate both 3-year rates (specified in VI.C.4.a above).

d. Phase-in of combined workforce rate requirement. OSHA expects to receive a 3-year combined workforce rate from each mobile workforce applicant. However, for a limited time period, a phase-in combined rate requirement is available for applicants who do not maintain sufficient contractor/subcontractor data.

Note: Mobile workforce participants who came into VPP as part of the Mobile Workforce Demonstration for Construction, and who have not completed that program's available phase-in, may continue their phase-in schedule.

To apply using the phase-in policy:

(1) For the year 2009, as part of an applicant's mobile workforce application, OSHA expects to receive:

(a) Combined workforce TCIR and DART rates for calendar year 2008, plus

(b) Company-only rates (that include temporary employees) for calendar years 2007 and 2006.

These 3 years of rates should reflect an applicant's nonfatal injury and illness experience within the DGA only.

(2) For calendar year 2010, new applicants and participants who applied using the phase-in rate requirement must provide to OSHA:

(a) Combined workforce TCIR and DART rates that reflect the experience of the company's regular workforce (including temporary employees) and contractors/subcontractors for calendar years 2008 and 2009, plus

(b) Company-only TCIR and DART rates (which include temporary employees) for calendar year 2007.

(3) Beginning January 1, 2011, all applicants and participants must provide to OSHA combined workforce TCIR and DART rates for the 3 most recent calendar years in the DGA. The data for each of these 3 calendar years must reflect the experience of the company's regular workforce (which includes temporary employees) combined with its contractors/subcontractors at projects DGA-wide.

5. Additional Safety and Health Management System Requirements

a. The mobile workforce applicant's safety and health management system must be fully established at the Star level and, therefore, must incorporate all elements of the VPP safety and health management system, as delineated at IV. above. Approval to either the Merit or Star Program will be determined by the degree and effectiveness of implementation at individual sites/projects.

b. Because the mobile workforce participant often relies on contractor/subcontractor employees, contract worker coverage (addressed at IV.A.7 above) is particularly critical for effective worker protection. Therefore, a mobile workforce participant's safety and health management system must provide thorough, documented oversight and management of all contractors/subcontractors under its control.

This oversight and management must include specific procedures for considering safety and health performance during the contractor selection process. If circumstances prevent the selection of contractors with a history of good safety and health performance, the participant's management system must provide sufficiently rigorous oversight to ensure the safety and health of all employees.

c. All mobile workforce applicants/participants must perform routine self-inspections of all their active worksites within the DGA. These self-inspections must follow written procedures or guidance, involve trained employees, and result in written reports of findings and tracking of hazard elimination or control to completion. Each worksite must be covered in its entirety at least weekly.

6. Preapproval Onsite Review of Mobile Workforce Applicants

OSHA conducts a two-phased onsite review of mobile workforce applicants. The first phase consists of an evaluation of the applicant's safety and health management system. This is followed by a second phase, during which OSHA conducts onsite evaluations of selected temporary, currently active worksites/projects within the DGA.

a. Purpose. This two-phased preapproval review, which OSHA conducts in a non-enforcement capacity, is intended to:

(1) Verify the information supplied in the application concerning qualification for VPP;

(2) Identify the strengths and weaknesses of the applicant's safety and health management system, and evaluate its adequacy to address the hazards of the applicant's worksites/projects;

(3) Determine whether the applicant's safety and health management system meets the requirements for Star approval;

(4) Determine how effectively the applicant has implemented its safety and health management system at its sites/projects, and how effectively it provides continuing oversight;

(5) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant;

(6) Determine whether the applicant is in compliance with OSHA regulations; and

(7) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

b. Preparation. The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader; a back-up team leader (when needed); and health, safety, and other specialists as required by the complexity of applicant's operations and the size and complexity of the worksites/projects OSHA visits.

c. Duration. The time required for the preapproval onsite review will depend upon the complexity of applicant's operations and the number, size and complexity of the worksites/projects OSHA visits.

d. Scope. The preapproval onsite review for mobile workforce applicants will consist of two phases: An evaluation of the applicant's safety and health management system, and onsite evaluations of temporary, currently active worksites/projects.

e. Phase 1: Safety and Health Management System Review. OSHA initially will conduct an evaluation of the applicant's safety and health management system to determine whether the system meets Star requirements. It will include systems for ensuring implementation and oversight of safety and health protection at all worksites/projects within the DGA. This evaluation normally will take place at the fixed location where the applicant maintains safety and health records (typically the applicant's headquarters).

(1) Management Commitment. OSHA will carefully assess the applicant's management commitment to safety and health and to VPP. This assessment will include interviews with senior officials, employees, and union representatives where applicable.

(2) Document Review. OSHA will examine the following records (or samples) if they exist and are relevant to the application or to the safety and health management system. (OSHA will accommodate trade secret concerns to the extent feasible.)

(a) Written safety and health management system;

(b) Management statement of commitment to safety and health;

(c) The OSHA Form 300 log (or a successor OSHA form) for all sites/projects within the DGA;

(d) Safety and health manuals;

(e) Safety rules, emergency procedures, and examples of safe work procedures;

(f) The system for enforcing safety rules;

(g) Reports from employees of safety and health problems and documentation of management's response;

(h) Self-inspection procedures, reports, and correction tracking;

(i) Accident investigation reports and analyses;

(j) Safety and health committee minutes;

(k) Employee orientation and safety training programs and attendance records;

(l) Baseline safety and industrial hygiene exposure assessments and updates;

(m) Industrial hygiene monitoring records, results, exposure calculations, analyses and summary reports;

(n) Annual safety and health management system self-evaluations, site audits, and, when needed to demonstrate that VPP criteria are being met, corporate audits that an applicant voluntarily chooses to provide in support of its application. The review of evaluative documents needed to establish that the applicant is meeting VPP requirements will cover at least the last 3 years and will include records of follow-up activities stemming from self-evaluation recommendations;

(o) Preventive maintenance program and records;

(p) Accountability and responsibility documentation, e.g., performance standards and appraisals;

(q) Contractor safety and health programs;

(r) Occupational health care programs and records;

(s) Available resources devoted to safety and health;

(t) Hazard and process analyses;

(u) Process Safety Management (PSM) documentation, if applicable;

(v) Employee involvement activities; and

(w) Other records that provide relevant documentation of VPP qualifications.

(3) Rates Review. OSHA will review DGA-wide injury, illness, and fatality records; and recalculate and verify the TCIR and the DART rate (the two rates submitted with the application).

f. Phase 2: Site/Project Evaluation. OSHA then will visit one or more temporary worksites/projects within the DGA. These worksite evaluations will assess how effectively the applicant has implemented its safety and health management system, including its system of oversight. The OSHA team will employ a strategy of site walkthrough, employee interviews, and site-specific document review.

(1) Site Walkthrough. The site walkthrough is a general assessment of safety and health conditions. It aims to determine whether the safety and health management system described in the application has been implemented effectively and is adequately protecting workers from site hazards. The walkthrough also will verify compliance with OSHA and VPP requirements.

(2) Interviews. The review will include random formal and informal interviews with relevant individuals, such as members of any safety and health committees, management personnel, randomly selected non-supervisory employees, temporary employees, union representatives, and contract workers.

(3) Site-Specific Document Review. OSHA will examine documents that demonstrate the site's implementation of applicant's safety and health management system, for example, specific rules regarding site hazards and site operations.

(4) Whenever possible, the onsite evaluations that OSHA conducts will be unannounced.

(5) However, when OSHA needs to visit a site that an applicant does not control,

(a) OSHA will provide reasonable notice prior to its visit;

(b) The applicant must inform and gain written permission from the controlling employer (for example, the general contractor) for OSHA to enter; and

(c) The applicant must inform the controlling employer that, while OSHA will focus primarily on the applicant's work at the site, any conditions (including those created by others) that OSHA views and deems a violation must be abated immediately or confirmed as abated according to an abatement plan approved by OSHA. In the VPP spirit of cooperation, OSHA will take no enforcement actions and issue no citations if the hazardous conditions are corrected immediately or with an OSHA-approved abatement plan. Only if correction does not occur will OSHA have the option to exercise normal enforcement procedures.

(6) Number of Site/Project Evaluations. The number of site/project evaluations will depend on the complexity and scope of applicant's operations and the number of sites/projects within the DGA, and will be determined by the Regional Administrator.

(7) Evaluation of Fixed Locations. Some applicants may conduct certain operations at fixed locations, such as a headquarters, warehouse, or construction yard, that impact the safety and health of the applicant's mobile workforce. OSHA reserves the right to evaluate these fixed locations, although they will not be considered a worksite for purposes of mobile workforce participation. Should an applicant desire to bring such fixed work locations into VPP, OSHA will accept applications under VPP's site-based participation requirements, as provided in VI.B. above.

7. Term of Participation

a. Star Program. A mobile workforce participant's term of participation in the Star Program is open-ended so long as the participant:

(1) Continues to maintain its excellent safety and health management system at its sites/projects within the DGA as evidenced by favorable reevaluation; and

(2) Submits the annual information required, including annual rates data and program self-evaluation (see VI.C.3.j. above).

b. Merit Program. Mobile workforce participants in the Merit Program are approved for a period of time agreed upon in advance of approval but not to exceed 3 years. The term will depend upon how long it is expected to take the applicant to accomplish the goals for Star participation. Merit participation terminates at the end of the term unless approval for a second term is recommended and is approved by the Assistant Secretary. Approval for a second term will be recommended only when unanticipated unique circumstances slow the participant's progress toward accomplishing the goals.

c. Demonstration Program. See III.C.3.e.

8. Periodic Reevaluation of Mobile Workforce Participants—Star Program

a. Purpose. Periodic evaluation of Star participants is intended to:

(1) Determine continued qualification for the Star Program;

(2) Document results of program participation throughout the DGA in terms of the evaluation criteria and other noteworthy aspects of the participant's safety and health management system; and

(3) Identify any problems that have the potential to adversely affect continued qualification and determine appropriate follow-up actions.

b. Frequency.

(1) OSHA will conduct the first post-approval reevaluation of a mobile workforce participant's sites/projects within 18 to 24 months of the initial Star approval or, in the case of a Demonstration Program participant that has been approved to Star, within 18 to 24 months of the last Demonstration evaluation.

(2) Subsequently, OSHA will reevaluate sites/projects within the DGA at no greater than 36-month intervals. The identification of potentially serious safety and health risks may create the need for more frequent evaluation.

(3) OSHA will reevaluate the participant's safety and health management system, normally at the participant's headquarters, beginning with the second post-approval reevaluation (see VI.C.8.b(2) above), and subsequently at the time of every second reevaluation period.

c. Scope. OSHA's reevaluation of mobile workforce Star Program participants will consist mainly of site/project visits and/or safety and health management system reviews similar in scope to the preapproval review described in VI.C.6.e-f. above. OSHA will review the documentation of system implementation since preapproval review or since the previous evaluation. The evaluation will include a review of DGA-wide incidence rates and supporting data (specified in VI.C.4. above) for all employees including temporary workers and contractor/subcontractor employees throughout the DGA for the latest 3 complete calendar years.

d. Measures of Effectiveness. OSHA will use the following factors in the evaluation of mobile workforce Star Program participants:

(1) Continued compliance with the program requirements and continuous improvement in the safety and health management system;

(2) Satisfaction and continuing demonstrated commitment of employees and management;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee involvement provisions within the safety and health management system.

9. Periodic Reevaluation of Mobile Workforce Participants—Merit Program

a. Purpose. Periodic reevaluation of Merit participants is intended to:

(1) Determine continued qualification for the Merit Program, or determine whether the participant may be approved for the Star Program;

(2) Determine whether adequate progress has been made toward the agreed-upon Merit goals;

(3) Identify any problems in the safety and health management system or its implementation that need resolution in order to continue qualification or meet agreed-upon goals;

(4) Document system improvements and/or improved results; and

(5) Provide advice and suggestions for needed improvements.

b. Frequency.

(1) OSHA will reevaluate a mobile workforce participant's sites/projects every 12 to 18 months or, in the case of a Demonstration Program participant that has been approved to Merit, every 12 to 18 months following the last Demonstration evaluation. The identification of potentially serious safety and health risks may create the need for more frequent evaluation.

(2) The participant may request an earlier reevaluation if it believes it has met Star Program qualifications.

(3) OSHA will reevaluate the participant's safety and health management system, normally at corporate headquarters, before making any recommendation to advance the participant to the Star Program.

c. Scope. OSHA's reevaluation of mobile workforce Merit Program participants will consist mainly of site/project visits and safety and health management system reviews similar in scope to the preapproval review described in VI.C.6.e-f. above. OSHA will review the documentation of system implementation since preapproval review or the previous evaluation. The reevaluation will include a review of DGA-wide incidence rates and supporting data (specified in VI.C.4. above) for all employees including temporary workers and contractor/subcontractor employees throughout the DGA for the latest 3 complete calendar years.

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of mobile workforce Merit Program participants:

(1) Continued adequacy of the safety and health management system to address the hazards at sites/projects throughout the DGA;

(2) Comparison of injury/illness rates to the industry average;

(3) Satisfaction and continuing demonstrated commitment of employees and management;

(4) Nature and validity of any complaints received by OSHA;

(5) Resolution of problems that have come to OSHA's attention;

(6) The effectiveness of employee involvement provisions within the safety and health management system; and

(7) Progress made toward goals specified in the preapproval or previous evaluation report.

10. Periodic Reevaluation of Mobile Workforce Participants—Demonstration Program.

See III.C.3.f.

D. Corporate Participation

The corporate way to participate may be appropriate for large organizations that have committed to bringing multiple facilities into VPP.

1. Purpose and Distinguishing Features

a. Corporate participation is intended for applicants/participants who:

(1) Are committed to achieving VPP approval for multiple specified individual sites and/or sites within Designated Geographic Areas (DGAs) within their organization;

(2) Utilize a well-established, standardized safety and health management system at all sites and/or DGAs seeking VPP approval; and

(3) Employ prescreening processes to ensure that their sites have effectively implemented the safety and health management system, addressed site-specific hazards, satisfied the VPP requirements, and completed all sections of the application before submitting it to OSHA.

b. Streamlined application and onsite evaluation processes. Organizations who achieve corporate VPP status are able to utilize streamlined application and onsite evaluation processes to bring into VPP individual sites or all sites within a DGA. These streamlined processes focus on implementation of the corporation's standardized safety and health policies and systems and any site-specific programs. Typically, less time is required for application preparation and review and the onsite evaluation, because:

(1) OSHA completes its evaluation of the corporation's standardized safety and health management system before focusing on individual sites/DGAs; and

(2) Before individual sites/DGAs apply under this option, they first undergo extensive screening processes, conducted by corporate personnel, to ensure readiness for VPP.

Individual sites/DGAs that come into VPP continue to be subject to the policies and requirements outlined in VI.B (site-based) and VI.C (mobile) above.

2. Eligibility

a. General. OSHA welcomes corporate VPP participation and accepts VPP applications from:

(1) Employers at various organizational levels in general industry, the construction industry, and the maritime industry; and

(2) Federal agencies.

All applicants must have a demonstrated working knowledge and experience of VPP, either through the traditional site-based program or the mobile workforce approach, and must have resources dedicated to establishing VPP throughout the organization.

b. Unionized Organizations. Organizations whose employees are organized into one or more collective bargaining units may wish to involve the unions during the corporate approval process. Individual sites/DGAs applying for VPP through the streamlined corporate application and onsite evaluation processes must adhere to the policies set forth in sections VI.B.2.b and VI.C.2.c above.

c. OSHA History. In addition to the general requirement concerning an applicant's inspection history (see III.D.5.), the following applies to corporate participation:

The applicant must not have any affirmed willful violations organization-wide during its most recent 36-month period. The applicant's history may include open investigations and/or pending or open contested citations or notices under appeal at the time of application. However, OSHA will review the applicant's most recent 36-month history for evidence of an overarching safety and health management system deficiency or events/actions that call into question the cooperative spirit and trust inherent in the VPP relationship (see III.D.1.).

3. Assurances

Corporate applications must include certain assurances describing what the

applicant agrees to do if OSHA approves the application. The applicant must assure that:

a. Applicant will comply with the OSH Act and, in the case of Federal agencies, 29 CFR part 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

b. Applicant will correct any deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite reviews. The correction deadline:

(1) Will depend on the nature of the deficiency;

(2) Will be determined by the OSHA VPP team leader; and

(3) In no instance will exceed 90 days.

c. A system for overseeing and monitoring safety and health management system implementation is maintained for all worksites/projects.

d. A system is maintained for pre-screening site/DGA readiness for VPP, so that at least 80 percent of an organization's site/DGA applicants are sufficiently qualified to achieve Star approval.

e. Applicant, following approval, will continue to meet and maintain the requirements of the VPP safety and health management system elements.

f. Applicant will bring no fewer than 10 sites and/or DGAs into VPP within 5 years of corporate approval, and then will continue to bring sites/DGAs into VPP.

g. Applicant has established and will maintain a documented, corporate-wide goal for VPP participation. Applicant will communicate this goal to employees organization-wide.

h. At applicant and approved sites, all employees, including newly hired employees and contractor/subcontractor employees, will have the VPP explained to them before they perform any work. This explanation will include employee rights under the program and under the OSH Act or 29 CFR part 1960.

i. All employees engaged in safety and health activities, including those specifically given safety and health duties as part of applicant's safety and health management system, will be protected from discriminatory actions resulting from their activities/duties, just as Section 11(c) of the OSH Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

j. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. For a unionized workforce, this requirement may be met through employee representative access to these results.

k. To enable OSHA to determine initial and continued VPP approval, applicant will maintain and make available for OSHA review the information listed below:

(1) Written safety and health management system;

(2) All documentation listed at VI.D.6.d. below; and

(3) Any agreements between management and the authorized collective bargaining agent(s) concerning safety and health.

l. Applicant will make available to OSHA any data not listed above that is necessary to evaluate identified deficiencies.

m. Each year by February 15, each corporate participant will send to its designated OSHA VPP contact (see VIII.A. below) data that will enable OSHA to evaluate its overall VPP performance and compare that performance to the organization's non-participating sites. This data will include:

(1) Total recordable case incidence rate (TCIR) for injuries and illnesses at all approved sites for the previous calendar year;

(2) Total recordable case incidence rate (TCIR) for injuries and illnesses at all non-VPP sites for the previous calendar year;

(3) Total recordable incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) at all approved sites for the previous calendar year;

(4) Total recordable incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) at all non-VPP sites for the previous calendar year;

(5) The participant will also submit:

(a) Total number of cases and hours worked for each of the above four rates;

(b) Number and percentage of U.S.-based VPP-approved facilities for the past full calendar year;

(c) Number and percentage of U.S.-based employees participating in VPP for the past full calendar year;

(d) A list of applications submitted during the past full calendar year, and a list of projected applications for the current full calendar year;

(e) Any corporate-level safety and health management system policy/procedure changes;

(f) Any major changes in corporate management or structure;

(g) Information on Special Government Employee, mentoring, and other outreach activities for the past full calendar year; and

(h) Corporate-wide success stories/best practices.

n. Whenever significant organizational or ownership changes occur, the corporate participant will provide OSHA within 60 days a new Statement of Commitment signed by management and, when applicable, any authorized collective bargaining agents.

4. Injury and Illness Performance

There are no organization-wide injury and illness rate requirements for organizations desiring to come into VPP via the corporate way to participate. OSHA will examine, however, injury and illness trends during its review of an applicant's safety and health management system. After OSHA approves an organization under the corporate option, the individual sites/DGAs that apply are subject to the VPP rate requirements of a program (Star or Merit) and the chosen manner of participation (site-based or mobile workforce).

5. Additional Safety and Health Management System Requirements

a. The corporate applicant's safety and health management system must be fully established at the Star level and, therefore, incorporate all elements of the VPP safety and health management system, as delineated in IV. above. OSHA may approve individual sites/DGAs to either the Star or Merit Program, depending on the degree and effectiveness of safety and health management system implementation. OSHA expects that at least 80 percent of an organization's sites/DGAs will achieve Star approval.

b. Pre-screening. A corporate applicant must have effective internal pre-screening processes to evaluate its sites/DGAs' level of preparedness to participate in VPP. VPP pre-screening processes are required for evaluating the implementation of the safety and health management system at each candidate site/DGA and the completeness of the VPP application prior to submission to OSHA.

c. A corporate applicant's safety and health management system must provide thorough, documented oversight, management, and evaluation of employee safety and health at all sites/DGAs.

6. Preapproval Onsite Review of a Corporate Applicant's Safety and Health Management System

When an organization chooses the corporate way to participate, the first step in OSHA's preapproval onsite

review process will be an evaluation of the applicant's standardized safety and health management system. This will be followed by onsite evaluations of all applicant sites/DGAs.

a. Purpose of the Safety and Health Management System Review. This preapproval review, which OSHA conducts in a non-enforcement capacity, is intended to:

(1) Verify the information supplied in the application concerning qualification for VPP;

(2) Identify the strengths and weaknesses of the applicant's safety and health management system, and evaluate its adequacy to address the hazards of the applicant's sites/DGAs;

(3) Determine whether the applicant's safety and health management system meets the requirements for Star approval,

(4) Determine how effectively the applicant's safety and health management system addresses safety and health implementation at its sites/DGAs, and how effectively the system provides pre-screening and continuing oversight and evaluation;

(5) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant.

(6) Determine whether the applicant is in compliance with OSHA regulations; and

(7) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

b. Preparation. The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader; a back-up team leader (when needed); and health, safety, and other specialists as required by the complexity of applicant's operations.

c. Duration. The time required for the preapproval onsite review will depend upon the complexity of applicant's operations but normally will last 3 days.

d. Scope. OSHA will conduct an evaluation of the applicant's safety and health management system to determine whether the system meets Star requirements. It will include systems for ensuring safety and health management system implementation, pre-screening, and continuing oversight and evaluation of safety and health protection at sites/DGAs within the corporation. This evaluation normally will take place at the fixed location where the applicant maintains safety and health records (typically the applicant's headquarters).

(1) Management Commitment. OSHA will carefully assess the applicant's management commitment to safety and health and to VPP. This assessment will include interviews with senior officials, regular and temporary employees, and union representatives where applicable, from headquarters and select sites/DGAs.

(2) Document Review. OSHA will examine the following records (or samples) if they exist and are relevant to the application or to the safety and health management system. (OSHA will accommodate trade secret concerns to the extent feasible.)

(a) Written safety and health management system, including policies and procedures that ensure compliance with OSHA standards;

(b) Management statement of commitment to safety and health;

(c) Safety and health manuals;

(d) Safety rules, emergency procedures, and examples of safe work procedures;

(e) The system for enforcing safety rules;

(f) The system for employee reporting of safety and health problems and management response;

(g) Self-inspection procedures, reports, and correction tracking;

(h) The system for investigating, documenting and analyzing accidents;

(i) The system for establishing and tracking safety and health performance goals;

(j) The system for tracking and responding to injury and illness trends;

(k) Employee orientation and safety training programs;

(l) The system for measuring, documenting, and assessing safety and industrial hygiene exposures;

(m) The system for conducting annual safety and health management system self-evaluations and site/DGA oversight and evaluation;

(n) The system for preventive maintenance;

(o) Accountability and responsibility documentation, e.g., performance standards and appraisals;

(p) Contractor safety and health programs;

(q) The system for occupational health care;

(r) Available resources devoted to safety and health;

(s) The system for conducting hazard and process analyses;

(t) The system to ensure meaningful employee involvement in safety and health;

(u) Other records that provide relevant documentation of VPP qualifications.

7. Site/DGA Evaluation. After OSHA reviews a corporate applicant's safety and health management system and grants VPP corporate approval, the Agency will accept streamlined applications and conduct streamlined onsite evaluations of corporate sites/DGAs. These evaluations and subsequent reevaluations will focus on how effectively the sites/DGAs implement the corporate-wide safety and health management system and additional protective measures that address specific site/DGA conditions. The evaluations and reevaluations will conform to OSHA's policies and requirements for site-based participation (see VI.B. above) and mobile workforce participation (see VI.C. above).

8. Term of Participation

a. A corporate participant's term of participation is open-ended so long as the participant:

(1) Continues to maintain its excellent safety and health management system;

(2) Submits the annual information required (see VI.D.3.n. above);

(3) Continues to bring acceptable numbers of new sites/DGAs into VPP (see VI.D.3.f. above).

b. The term of participation for individual sites/DGAs will depend on the program to which they are approved (Star or Merit) and their manner of participation (site-based or mobile workforce).

c. In the event a corporation withdraws from VPP, completes its participation, or is terminated by OSHA, individual qualified sites/DGAs are entitled to continue their participation under the site-based option.

9. Periodic Reevaluation of Corporate Safety and Health Management System

a. Purpose. OSHA periodically conducts onsite reevaluation of a corporate participant's safety and health management system to:

(1) Determine continued qualification for corporate participation;

(2) Document results of participation in terms of the evaluation criteria and other noteworthy aspects of the participant's safety and health management system; and

(3) Identify any problems that have the potential to adversely affect continued qualification and determine appropriate follow-up actions.

b. Frequency. OSHA will conduct reevaluations of corporate participants' safety and health management systems at no greater than 60-month intervals. (Significant changes in the safety and health management system, corporate leadership or structure may trigger more frequent evaluation.) For corporate participants who participated in the Corporate Pilot, OSHA will conduct the initial reevaluation of the safety and health management system within 60

months of the last Corporate Pilot evaluation.

c. Scope. OSHA's reevaluation of corporate participants will consist mainly of an onsite visit similar in scope to the preapproval onsite review described in VI.D.6. above.

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of corporate participants:

(1) Continued compliance with VPP requirements and continuous improvement in the safety and health management system;

(2) Satisfaction and continuing demonstrated commitment of employees and management; and

(3) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation.

VII. Participation Decisions

A. Recommendation for Program Approval

1. Approval

If, in the opinion of the OSHA preapproval onsite review team, the applicant has met the qualifications for participation, the team leader will submit the team's recommendation to the appropriate OSHA official, normally the Regional Administrator. This official, on concurrence, will recommend approval to the Director of Cooperative and State Programs. The Director of Cooperative and State Programs will review the preapproval report for compliance with program criteria and consistent application of the qualifications requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

2. Deferred Approval

If the preapproval review determines that the applicant needs to take steps to meet one or more program requirements or to come into compliance with OSHA rules, the applicant will be given reasonable time (up to 90 days) before a recommendation for VPP approval is made to the Assistant Secretary. When necessary, an onsite visit will be made to verify the actions taken after the preapproval onsite review visit.

Upon satisfactory completion of the above steps, the onsite review team leader will initiate the approval process described in VII.A.1. above.

3. Rejection of the Recommendation to Approve

Should the Assistant Secretary for any reason reject the recommendation to approve made by the Regional Administrator or other appropriate official, a letter from the Assistant Secretary denying approval and explaining the rejection will be sent to the applicant. The denial will occur as of the date of the Assistant Secretary's letter.

B. Recommendation for Program Denial

1. If OSHA determines that the applicant does not meet the requirements for VPP participation, the Agency will allow reasonable time (not to exceed 30 calendar days) for the applicant to withdraw its application or submit an appeal of the team recommendation.

a. If the applicant chooses to withdraw its application, the provisions of V.E. above will apply and no onsite team report will be generated.

b. If an applicant chooses to appeal the recommendation, it should submit its appeal within 30 calendar days to the Regional Administrator or other appropriate OSHA official. That official will submit the appeal, along with a denial recommendation, to the Director of Cooperative and State Programs, who will review the submission and forward it to the Assistant Secretary.

2. The Assistant Secretary will make a binding decision.

a. If the Assistant Secretary accepts the applicant's appeal, the applicant will be approved to VPP on the day the Assistant Secretary signs a letter conveying this decision to the applicant.

b. If the Assistant Secretary denies the applicant's appeal, participation denial will occur on the day the Assistant Secretary signs a letter conveying this decision to the applicant.

C. Reapproval Recommendations and Decisions

1. Star Program

The Regional Administrator or other appropriate official will make one of the following decisions/recommendations following a Star periodic reevaluation visit:

a. Decision to continue participation in the Star Program;

b. Decision to allow a 1-year conditional participation in the Star Program. The VPP onsite review team may recommend this alternative if it finds that the participant has allowed one or more safety and health management system elements to slip below Star quality. Before a participant can be placed on 1-year conditional status, the participant first must return its safety and health management system to Star quality within 90 calendar days of the evaluation visit and must demonstrate a commitment to maintain that level of quality;

c. Recommendation to remove a Star participant's 1-year conditional status. A VPP onsite review team will return to a conditional Star participant's site/DGA 1 year after the onset of conditional status to determine if the participant's safety and health management system remains at Star quality. If the team is satisfied that Star quality has been maintained, it will recommend the participant be reapproved to the Star Program; or

d. Recommendation to Terminate. After considering the recommendation of the VPP onsite review team, the Regional Administrator or other appropriate official may recommend to the Assistant Secretary that a participant be terminated if the participant has been found to have significantly failed to maintain its safety and health management system at Star quality or meet other VPP requirements.

2. Merit Program

The Regional Administrator or other appropriate official will make one of the following decisions/recommendations following a Merit periodic evaluation visit:

a. Decision for continued Merit participation;

b. Recommendation for advancement to the Star Program;

c. Recommendation for termination; or

d. Recommendation for a second Merit term. This recommendation will occur only when unanticipated unique circumstances slow the participant's progress toward accomplishing the goals.

3. Demonstration Program

The Regional Administrator or other appropriate official will make one of the following decisions/recommendations to the Assistant Secretary following a Demonstration periodic reevaluation visit.

a. Decision to continue participation in the Demonstration Program at current recognition level (Star or Merit);

b. Recommendation for advancement to Star level recognition within the Demonstration Program; or

c. Recommendation for termination. This recommendation may occur when the unique aspects of the Demonstration do not provide VPP-quality protection or when the participant has significantly failed to maintain a VPP-quality safety and health management system.

4. Corporate Safety and Health Management System

The Regional Administrator or other appropriate official will make one of the

following recommendations to the Assistant Secretary following a periodic reevaluation visit to reassess a corporate participant's organization-wide safety and health management system.

a. Recommendation to continue participation; or

b. Recommendation for termination.

5. Effective Date of Reapproval Decisions

a. When the Regional Administrator or other appropriate official has authority to make a reapproval decision, the effective date will be the day the deciding official signs a letter conveying the decision to the participant.

b. When the Regional Administrator or other appropriate official makes a reapproval recommendation to the Assistant Secretary, the effective date will be the day the Assistant Secretary signs a letter conveying the decision to the participant.

D. Voluntary Withdrawal

1. A participant may withdraw from VPP for any reason, including receipt of an OSHA notice of intent to terminate, by submitting written notification to the Regional Administrator or other appropriate OSHA official.

2. The completion of work by a site-based construction participant, and the resulting final self-evaluation (see VI.B.5.), will constitute a withdrawal.

3. Before acting to terminate a participant from VPP (see VII.E. below), OSHA normally will give the participant the opportunity to voluntarily withdraw.

E. Termination of Participation

1. Reasons for Termination. OSHA will terminate a participant from VPP when:

a. Participant's management, or the duly authorized collective bargaining agent, where applicable, withdraws support for VPP participation;

b. A participant fails to maintain its safety and health management system in accordance with program requirements;

c. Following a fatality or other significant event and completion of OSHA enforcement action and/or a VPP reevaluation (see VIII.C.2–3), OSHA determines that the event reflects a serious deficiency in the participant's safety and health management system that warrants termination.

d. No significant progress has been made toward achieving the established Merit goals or 1-year Star Conditional goals;

e. The 2-year period for a Rate Reduction Plan has expired without the participant returning injury and illness rates to acceptable levels;

f. The Merit term of approval has expired, and no recommendation has been made for a second term;

g. The sale of a VPP participant to another company or a management change has significantly weakened the safety and health management system;

h. Resident contractor participation is no longer possible because the host site no longer participates in VPP and no other appropriate option is available. This reason for termination does not apply to resident contractors that are participating as part of a larger organization approved under the corporate option;

i. A corporate participant fails to meet expected numbers of new site/DGA participants;

j. OSHA terminates a Demonstration Program for just cause; or

k. The Regional Administrator or other appropriate official presents written evidence to the Assistant Secretary that the essential trust and cooperation among labor, management, and OSHA no longer exist, and therefore recommends termination, and the Assistant Secretary concurs.

2. Termination Notification and Appeal or Withdrawal

a. Under most circumstances, OSHA will provide the participant and bargaining unit representatives 30 days' notice of intent to terminate participation in the VPP. During the 30-day period, the participant is entitled to appeal in writing to the Assistant Secretary and to provide reasons why it believes it should not be removed from the VPP.

b. OSHA will not provide 30 days' notice when:

(1) Other terms for termination were agreed upon before approval; or

(2) A set period for approval is expiring.

3. Reapplication Following Termination

a. Reinstatement to VPP following termination requires reapplication.

b. OSHA will not consider the reapplication of a terminated participant for a period of 3 years from the date of termination.

VIII. OSHA's Post-Approval Contact with Participants

A.OSHA Contact Person

The Contact Person for each VPP participant will be the appropriate Regional VPP Manager or his/her designee, or the appropriate OSHA National Office representative. This person will be available to assist the participant, as needed.

B. OSHA Compliance Assistance

1. In some cases, OSHA may schedule and conduct an onsite assistance visit, for example, to respond to employer technical inquiries or to ensure the efficacy of a Demonstration.

2. Whenever significant changes in ownership or organizational structure occur, or a change occurs in an authorized collective bargaining agent required to provide evidence of support for VPP, OSHA may make an onsite assistance visit if needed to determine the impact of the changes on VPP participation. In the event of such changes, the Regional Administrator or other appropriate OSHA official must be notified of the change within 60 days, and a new signed Statement of Commitment will be required. The Statement must be signed by management and appropriate bargaining representatives.

3. Whenever a 3-year rate (either the TCIR or the DART rate) of a Star Program participant exceeds the 3 most recent years' national averages published by BLS, at the discretion of the Regional Administrator or other appropriate OSHA official, the participant may be required to develop an agreed upon 2-year rate reduction plan.

a. If appropriate, OSHA may make an assistance visit to help the participant develop the plan.

b. The plan may be developed in conjunction with needed corrections to deficiencies within the safety and health management system that have resulted in OSHA placing the participant on 1-year conditional status. (See VII.C.1.b.)

(1) OSHA may lift a participant's conditional status before completion of the rate reduction plan.

(2) If, after 2 years, a participant's rates have not returned to acceptable levels, the participant will be asked to withdraw from VPP. Failure to withdraw will result in termination.

C. OSHA Enforcement

1. Programmed Inspections. VPP applicants and participants, unless they choose otherwise, will be removed from OSHA's programmed inspection lists, including any lists of targeted sites.

a. OSHA will remove an individual site applicant or multiple sites within an applicant DGA from the programmed inspection lists.

(1) This will occur no more than 75 calendar days prior to the commencement of the scheduled preapproval onsite review.

(2) The applicant will remain off these lists until official denial of the application, applicant withdrawal of its

application, or, if the applicant is approved to the VPP, subsequent cessation of active participation in the VPP.

b. Upon approval, VPP participants will continue to be removed from OSHA inspection lists for the duration of approved participation.

c. Removal from OSHA programmed inspection lists does not apply to a corporate headquarters or DGA headquarters unless these locations have applied or been approved for site-based participation.

2. Unprogrammed Inspections

a. Workplace complaints to OSHA, all fatalities and catastrophes, and other significant events will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

b. The history of the VPP demonstrates that safety and health problems discovered during any contact with VPP participants normally are resolved cooperatively. Nevertheless, OSHA must reserve the right, where employees' safety and health are seriously endangered and management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action. The employer will be informed that a referral will be made to the Assistant Secretary and that enforcement action may result.

3. Additional VPP Investigations

a. Following significant events, e.g., fatalities, chemical spills or leaks, or other accidents, OSHA may choose to use VPP personnel to conduct an onsite review to determine a participant's continued eligibility for VPP.

b. OSHA also may choose to investigate other significant accidents or events that come to its attention and that are not required to be handled with normal OSHA enforcement procedures, whether or not injury/illness is involved. OSHA will use VPP personnel to determine whether the accident or incident reflects a serious deficiency in the participant's safety and health management system that warrants reevaluation of the participant's VPP qualification.

Authority: The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*

Signed at Washington, DC, this 5th day of January, 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–165 Filed 1–8–09; 8:45 am]

BILLING CODE 4510–26–P

MILLENNIUM CHALLENGE CORPORATION

[MCC 09–05]

Notice of Quarterly Report (July 1, 2008–September 30, 2008)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2008 through September 30, 2008 in respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D (the Act)), and transfers or allocations of funds to other federal agencies pursuant to Section 619(b) of the Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with Section 612(b) of the Act.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2008 Quarter 4 Total obligation: $109,773,000 Entity to which the assistance is provided: MCA Madagascar Total quarterly disbursement: $12,296,269				
Land Tenure Project	$37,803,000	Increase Land Titling and Security.	$15,491,326	Legislative proposal reflecting the National Land Tenure Program submitted to Parliament and passed. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property transactions. Percent of reported land conflicts resolved on titled land in zone 3, 4, 5 during the title regularization operations. Percentage of land in the zones that is demarcated and ready for titling.
Finance Project	$35,888,000	Increase Competition in the Financial Sector.	$11,298,895	The number of savings accounts and outstanding value of accounts from primary banks. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Increased public awareness of new financial instruments as measured by surveys within intervention zones and large towns. The amount of government debt issued with maturities in excess of 52 weeks. The number of new individual investors buying government debt securities. The number of bank branches of the Central Bank of Madagascar capable of accepting auction tenders.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Agricultural Business Investment Project.	$17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$8,923,689	Percentage of all loans included in the central database. Number of rural producers receiving or soliciting information from Agricultural Business Centers about the opportunities. Intervention zones identified and description of beneficiaries within each zone submitted. Number of visitors receiving information from National Coordinating Center with respect to business opportunities. Change in farm income due to improved production and marketing practices. Change in enterprise income due to improved production and marketing practices. Number of farmers and business employing technical assistance received.
Program Administration * and Control, Monitoring and Evaluation.	$18,399,000	.....	$10,483,218	
Pending subsequent reports **.	.....	.....	$12,654,499	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.
** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Honduras Year: 2008 Quarter 4 Total obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total quarterly disbursement: $13,479,730				
Rural Development Project.	$70,687,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees..	$21,844,528	Increase in farm income resulting from Rural Development Project. Funds lent by MCA-Honduras to financial institutions. Increase in employment income resulting from Rural Development Project. Number of Program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops.
Transportation Project	$127,491,876	Reduce transportation costs between targeted production centers and national, regional and global markets.	$8,329,169	Freight shipment cost from Tegucigalpa to Puerto Cortes. Price of basic food basket. Number of days per year road is passable.
Program Administration * and Control, Monitoring and Evaluation.	$16,821,124	.....	$3,994,766	
Pending subsequent reports **.	.....	.....	$776,067	

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Cape Verde Year: 2008 Quarter 4 Total obligation: $110,078,488 Entity to which the assistance is provided: MCA Cape Verde Total quarterly disbursement: $9,450,397				
Watershed and Agricultural Support.	$10,848,630	Increase agricultural production in three targeted watershed areas on three islands.	$3,541,205	Increase in horticultural productivity. Increase in annual income. Value-added for farms and agribusiness.

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Infrastructure Improvement.	$83,160,208	Increase integration of the internal market and reduce transportation costs.	$16,923,184	Volume of goods shipped between Praia and other islands. Mobility Ratio: Percentage of beneficiary population who take at least 5 trips per month. Savings on transport costs from improvements.
Private Sector Development.	$2,800,000	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$356,711	Value added in priority sectors above current trends. Volume of private investment in priority sectors above current trends.
Program Administration * and Control, Monitoring and Evaluation.	$13,269,650	.....	$6,218,097	
Pending subsequent reports **.	.....	.....	0	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Nicaragua Year: 2008 Quarter 4 Total obligation: $174,710,890 Entity to which the assistance is provided: MCA Nicaragua Total quarterly disbursement: $ 11,129,188				
Property Regularization Project.	$22,000,000	Increase Investment by strengthening property rights.	$4,669,995	Value of investment on land. Value of urban land. Value of rural land. Number of days to conduct a land transaction. Total cost to conduct a land transaction.
Transportation Project	$105,193,200	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$8,990,461	Price of a basket of goods. Travel Time.
Rural Business Development Project.	$32,897,500	Increase the value added of farms and enterprises in the region.	$11,325,597	Annual percentage increase in value-added of clients of business office. Number of jobs created. Number of program farm plots harvesting higher-value crops or reforesting under improvement of Water Supply Activities.
Program Administration *, Due Diligence, Monitoring and Evaluation.	$14,909,300	.....	$6,867,070	
Pending subsequent reports **.	.....	.....	$2,129,337	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Georgia Year: 2008 Quarter 4 Total obligation: $295,300,000 Entity to which the assistance is provided: MCA Georgia Total quarterly disbursement: $21,853,277				
Regional Infrastructure Rehabilitation.	$216,600,000	Key Regional Infrastructure Rehabilitated.	$45,138,132	Reduction in Akhalkalaki-Ninotsminda-Teleti journey time. Reduction in vehicle operating costs. Increase in internal regional traffic volumes. Decreased technical losses in gas through the main North-South pipeline Reduction in the production of greenhouse gas emissions measured in tons of CO2 equivalent. Increased collection rate of the Georgian Gas Company (GOGC). Number of household beneficiaries served by Regional Infrastructure Development projects. Actual operations and maintenance expenditures.
Regional Enterprise Development.	$47,350,000	Enterprises in Regions Developed.	$16,230,586	Increase in annual revenue in portfolio companies. Increase in number of portfolio company employees and number of local suppliers. Increase in portfolio companies' wages and payments to local suppliers. Jobs created. Increase in aggregate incremental net revenue to project assisted firms. Direct household net income.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Direct household net income for market information initiative beneficiaries. Number of beneficiaries.
Program Administration *, Due Diligence, Monitoring and Evaluation.	$36,100,000	.....	$10,630,824	
Pending subsequent reports **.	.....	.....	$1,162,968	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Vanuatu Year: 2008 Quarter 4 Total obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total quarterly disbursement: $9,498,932				
Transportation Infrastructure Project.	$60,587,816	Facilitate transportation to increase tourism and business development.	$188,462	Number of Tourists. Number of days per year road is closed. Number of S-W Bay, Malekula flights cancelled per year due to flooding. Vessel wait time at wharf.
Program Administration *, Due Diligence, Monitoring and Evaluation.	$5,074,768	.....	$19,844,963	
Pending subsequent reports **.	.....	.....	$19,844,963	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Armenia Year: 2008 Quarter 4 Total obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total quarterly disbursement: $5,030,672				
Irrigated Agriculture Project (Agriculture and Water).	$145,680,000	Increase agricultural productivity Improve and Quality of Irrigation.	$12,015,860	Increase in hectares covered by high value added horticultural and fruit crops. Percentage of respondents satisfied with irrigation services. Share of Water User Association water charges as percentage of Water User Association annual operations and maintenance costs. Number of farmers using improved on-farm water management practices. Annual increase in irrigated land in Project area. State budget expenditures on maintenance of irrigation system. Value of loans provided under the project.
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$5,541,926	Government budgetary allocations for routine maintenance of the entire road network Average daily traffic in Project area. Kilometers of Package 1 road sections rehabilitated. Kilometers of Package 2 road sections rehabilitated. Kilometers of Package 3 road sections rehabilitated.
Program Administration *, Due Diligence, Monitoring and Evaluation.	$22,870,000	.....	$5,411,097	
Pending subsequent reports **.	.....	.....	$1,224,709	
Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Benin Year: 2008 Quarter 4 Total obligation: $307,298,040 Entity to which the assistance is provided: MCA Benin Total quarterly disbursement: $9,377				
Access to Financial Services.	$19,650,000	Expand Access to Financial Services.	$1,737,505	Operational self-sufficiency of participating microfinance institutions. Number of microfinance institutions supervised by the microfinance cellule. Total incremental increase in value of new credit extended and savings received by financial institutions participating in the project.

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Share value of all loans outstanding that have one or more installments of principal over 30 days past due. Total number of loans guaranteed by land titles per year.
Access to Justice	$34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$1,424,538	Number of cases processed at the arbitration center. Percentage of all cases in the "Tribunal de Premiere Instance" courts per year. Percentage of all cases resolved in court of appeals per year. Average distance to reach TPI. Number of enterprises registered through the registration center. Average number of days required to register an enterprise.
Access to Land	$36,020,000	Strengthen property rights and increase investment in rural and urban land.	$6,417,860	Total value of additional investments in target rural land parcels. Total value of additional investments in target urban land parcels.
Access to Markets	$169,447,000	Improve Access to Markets through Improvements to the Port of Cotonou.	$4,328,427	Total metric tons of exports and imports passing through Port of Cotonou per year.
Program Administration *, Due Diligence, Monitoring and Evaluation.	$47,911,040	.....	$9,554,759	
Pending subsequent reports **.	.....	.....	$933,326	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Ghana Year: 2008 Quarter 4 Total obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total quarterly disbursement: $10,423,856				
Agriculture Project	$240,984,001	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$12,127,070	Number of hectares irrigated. Number of days to conduct a land transaction. Number of land disputes in the pilot registration districts. Registration of land rights in the pilot registration districts. Metric tons of products passing through post-harvest treatment. Portfolio-at-risk of agriculture loan fund. Value of loans disbursed to clients from agricultural loan fund. Number of additional loans. Vehicle operating costs on minor, medium and major rehabilitated roads.
Rural Development	$101,288,000	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$973,565	Time/ quality per procurement. Score card of citizen satisfaction with services. Gross enrollment rates. Gender parity in school enrollment. Distance to collect water. Time to collect water. Distance to sanitation facility. Travel time to sanitation facility. Incidence of guinea worm, diarrhea or bilharzias. Average number of days lost due to guinea worm, diarrhea or bilharzias. Percentage of households, schools, and agricultural processing plants in target districts with electricity. Number of inter-bank transactions. Value of deposit accounts in rural banks.
Transportation	$143,104,000	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$1,913,952	Volume capacity ratio. Vehicles per hour at peak hour. Travel time at peak hour. International roughness index.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration *, Due Diligence, Monitoring and Evaluation.	$61,632,999	.....	$10,134,998	Annual average daily vehicle and passenger traffic.
Pending subsequent reports **.	.....	.....	$808,368	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: El Salvador Year: 2008 Quarter 4 Total obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total quarterly disbursement: $6,521,093				
Human Development Project.	$95,073,000	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	$1,172,454	Number of students enrolled in the Chalatenango Center functioning as a MEGATEC institute. Graduation rate of students enrolled in the Chalatenango Center functioning as a MEGATEC institute. Number of students enrolled in participating middle technical schools. Graduation rate of students enrolled in participating middle technical schools. Number of students enrolled in non-formal training activities. Graduation rate of students enrolled in non-formal training activities. Number of households with access to water in the Northern Zone. Number of households with access to basic sanitation in the Northern Zone. Number of households with electricity in the Northern Zone. Number of individuals that benefit annually from the strategic infrastructure projects.
Productive Development Project.	$87,466,000	Increase production and employment in the Northern Zone.	$5,514,266	Investment in productive chains by selected beneficiaries.
Connectivity Project	$233,560,000	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	$94,900	Weighted average of the International Roughness Index for the rehabilitation of the Transnational Highway. Weighted average of the International Roughness Index for the rehabilitation of the network of connecting roads.
Program Administration * and Control, Monitoring and Evaluation.	$44,841,000	.....	$4,998,673	
Pending Subsequent Report **.	.....	.....	$703,921	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mali Year: 2008 Quarter 4 Total obligation: $460,811,164 Entity to which the assistance is provided: MCA Mali Total quarterly disbursement: $1,638,291				
Bamako Senou Airport Improvement Project.	$182,007,541	Establish an independent and secure link to the regional and global economy.	$1,377,281	Number of weekly flight arrivals and departures. Average time for passengers to complete departures and arrivals procedures.
Industrial Park Project	$2,080,155	Develop a platform for industrial activity to be located within the Airport domain.	$2,080,155	Occupancy level. Average number of days required for operator to connect to Industrial Park water and electricity services.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Alatona Irrigation Project	$234,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	$436,925	Weighted average of the International Roughness Index for the rehabilitation of the Niono-Goma Coura road. Annual average daily count of vehicles on the Niono-Goma Coura road. Total amount of land irrigated by the Project in the Alatona zone. Average water volume delivered at the farm level in the Alatona zone. Crop water requirements as a percentage share of water supply at the canal headworks in the Alatona Zone. Number of 5 and 10 hectare farm plots allocated in the Alatona zone. Total market garden parcels allocated in the Alatona zone. Number of titles registered in the land registration office granted to households in the Alatona zone. Number of students enrolled in schools established by the Project. Graduation rate of students enrolled in schools established by the Project. Number of farms adopting at least one new extension technique as a percentage of all farms receiving technical assistance under the Project. Total amount of credit extended in loan portfolios by participating microfinance institutions and banks in the Alatona zone. Number of active clients of microfinance institutions and banks in the Alatona zone.
Program Administration * and Control, Monitoring and Evaluation.	$41,838,793	.....	$6,363,455	
Pending Subsequent Report **.	.....	.....	$43,016	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mongolia Year: 2008 Quarter 4 Total obligation: $284,911,363 Entity to which the assistance is provided: MCA Mongolia Total quarterly disbursement: $1,216,243				
Property Rights Project	$188,378,000	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	$0	Immovable property value of hashaa plots. Households accessing bank credit. Hashaa plots directly registered by the Property Rights Project. Income of herder households on long-term lease land. Herd mortality rate. Number of herder groups adopting intensive/semi-intensive farm management techniques.
Rail Project	$23,062,286	Increase rail traffic and shipping efficiency.	$0	Increase in GDP due to rail improvements. Freight turnover. Mine traffic. Percent of wagons leased by private firms. Railway operating ratio. Customer satisfaction. Wagon time to destination. Average locomotive availability.
Vocational Education Project.	$25,512,856	Increase employment and income among unemployed and underemployed Mongolians.	$5,000	Annual salary. Rate of employment. Non-governmental funding of vocational education. Students completing newly designed long-term programs. Certified vocational education teachers. Percent of active teachers receiving certification training.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Health Project	$17,027,119	Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.	$16,377	Diabetes and hypertension controlled. Cervical cancer prevention. Percentage of cancer cases diagnosed in early stages. Percentage of those with known diagnosis of hypertension/diabetes out of all actual cases in adult population. Women screened for breast and cervical cancer. Counseling for diabetes and hypertension.
Program Administration * and Control, Monitoring and Evaluation.	$30,931,102		$1,635,428	
Pending subsequent reports **.			$0	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Mozambique Year: 2008 Quarter 4 Total obligation: $506,924,053 Entity to which the assistance is provided: MCA Mozambique Total quarterly disbursement: $2,662,982				
Water and Sanitation Project.	$203,585,393	Increase access to reliable and quality water and sanitation facilities.	$0	Value of productive days gained due to less diarrhea, cholera and/or malaria. School attendance days gained due to less diarrhea, cholera and/or malaria. Number (Percent) of businesses with access to improved water source. Reduction in time for rural/urban households to access improved water sources. Number (Percent) of urban households with access to improved water sources. Number (Percent) of rural households with access to improved water sources. Number (Percent) of urban households with access to improved sanitation facilities.
Road Rehabilitation Project.	$176,307,480	Increase access to productive resources and markets.	$0	Increase in agricultural production among communities affected by road rehabilitation works. Increase in the number of new businesses within 5 km of rehabilitated roads. Reduction in vehicle operating costs as a result of rehabilitated roads. Time savings due to a reduction in time to travel a fixed length of rehabilitated road. Weighted average of the International Roughness Index for the rehabilitation roads. Average annual daily traffic volume on rehabilitated roads disaggregated by vehicle type.
Land Tenure Services Project.	$39,068,307	Establish efficient, secure land access for households and investors.	$0	Increase (Percent) in value of new investments on land. Number of new businesses. Reduction (Percent) in time to right to land usage. More efficient, free and secure land transfers/transactions. Increase (Percentage) in parcel-holder land value. Reduction (Percent) in costs to right to land usage.
Farmer Income Support Project.	$17,882,211	Improve coconut productivity and diversification into cash crop.	$123,900	Reduction (Percentage) in loss of coconut production and coconut products' sales. Increased income (Percentage) from sales from intercropping activities to small farm plot holders. Increased number (Percentage) of live coconut trees. Increased productive capacity (Percentage) of coconut trees.

Projects	Obligated	Objective	Cumulative disbursements	Measures
Program Administration * and Control, Monitoring and Evaluation.	$70,924,053	.....	$2,670,336	
Pending Subsequent Report **.	.....	.....	$48,716	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Lesotho Year: 2008 Quarter 4 Total obligation: $362,551,000 Entity to which the assistance is provided: MCA Lesotho Total quarterly disbursement: $2,178,797				
Water Project	$164,027,584	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	$4,621	Increased urban access to potable water supply. Increase in volume of water delivered after treatment at Metolong site. Decrease in percentage of urban water that is not accounted for (non-revenue losses plus physical losses). Number of people covered per year in rural areas with MCC funded rural water supply. Number of new VIP latrines provided to households.
Health Project	$122,398,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	$548,807	Increase in the percentage of health facilities providing full package of standard services for level of center (MoHSW 2007 standard). Increase in TB treatment success rate. Increase in the percentage of health facilities staffed with standard number and type of qualified staff (MoHSW 2007 standard). Increase in the number of patients treated in health centers in Lesotho. Increase in immunization rate (measles). Number of people receiving ARV treatment (number). Increase in annual enrolment at National Health Training College. Increase in average referred tests performed at the central laboratory per quarter during the past year. Increase in average number of blood units collected per quarter during the past year.
Private Sector Development Project.	$36,208,000	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	$401,992	Increase in the percentage of the adult population listed by a private credit bureau with current information on repayment history, unpaid debts or credit outstanding. Increase in the number of payments associated with salaries and pensions made through EFT per year. Land used as collateral (number of mortgage bonds registered). Land transaction costs (percent of property value). Land transaction times (median number of days necessary to complete a procedure). Increase in the number of pending civil cases in the High Court. Gender equality index (percent change in index of knowledge, attitudes, and practices for supporting gender equality in economic rights).
Program Administration * and Control, Monitoring and Evaluation.	$39,917,416	.....	$3,054,152	
Pending Subsequent Report **.	$0	.....	$422	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Morocco Year: 2008 Quarter 4 Total obligation: $697,500,000 Entity to which the assistance is provided: MCA Lesotho Total quarterly disbursement: $639,367				
Fruit Tree Productivity	$306,411,391	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	$433,590	Total annual volume of production of dates and olives. Cropped area covered by olive trees. Survival rate of newly planted olive trees after 2 years project-supported establishment period. Yield of rehabilitated olive trees. Cropped area covered by date trees. Yield of rehabilitated date palms.
Small Scale Fisheries	$109,162,154	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	$0	State of fish stock. Domestic fish consumption level. Fisherman net revenue. Average fisherman sales price at PDA. Volume sold at wholesale markets. Fish sale price. Average sales price. Volume of sales among mobile fish vendors.
Artisan and Fez Medina ..	$106,331,421	Increase value added to tourism and artisan sectors.	$0	Average revenue of potters receiving Artisan Production Activity. Employment and wages among Project graduates. Tourist arrivals. Artisan profits (artisans engaged in product finishing and points of sale). Employment created. SME value added.
Financial Services	$46,200,000	Increase supply and decrease costs of financial services available to microenterprises.	$0	Gross loan portfolio outstanding of microcredit associations. Portfolio at risk >30 days ratio. Operating Expense Ratio.
Enterprise Support	$36,442,894	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	$0	Average annual sales of participating businesses. Survival rate of participating businesses.
Program Administration * and Control, Monitoring and Evaluation.	$92,952,140	.....	$342,304	
Pending Subsequent Report **.	$0	.....	$0	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Tanzania Year: 2008 Quarter 4 Total obligation: $698,136,000 Entity to which the assistance is provided: MCA Tanzania Total quarterly disbursement: $315,187				
Energy Sector	$206,471,000	Increase value added to businesses.	$0	TBD.
Transport Sector	$372,776,000	Increase cash crop revenue and aggregate visitor spending.	$0	TBD.
Water Sector Project	$66,335,000	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	$0	TBD.
Program Administration * and Control, Monitoring and Evaluation.	$52,554,000	.....	$563,129	
Pending Subsequent Report **.	$0	.....	−$247,942	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Burkina Faso (CIF ONLY) Year: 2008 Quarter 4 Total obligation: $16,101,0650 Entity to which the assistance is provided: MCA Burkina Faso Total quarterly disbursement: $3,260,580				
Roads Project	$337,983	Enhance access to markets through investments in the road network.	$0	TBD.
Rural Land Governance Project.	$1,105,412	Increase investment in land and rural productivity through improved land tenure security and land management.	$0	TBD.
Agriculture Development Project.	$4,771,602	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	$0	TBD.
Bright 2 Schools Project	$3,000,000	Increase primary school completion rates.	$3,000,000	TBD.
Program Administration * and Control, Monitoring and Evaluation.	$6,886,068	.....	$201,694	
Pending Subsequent Report **.	$0	.....	$58,886	

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Namibia (CIF ONLY) Year: 2008 Quarter 4 Total obligation: $19,543,175 Entity to which the assistance is provided: MCA Namibia Total quarterly disbursement: $0				
Education Project	$8,976,296	Improve the education sector's effectiveness, efficiency and quality.	$0	TBD.
Tourism Project	$2,475,145	Increase incomes and create employment opportunities by improving the marketing, management and infrastructure of Etosha National Park.	$0	TBD.
Agriculture Project	$1,369,139	Sustainably improve the economic performance and profitability of the livestock sector and increase the volume of the indigenous natural products for export.	$0	TBD.
Program Administration * and Control, Monitoring and Evaluation.	$6,722,595	.....	$0	
Pending Subsequent Report **.	$0	.....	$0	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s).

619(b) transfer or allocation of funds		
U.S. agency to which funds were transferred or allocated	Amount	Description of program or project
USAID	$43,405,520	Threshold Program.

Dated: January 2, 2009.

Matthew McLean,

Vice President, Congressional and Public Affairs, Millennium Challenge Corporation.

[FR Doc. E9–181 Filed 1–8–09; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection to evaluate methods of assessing student learning arts education programs. A copy of the current information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before March 5, 2009. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Sarah Cunningham, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 703, Washington, DC 20506–0001, telephone (202) 682–5515 (this is not a toll-free number), fax (202) 682–5002.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. E9–187 Filed 1–8–09; 8:45 am]

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NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Arts; Submission of OMB Review: Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. Chapter 35]. Copies of the ICR, with applicable supporting documentation, may be obtained by contacting Sunil Iyengar via telephone at 202–682–5654 (this is not a toll-free number) or e-mail at *research@arts.endow.gov*. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202–682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: National Endowment for the Arts.

Title: Study of Outdoor Arts Festivals.

OMB Number: New.

Frequency: One time.

Affected Public: Festival organizers.

Estimated Number of Respondents: 7769.

Estimated Time Per Respondent: 16.0 minutes.

Total Burden Hours: 2071 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: The National Endowment for the Arts plans to conduct a study of outdoor arts festivals in the United States. There currently is no single, comprehensive research publication or database that describes the range and/or impact of arts festivals in this country. The study proposed here is a two-pronged research effort to describe the U.S. outdoor festival community—among other characteristics, its number, types, financing, staffing, regional distribution, and artist employment patterns. The first prong of the study is a national on-line survey of the universe of outdoor arts festivals, and the second is a series of seven case studies of festivals involving site visits, audience surveys, interviews with festival administrators, focus groups of artists, and focus groups of volunteers. Festivals in the study may be one-day or season-long programs, multi-disciplinary or discipline-specific, and funded by non-profit or for-profit organizations. The activities include collecting uniform data from festival organizers while still keeping data collection burdens to a minimum.

ADDRESSES: Sunil Iyengar, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5654 (this is not a toll-free number), fax (202) 682–5677.

Kathleen Edwards,

Support Services Supervisor, Administrative Services, National Endowment for the Arts.

[FR Doc. E9–200 Filed 1–8–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent to Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for three years.

DATES: Written comments on this notice must be received by March 10, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Survey of Research and Development Expenditures at Universities and Colleges; OMB Control Number 3145–0100.

Expiration Date of Current Approval: May 31, 2009.

Proposed Renewal Project: Separately budgeted current fund expenditures on research and development in the sciences and engineering performed by universities and colleges and federally funded research and development centers—A web survey, the Survey of Research and Development Expenditures at Universities and Colleges, originated in fiscal year (FY) 1954 and has been conducted annually since FY 1972. The survey is the academic research and development expenditure component of the NSF statistical program that seeks to provide a ''central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government,'' as mandated in the National Science Foundation Act of 1950.

Use of the Information: The proposed project will continue the annual survey cycle for up to three years. The Academic R&D Survey will be a census of the full population-for FY 2009 an expected 751 institutions (713 universities or colleges plus 38 federally funded research and development centers—FFRDCs). These institutions account for over 95 percent of the Nation's academic R&D funds. NSF will also conduct a pretest of a revised and expanded version of the survey for planned implementation in FY 2010 with a subset of 40 universities or colleges.

The survey has provided continuity of statistics on R&D expenditures by source of funds and by science & engineering (S&E) field, with separate data requested on current fund expenditures for research equipment by S&E field. Further breakdowns are collected on passed through funds to subrecipients and received as a subrecipient, and on R&D expenditures by field of science and engineering from specific Federal Government agency sources. Information on R&D for non-S&E fields is also requested. Data are published in NSF's annual publication series *Academic R&D Expenditures* and are available electronically on the World Wide Web.

The survey is a fully automated web data collection effort and is handled primarily by the administrators in university budget and accounting offices. To minimize burden, institutions are provided with an abundance of guidance and help menus on the web, in addition to printing and responding via paper copy if necessary. Each record is pre-loaded with the institution's 2 previous years data and a complete program for editing and trend checking. Response to this voluntary survey in FY 2007 was 96.9 percent.

BURDEN ESTIMATES [1]

Year	Total number of institutions	Doctorate-granting burden hours	Masters-granting burden hours	Bachelors degree burden hours	FFRDC's burden hours
FY 1999	480	20.8	13.0	7.5	9.4
FY 2000	700	21.0	12.0	10.5	9.2
FY 2001	625	30.2	11.9	9.0	12.1
FY 2002	625	28.7	14.9	12.2	4.5

[1]Average burden hours for institutions responding to burden item.

Dated: January 6, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–196 Filed 1–8–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03003754]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 06–00217–06, for Amendment of the License and Unrestricted Release of a Portion of the ABB, Inc. Facility in Windsor, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Jim Schmidt, Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Drive, King of Prussia, Pennsylvania 19406–1415; telephone (610)–337–5276; fax number (610)–337–5269; or by e-mail: *jim.schmidt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct License No. 06–00217–06. This license is held by ABB, Inc. (the Licensee), for its CE Windsor Site (the Facility), located at 2000 Day Hill Road in Windsor, Connecticut. Issuance of the amendment would authorize a partial site release of 365 contiguous acres of the 612 acre facility for unrestricted use. The Licensee requested this action in a letter dated December 27, 2007. The NRC has prepared an Environmental Assessment in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the Environmental Assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this Finding of No Significant Impact and Environmental Assessment in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's December 27, 2007, license amendment request, resulting in the partial site release of 365 contiguous acres of the Windsor, Connecticut facility for unrestricted use. Historical NRC-licensed activities previously conducted at the Facility included research, development, and commercial fuel fabrication and component repair. Additionally, the Facility was also used to fabricate naval fuel for the United States Government. License No. 06–00217–06 was issued in the 1960's pursuant to 10 CFR Part 30 and has been amended periodically since that time. The license currently authorizes the Licensee to possess and use unsealed byproduct material, and limited amounts of source and special nuclear material, solely for purpose of conducting decommissioning activities at the Facility.

The Facility is situated on 612 acres of which about a third is developed with buildings containing office space, fabrication shops, and laboratories. The balance of the Facility is comprised of undeveloped wooded land. The Facility is located in an industrial zone with nearby property that includes commercial, agricultural, industrial, and residential areas. Within the Facility, NRC-licensed material was confined to numerous laboratories and fabrication buildings associated with commercial nuclear activities. All of these buildings have been removed and the impacted areas remediated. Those areas of the facility that were involved with the United States Government fuel fabrication have been designated as Formally Utilized Sites Remedial Action Program areas and have not yet been remediated. The Formally Utilized Sites Remedial Action Program areas within the Facility include two buildings having a total footprint of about 50,000 ft^2 along with other undeveloped areas having a total footprint of about 15 acres. Also located within the Facility boundary is a 10.6 acre plot of land previously used as a United States Navy training site which was owned by the United States Government and was previously remediated by the United States Department of Energy.

On September 13, 2007, the Licensee completed the licensed decommissioning activities for the non-Formally Utilized Sites Remedial Action Program areas of the Facility and requested that all of these areas be removed from control of NRC License No. 06–00217–06. These activities were conducted in accordance with a decommissioning plan that was approved for use as part of Amendment 54 to License No. 06–00217–06. The Licensee conducted final status surveys of these areas of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E to 10 CFR Part 20 for unrestricted release. On December 27, 2007, the Licensee requested that only 365 contiguous acres of the non-Formally Utilized Sites Remedial Action Program areas be considered for unrestricted release in order to provide buffer areas around the Formally Utilized Sites Remedial Action Program areas on the Facility that have yet to be remediated.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities within the areas of the Facility for which the partial site release has been requested and seeks unrestricted use of the area. License No. 06–00217–06 will remain in place for the balance of the Facility to support future Formally Utilized Sites Remedial Action Program decommissioning and eventual site release.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved primarily uranium-234, uranium-235, uranium-238, cesium-137, and cobalt-60. Prior to performing the final status survey for the areas for which the unrestricted release has been requested, the Licensee conducted decontamination and remediation activities, as necessary, in the areas of the Facility affected by these radionuclides. The Licensee conducted final status surveys between 2005 and 2007. These surveys covered all impacted areas within the requested partial site release portion of the Facility. Notification that decommissioning activities in non-Formally Utilized Sites Remedial Action Program areas of the site were complete was provided in the Licensee's letter dated September 13, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR Part 20.1402 by developing derived concentration guideline levels for its Facility. The Licensee conducted site-specific dose modeling using input parameters specific to the Facility. This dose modeling used the residential farmer scenario. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, materials, and soils

that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The NRC previously reviewed the Licensee's methodology and the proposed derived concentration guideline levels, and concluded that the proposed derived concentration guideline levels were acceptable for use as release criteria at the Facility. The NRC's approval of the Licensee's proposed derived concentration guideline levels was published in the **Federal Register** on June 1, 2004 (Volume 69, Number 105). The Licensee's final status survey results were below these derived concentration guideline levels, and are thus acceptable.

The Oak Ridge Institute for Science and Education and NRC staff conducted confirmatory surveys between March 24 and March 27, 2008. None of the confirmatory sample results exceeded the derived concentration guideline levels established for the Facility. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material within the partial site release area of the Facility. The NRC staff reviewed the docket file records and the final status survey reports to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the portion of the Facility described above for unrestricted use is in compliance with 10 CFR 20.1402. Although the Licensee will continue to perform licensed activities at other parts of the Facility, the Licensee must ensure that this decommissioned area does not become recontaminated. Before the license can be terminated, the Licensee will be required to show that the entire Facility, including previously-released areas, complies with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is inconsistent with 10 CFR 30.36(d) and 10 CFR 70.38(d) requiring that decommissioning of byproduct material and special nuclear material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the partial site release area meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not considered further.

Conclusion

The NRC staff reviewed the environmental impacts of the proposed action in accordance with the requirements of 10 CFR Part 51 and NRC's unrestricted release criteria specified in 10 CFR 20.1402. The NRC staff has determined that the partial site release of the ABB, Inc. site would not significantly affect the quality of the human environment. Therefore, an environmental impact statement is not warranted for the proposed action, and pursuant to 10 CFR 51.31, a Finding of No Significant Impact is appropriate.

Agencies and Persons Consulted

On September 19, 2008, the NRC provided a draft of this Environmental Assessment to the Connecticut Department of Environmental Protection for review. On November 6, 2008, Mr. Michael Firsick of the Connecticut Department of Environmental Protection responded by e-mail. The State agreed with the conclusions of the Environmental Assessment, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

On the basis of this Environmental Assessment, the NRC finds that there are no significant environmental impacts from the proposed partial site release action as described above. Accordingly, preparation of an environmental impact statement is not warranted and a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. Letter dated October 31, 2005, from ABB to NRC, ''Final Status Survey Report—Building 2 Complex'' with attachments (ADAMS Accession No. ML053320512, ML053320517, ML053320521, ML053320522, ML053320523, ML053320524, ML053320525, ML053320526, ML053320527, ML053320530, ML053320532, ML053320536, ML053320539, and ML053320540);
6. Letter dated February 7, 2006, from ABB to NRC, ''Final Status Survey Report—Building 17 Complex'' with attachments (ADAMS Accession No. ML060670224, ML060670354, ML060670385, ML060670398, ML060670405, ML060670408, ML060670411, ML060670425, ML060670444, ML060670451,

ML060670456, ML060670470, ML060670478, and ML060670489);

7. Letter dated May 2, 2006, from ABB to NRC, ''Final Status Survey Report—Building 5/6A Complex'' with attachments (ADAMS Accession No. ML061300647, ML061600110, ML061600128, ML061600142, ML061600154, ML061600158, ML061600160, ML061600178, ML061600184, ML061600185, ML061600186, ML061600187, ML061600280, ML061600292, ML061600304, ML061600315, ML061600324, and ML061600331);

8. Letter dated September 13, 2007, from ABB to NRC, ''Final Status Survey Report'' with attachments (ADAMS Accession No. ML072890334, ML072890351, ML072890359, ML072890361, ML072890362, ML072890533, ML072890542, ML072890545, ML072890552, ML072890556, ML072890565, ML072890572, ML072890586, ML072890590, ML072890603, ML072890611);

9. Letter dated December 27, 2007, from ABB to NRC, ''Partial Site Release'' (ADAMS Accession No. ML080020357);

10. Letter dated June 27, 2008, from ORISE to NRC, ''Final Report—Confirmatory Survey for the Partial Site Release at the ABB Inc. CE Windsor Site; Windsor, Connecticut'' (ADAMS Accession No. ML082420398); and

11. NRC Inspection Report 03000754/2008001, dated September 30, 2008, (ADAMS Accession Nos. ML082730833 and ML082730842).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The Public Document Room reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 30th day of December, 2008.

For the Nuclear Regulatory Commission.

Eugene Cobey,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E9–202 Filed 1–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability; NUREG–1307, Revision 13, ''Report on Waste Burial Charges Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Faciilities''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is announcing the completion and availability of NUREG–1307, Revision 13, ''Report on Waste Burial Charges,'' dated December 2009.

ADDRESSES: NUREG–1307 may be purchased from The Superintendent of Documents, U.S. Government Printing Office , P.O. Box 37082, Washington, DC 20402–9328: *http://www.access.gop.gov/sudocs:* 202–512–1800; or The National Technical Information Service, Springfield, Virginia 22161–0002; *http://www.ntis.gov;* or locally, 703–605–6000. The publication may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. The public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS) through the agency's public Web site at *http://www.nrc.gov.*

This Web site provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference Staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Clayton L. Pittiglio, Office of Nuclear Reactor Regulation, Division of Policy and Rulemaking, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1435, e-mail *Clayton.Pittiglio@nrc.gov.*

SUPPLEMENTARY INFORMATION: A requirement placed upon nuclear power reactor licensees by the NRC is that licensees must annually adjust the estimate of the cost of decommissioning their plants, in dollars of the current year, as part of the process to provide reasonable assurance that adequate funds for decommissioning will be available when needed. This report, which is revised periodically, explains the formula that is acceptable to the NRC for determining the minimum decommissioning fund requirements for nuclear power plants. The sources of information used in the formula are identified, and the values developed for the estimation of radioactive waste burial/disposition costs, by site and by year, are given.

Dated at Rockville, Maryland, this 22 day of December.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Program.

[FR Doc. E9–203 Filed 1–8–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 18f–3; SEC File No. 270–385; OMB Control No. 3235–0441.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Section 18(f)(1) [1] of the Investment Company Act of 1940 [2] (the ''Investment Company Act'' or ''Act'') prohibits registered open-end management investment companies (''funds'') from issuing any senior security. Rule 18f–3 under the Act [3] exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a ''multiple class fund'') if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare, and fund directors must approve, a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges (''rule

[1] 15 U.S.C. 80a–18(f)(1).

[2] 15 U.S.C. 80a.

[3] 17 CFR 270.18f–3.

18f–3 plan'').[4] Approval of the plan must occur before the fund issues any shares of multiple classes and whenever the fund materially amends the plan. In approving the plan, a majority of the fund board, including a majority of the fund's independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f–3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 5,300 multiple class funds offered by 1,120 registrants.[5] Based on a review of typical rule 18f–3 plans, the Commission's staff estimates that the 1,120 registrants together make an average of 560 responses each year to prepare and approve a written rule 18f–3 plan, requiring approximately 10 hours per response and a total of 5,600 burden hours per year in the aggregate.[6] The staff estimates that preparation of the rule 18f–3 plan may require 6 hours of the services of an attorney employed by the fund, at a cost of approximately $295 per hour for professional time,[7] and approval of the plan may require 4 hours of the services of the board of directors, at a cost of approximately $2000 per hour.[8] The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $5,471,200 ((6 hours × 560 responses × $295 = $991,200) + (4 hours × 560 responses × $2000 = 4,480,000)).

The estimated annual burden of 5,600 hours represents a decrease of 110 hours over the prior estimate of 5,710 hours. The decrease in burden hours is attributable to a change in the estimate of the number of responses that are submitted pursuant to the rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

January 5, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–159 Filed 1–8–09; 8:45 am]

BILLING CODE 8011–01–P

[4] Rule 18f–3(d).

[5] This estimate is based on data from Form N–SAR, the semi-annual report that funds file with the Commission. In previous years, the staff estimated that each multiple class fund prepared and approved a rule 18f–3 plan. However, the staff has revised this estimate to reflect its belief that most registrants prepare and approve a single rule 18f–3 plan for all series funds offered by the registrants.

[6] The estimate reflects the assumption that each registrant prepares and approves a rule 18f–3 plan every two years when issuing a new fund or new class or amending a plan (or that 560 of all 1,120 registrants prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 6 hours per plan (or 3360 hours for 560 registrants annually), and the time required to approve a plan is an additional 4 hours per plan (or 2240 hours for 560 registrants annually).

[7] This hourly rate estimate is derived from annual salaries reported in: Securities Industry and Financial Markets Association, Management and Professional Earnings in the Securities Industry (2007), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[8] This hourly rate estimate is derived from fund representatives.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0213.

Extension:

Rule 30b2–1; SEC File No. 270–213; OMB Control No. 3235–0220.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 30b2–1 (17 CFR 270.30b2–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[1] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of a registered investment companies.[2]

Registered management investment companies are required to send reports to stockholders at least twice annually. In addition, under rule 30b2–1, each registered investment company is required to file with the Commission Form N–CSR (17 CFR 274.128), certifying the financial statements.[3] The annual burden of filing the reports is included in the burden estimate for Form N–CSR; however, we are requesting one burden hour remain in inventory for administrative purposes.

The burden estimate for rule 30b2–1 is made solely for the purposes of the Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The collection of information under rule 30b2–1 is mandatory. The information provided by rule 30b2–1 is not kept confidential. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to:

[1] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[2] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

[3] Rule 30b2–1(a) [17 CFR 270.30b2–1(a)].

Shagufta_Ahmed@omb.eop.gov; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

January 5, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–160 Filed 1–8–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59197; File No. SR–BSE–2008–52]

Self-Regulatory Organizations; the Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rules Relating to Obvious Error Provisions To Address Catastrophic Errors, Erroneous Quotes or Prints in the Underlying Security, and Some Additional Modifications

January 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934) (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 24, 2008, the Boston Stock Exchange, Inc.) (''BSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by BSE. The Exchange filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 20 (Obvious Errors) of the Rules of the Boston Options Exchange Group, LLC) (''BOX'') to address catastrophic errors) (''Catastrophic Errors'') as well as erroneous quotes or prints in the underlying security and some additional modifications to this section. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Chapter V, Section 20 of the BOX Rules (the ''Obvious Error Rule'') to address certain extreme circumstances. In particular, the Exchange proposes to add criteria for identifying ''Catastrophic Errors'' and making adjustments when Catastrophic Errors occur, as well as a streamlined procedure for reviewing actions taken in these extreme circumstances. This proposed rule change also seeks to incorporate provisions within the BOX Obvious Error Rule which will allow for the nullification or adjustment of trades that are the result of either an erroneous quote or print in the underlying security. In addition, the proposed rule also amends the Supplementary Material to remove references to a $.05 offer and to provide that executions may be busted, if at least one strike below (for calls) or above (for puts), rather than the three strikes.

The Exchange notes that, currently under the Obvious Error Rule, trades that result from an Obvious Error may be adjusted or busted according to objective standards. Under the rule, whether an Obvious Error has occurred is determined by comparing the execution price to the Theoretical Price of the option. The rule requires that participants notify the Market Operations Center) (''MOC'') within a short time period following the execution of a trade (five minutes for market makers and 20 minutes for non-market makers) if they believe the trade qualifies as an Obvious Error. Trades that qualify for adjustment are adjusted under the rule to a price that matches the Theoretical Price plus or minus an adjustment value, which is $.15 if the theoretical value is under $3 and $.30 if the theoretical value is at or above $3. By adjusting trades above or below the Theoretical Price, the rule assesses a ''penalty'' in that the adjustment price is not as favorable as what the party making the error would have received had it not made the error.

In formulating the Obvious Error Rule, the Exchange has weighed carefully the need to assure that one market participant is not permitted to receive a wind-fall at the expense of another market participant that made an Obvious Error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. The Exchange states that, while it believes that the Obvious Error Rule strikes the correct balance in most situations, in some extreme situations, participants may not be aware of errors that result in very large losses within the time periods required under the rule. In this type of extreme situation, the Exchange believes participants should be given more time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce the corresponding large wind-falls. However, to maintain the appropriate balance, the Exchange believes participants should only be given more time when the execution price is much further away from the Theoretical Price than is required for Obvious Errors, and that the adjustment ''penalty'' should be much greater, so that relief is only provided in extreme circumstances.[5]

Accordingly, the Exchange proposes to amend the Obvious Error Rule to address ''Catastrophic Errors.'' Under the proposed rule, participants will have until 8:30 a.m. Eastern Time on the day following the trade to notify the MOC of a potential Catastrophic Error. For trades that take place in an expiring series on expiration Friday, participants must notify the MOC of a potential Catastrophic Error by 5 p.m. Eastern Time that same day. Once a participant has notified the MOC of a Catastrophic Error within the required time period,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange does not believe the type of extreme situation that is covered by the proposed rule would occur in the normal course of trading. Rather, this type of situation could potentially occur as a result of, for example, an error in a paticipant's quotation system that causes a market maker to severly misprice an option.

the Market Regulation Center) (''MRC'') will review the Catastrophic Error claim.

A Catastrophic Error would be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the option by an amount equal to at least the amount shown in the second column of the chart below (the ''Minimum Amount''), and the adjustment would be made plus or minus the amount shown in column three of the chart below (the ''Adjustment Value''). At all price levels, the Minimum Amount and the Adjustment Value for Catastrophic Errors would be significantly higher than for Obvious Errors, which the Exchange believes, would limit the application of the proposed rule to situations where the losses are very large.

Theoretical price	Minimum amount	Adjustment value
Below $2	$1	$1
$2 to $5	2	2
Above $5 to $10	5	3
Above $10 to $50	10	5
Above $50 to $100	20	7
Above $100	30	10

The following example demonstrates how the proposed Catastrophic Error provisions would operate within the Obvious Error framework. Assume a participant notifies the MOC within 2 minutes of a trade where 100 contracts of an option with a Theoretical Price of $9 were purchased for $17, resulting in an $80,000 error.[6] The trade would qualify as an Obvious Error because the purchase price is more than $.50 above the Theoretical Price and the participant notified the MOC within the required time period. The Exchange would review the trade and either bust it or adjust it to a purchase price of $9.30,[7] which reduces the cost of the error to $3,000.[8] If, however, the participant failed to identify the same error and notify the MOC until four hours after the trade, it may not be reviewed under the current Obvious Error Rule. Under the proposal, this trade would qualify as a Catastrophic Error because the purchase price is more than $5 above the Theoretical Price. Under the proposal, the MRC would review the trade and adjust the purchase price to $12, which reduces the cost of the error to $30,000.[9]

The Exchange believes that the proposed longer time period is appropriate to allow participants to discover, and seek relief from, trading errors that result in extreme losses. At the same time, the Exchange believes that the proposed Minimum Amounts required for a trade to qualify as a Catastrophic Error, in combination with the large Adjustment Values, assures that only those transactions where the price of the execution results in very high losses will be eligible for adjustment under the new provisions. While the Exchange believes it is important to identify and resolve trading errors quickly, it also believes it is important to the integrity of the marketplace to have the authority to mitigate extreme losses resulting from errors. In this respect, the Exchange believes that the above example illustrates how market participants would continue to be encouraged to identify errors quickly, as losses will be significantly lower if the erroneous trades are busted or adjusted under the Obvious Error provisions of the rule.

In consideration of the extreme nature of situations that will be addressed under the proposed Catastrophic Error provisions, the Exchange proposes a streamlined procedure for making determinations and adjustments. Under the current rule for Obvious Errors, the MRC makes determinations that can then be appealed to the Boston Options Exchange Regulation (''BOXR'') Chief Regulatory Officer (''CRO''). For Catastrophic Errors, the Exchange proposes to have a one-step process where the MRC, with the approval of the CRO or an Options Official,[10] who is not a participant, designated by the CRO (''CRO or designee'') makes determinations and adjustments. If it is determined that a Catastrophic Error has occurred, the CRO or its designee will instruct the MRC to adjust the execution price of the transaction(s) according to proposed subparagraph (g)(iii). All determinations by the CRO or its designee shall constitute final Exchange action on the matter at issue. The Exchange encourages participants to request reviews only in appropriate situations, particularly given the objective criteria used to determine whether a Catastrophic Error occurred and the considerable amount of time participants are given under the proposal to assess whether a trade falls within that criteria.

Additionally, the Exchange proposes to amend the Obvious Error Rule to address an occurrence of an erroneous quote or print in the underlying security. Participants on BOX base the value of their quotes and orders off of the price of underlying security. The two provisions which the Exchange proposes to add to the BOX Obvious Error Rule cover instances where the information that the participants are using to price options is erroneous, through no fault of their own. An erroneous quote or print in an underlying security, which is disseminated by the Primary Market[11] for that security, means that participants are receiving erroneous information which they then incorporate into trading decisions. In these instances, participants have little if any chance of pricing options accurately. In order to provide relief from transactions that occur as a result of these erroneous quotes and/or prints, the Exchange proposes the following provisions.

Chapter V, Section 20(d) Erroneous Print in Underlying

An electronic trade resulting from an erroneous print disseminated by the Primary Market which is later cancelled or corrected by that Primary Market may be nullified. In order to be nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the

[6] One hundred contracts equal 10,000 shares, and the purchase price is $8 per share above the Theoretical Price. Therefore, the purchaser paid $80,000 over the theoretical value.

[7] See Proposed Chapter V, Section 20(g)(ii) of the BOX Rules.

[8] 10,000 shares at $.30 per share over the theoretical value.

[9] 10,000 shares at $3.00 per share over the theoretical value.

[10] *See* BOX Rules Chapter I, Section 1(43) which defines ''Options Official'' as an officer of BOX Regulation vested by the BOX Regulation Board with certain authority to supervise option trading on BOX.

[11] *See* BOX Rules Chapter I, Section 1(50) which defines ''Primary Market'' as the principal market where the underlying security is traded.

underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period. For purposes of this paragraph, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question). For purposes of this paragraph, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

Chapter V, Section 20(e) Erroneous Quote in Underlying

Trades resulting from an erroneous quote in the underlying security may be adjusted or nullified as set forth in Chapter V, Section 20(f). An erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the Primary Market (as defined in BOX Rules Chapter I, Section 1(50)) during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this paragraph, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

These proposed rule changes will provide participants on BOX with the same opportunities for price adjustment or trade nullification that are available on other options exchanges. The Exchange notes that these provisions are similar in all respects to rules already approved for use at The Chicago Board Options Exchange (''CBOE''),[12] The American Stock Exchange (''Amex''),[13] and NYSE Arca.[14]

In addition, the proposed rule also amends the Supplementary Material to remove references to a $.05 offer. The Exchange also proposes to provide that buyers of options with a zero bid may request their execution be busted, if at least one strike below (for calls) or above (for puts), in the same options class were quoted with a zero bid at the time of execution rather than the three strikes, which is currently in the rule. Removing the references to a $.05 offer will allow errors resulting from trades in penny pilot issues be treated in the same manner as non-penny classes. Moreover, these proposed changes will provide participants on BOX with similar opportunities for price adjustment or trade nullification that are available on other options exchanges.[15]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[16] in general, and Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will, under certain circumstances, provide participants with the opportunity for a longer period within which to seek relief from errors that result in large losses. The proposal is also appropriate given that it provides for the adjustment or nullification of trades which are executed at clearly erroneous prices due to no fault of the parties to the trade. Finally, removing the references to a $.05 offer in the Supplementary Material will allow errors resulting from trades in penny pilot issues be treated in the same manner as non-penny classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[18] and Rule 19b–4(f)(6) thereunder.[19]

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.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BSE requests that the Commission waive the 30-day operative delay to immediately offer market participants on BSE the same potential for relief that is available at other options exchanges for certain obvious errors, catastrophic errors, or erroneous quotes or prints in the underlying security. The Exchange stated that the proposed changes are not novel and are necessary to eliminate any confusion among members of multiple exchanges regarding the handling and treatment of requests for review of Catastrophic Errors and instances of erroneous quotes or prints in the underlying security and for purposes of maintaining a fair and orderly market. The Commission believes that waiving the 30-day

[12] *See* CBOE Rules 6.25(a)(4)–(5).

[13] *See* Amex Rules 936–ANTE(a)(4)–(5).

[14] *See* NYSE Arca Rules 6.87(a)(4)–(5).

[15] *See e.g.* CBOE Rules 6.25(a)(2); Amex Rules 936–ANTE(a)(2).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSE has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] *Id.*

operative delay[22] is consistent with the protection of investors and the public interest. Given that the Exchange's proposed rule change is substantially similar to the rules of other exchanges previously approved by the Commission, the proposal does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal as operative upon filing.

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–BSE–2008–52 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–BSE–2008–52. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BSE–2008–52 and should be submitted on or before January 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8011–01–P

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59193; File No. SR–CBOE–2008–128]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees for Fiscal Year 2009

January 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 24, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member 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

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule to make various changes for Fiscal Year 2009. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the CBOE Fees Schedule to make various fee changes. The proposed changes are the product of the Exchange's annual budget review. The fee changes were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 1, 2009.

The Exchange proposes to amend the following fees:

A. Liquidity Provider Sliding Scale

The Exchange's Liquidity Provider Sliding Scale program reduces a Liquidity Provider's per contract transaction fee based on the number of contracts the Liquidity Provider trades in a month.[5] The sliding scale applies to all Liquidity Providers (CBOE Market-Maker, Designated Primary Market-Maker (''DPM''), Electronic DPM (''e-DPM'') and Lead Market-Maker (''LMM'')) for transactions in all products.[6]

Under the current program, a Liquidity Provider's standard $.20 per contract transaction fee is reduced if the Liquidity Provider reaches the volume thresholds set forth in the sliding scale in a month. As a Liquidity Provider's monthly volume increases, its per contract transaction fee decreases. The first 75,000 contracts traded in a month (first tier) are assessed at $.20 per

[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] *See* Section 1 and Footnote 10 of the CBOE Fees Schedule.

[6] Contract volume resulting from dividend, merger and short stock interest strategies as defined in Footnote 13 of the Fees Schedule does not apply towards reaching the sliding scale volume thresholds.

contract. The next 1,125,000 contracts traded (up to 1.2 million total contracts traded—second tier) are assessed at $.18 per contract. The next 1.8 million contracts traded (up to 3 million total contracts traded—third tier) are assessed at $.15 per contract and the next 1.8 million contracts traded (up to 4.8 million total contracts traded—fourth tier) are assessed at $.10 per contract. The next 5.2 million contracts traded (up to 10 million total contracts traded—fifth tier) are assessed at $.03 per contract. All contracts above 10 million contracts traded in a month (sixth tier) are assessed at $.01 per contract. The Exchange aggregates the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A.[7]

The Exchange proposes to increase the sliding scale volume thresholds for fiscal year 2009 due to increased volume on the Exchange. Specifically, the Exchange proposes to change the first tier volume threshold from 75,000 contracts to 85,000 contracts, the second tier volume threshold from 1,125,000 contracts to 1,265,000 contracts (up to 1.35 million total contracts traded), the third tier threshold from 1.8 million contracts to 2,075,000 contracts (up to 3,425,000 total contracts traded), the fourth tier threshold from 1.8 million contracts to 2,050,000 contracts (up to 5,475,000 total contracts traded), the fifth tier threshold from 5.2 million contracts to 5,025,000 contracts (up to 10.5 million total contracts traded), and the sixth tier threshold from above 10 million contracts to above 10.5 million contracts. The Exchange does not propose to change any of the tier fee rates.

Currently, the Exchange provides Liquidity Providers with two incentives to prepay annual transaction fees. First, in order to be eligible to participate in the sliding scale above 1.2 million contracts (*i.e.*, at the $.15 per contract rate and lower), a Liquidity Provider is required to prepay their transaction fees for the first two tiers of the sliding scale for the entire year (*i.e.*, $2.61 million). Second, if a Liquidity Provider prepays annual fees for the first four tiers of the sliding scale, the Liquidity Provider receives a $600,000 prepayment discount (total amount of the prepayment would be $7.41 million instead of $8.01 million). As a result of the volume threshold changes described above, the $2.61 million prepayment amount for the first two tiers would be revised to $2,936,400. The discount for prepaying the first four tiers of the sliding scale would increase from $600,000 to $685,000 (total amount of the prepayment would be $8,446,400 instead of $9,131,400).

B. Member Firm Proprietary Sliding Scale

The Exchange's Member Firm Proprietary Sliding Scale program reduces a member firm's standard $.20 per contract transaction fee if the member firm reaches the volume thresholds set forth in the sliding scale in a month.[8] As a member firm's monthly volume increases, its per contract transaction fee decreases. The first 400,000 contracts traded in a month are assessed at $.20 per contract. The next 200,000 contracts traded (up to 600,000 total contracts traded) are assessed at $.15 per contract. The next 150,000 contracts traded (up to 750,000 total contracts traded) are assessed at $.10 per contract and the next 100,000 contracts traded (up to 850,000 total contracts traded) are assessed at $.05 per contract. All contracts above 850,000 contracts traded in a month are assessed at $.02 per contract.

The Exchange proposes to increase the sliding scale volume thresholds for fiscal year 2009 due to increased volume on the Exchange. Specifically, the Exchange proposes to change the first tier volume threshold from 400,000 contracts to 450,000 contracts, the second tier volume threshold from 200,000 contracts to 225,000 contracts (up to 675,000 total contracts traded) and the third tier threshold from 150,000 contracts to 175,000 contracts (up to 850,000 total contracts traded). The fourth tier threshold would remain at 100,000 contracts (up to 950,000 total contracts traded) and the fifth tier threshold would change from above 850,000 contracts to above 950,000 contracts. The Exchange does not propose to change any of the tier fee rates.

Due to the Exchange's obligation to pay license fees on certain products, the Exchange currently assesses a $.10 per contract license fee (a total of 10 cents per contract less any surcharge fees already assessed) on all licensed products when a firm reaches the fifth tier of the sliding scale. The Exchange proposes to increase this charge to $.15 per contract for options on the Russell 2000 index (RUT), mini-Nasdaq-100 index (MNX) and Nasdaq-100 index (NDX) due to the increase in the surcharge fees for these products as described in the next section below.

C. Surcharge Fees

The Exchange currently charges a $.10 per contract surcharge fee on all transactions in MNX, NDX and RUT options and on options on the Dow Jones Industrial Average (DJX and DXL), excluding public customer orders and including voluntary professional and linkage orders.[9] The Exchange proposes to increase the surcharge fee to $.15 per contract for transactions in MNX, NDX and RUT options, excluding public customer orders and including voluntary professional and linkage orders. The surcharge fee is assessed to help the Exchange recoup license fees the Exchange pays to index licensors for the right to list these products for trading and is similar to surcharge fees charged by other exchanges.

D. XSP Transaction Fee

The Exchange waived transaction fees for all market participants in options on the mini-SPX (XSP) beginning on November 19, 2007 for an indefinite time period in conjunction with a marketing ''re-launch'' of the XSP product.[10] The Exchange has reevaluated the fee waiver and determined to reinstate XSP transaction fees effective January 1, 2009.[11]

E. Floor Broker Workstation Fees

The Floor Broker Workstation (FBW) is a system for electronically entering and electronically managing orders on the Exchange floor. The Exchange currently assesses a fee of $425 per month for FBW functionality that is placed on a desktop terminal. The Exchange assesses an additional $100 per month ($525 total per month) if the FBW application resides on a workstation that also includes certain market data functionalities. The Exchange charges a fee of $100 per month per login ID for mobile FBWs used in index option trading crowds. No

[7] A Liquidity Provider's monthly contract volume is determined at the firm affiliation level, *e.g.*, if five Liquidity Provider individuals are affiliated with member firm ABC as reflected by Exchange records for the entire month, all of the volume from those five individual Liquidity Providers count towards firm ABC's sliding scale transaction fees for that month. If a Liquidity Provider firm has nominees that trade independently and have their own profit-loss accounts that are separate and distinct from those of other nominees of the firm, the independent nominee's individual contract volume shall not be grouped with the contract volume of the firm for purposes of calculating the firm's sliding scale monthly volume total.

[8] *See* Section 1 and Footnote 11 of the CBOE Fees Schedule.

[9] *See* CBOE Fees Schedule, Section 1 (Index Options) and Footnote 14.

[10] *See* Securities Exchange Act Release No. 56862 (November 29, 2007), 72 FR 68918 (December 6, 2007).

[11] XSP option transaction fees are assessed pursuant to the Index Options transaction fee schedule set forth in Section 1 of the Fees Schedule.

fee is assessed for mobile FBWs used in equity option trading crowds. Additionally, the Exchange assesses DPMs a fee of $100 per month per login ID for use of an FBW, whether it is a desktop FBW or a mobile FBW.

The Exchange proposes to eliminate all of the distinctions described above and charge a fee of $355 per month per login ID for use of any FBW, whether a mobile FBW or a desktop (stationary) FBW. FBW fees are charged to assist the Exchange in offsetting the cost of making FBWs available to members.

F. Position Transfer Fee

CBOE Rule 6.49A provides for a special procedure to permit option positions to be offered on the floor of the Exchange in the event that the positions are being transferred as part of a sale or disposition of all or substantially all of the assets or options positions of the transferring party where the transferring party would not continue to be involved in managing or owning the transferred positions. The rule also provides for off-floor transfers of positions based on certain specified exemptions, as well as with the approval of the Exchange's President under extraordinary circumstances.

The Exchange regularly accommodates both on-floor and off-floor transfers of positions. The primary reason that members prefer to transfer positions as opposed to trading out of them is that transferring positions affords a reduction in administrative overhead and cost. In the typical situation, a member is undergoing a structural change and a one-time movement of positions offers efficiency in that process.

Exchange Trading Floor Liaison and Help Desk staff participate in on-floor transfers by reviewing, preparing and executing the process, which can take several hours depending upon the size and number of classes involved.[12] Off-floor transfers are reviewed and approved by management of the Exchange's Market Regulation Department. Reviewing the position transfer data may take little time or several hours, again depending upon the size and number of classes involved.

The Exchange proposes to establish a fee for options position transfers to help offset the Exchange's costs to provide the services described above. The Exchange proposes to charge $.02 per contract side for all options contracts transferred pursuant to Rule 6.49A. The fee would be capped at $25,000 per transfer. The Exchange believes the proposed position transfer fee is reasonable in that even with the proposed fee the position transfer process provides members with significant cost savings as compared to the transaction fee costs that a member would incur by trading out of the positions.

G. PAR Workstation Fee

PAR Workstations are touch screen terminals designed to allow electronic representation of orders routed to it. PAR Workstations have been in service for many years with no user fee assessed by the Exchange. The Exchange proposes to assess a $100 per month fee for use of a PAR Workstation, in order to help offset hardware costs incurred by the Exchange in making PAR Workstations available to members.

H. Miscellaneous Changes

The Exchange proposes the following housekeeping changes to its Fees Schedule. The Exchange proposes to delete a sentence in Footnote 1 of the Fees Schedule relating to a transaction fee waiver for binary options that expired on October 1, 2008.[13] The Exchange also proposes to delete certain charges under the Trade Processing section (Section 9) of the Fees Schedule because those fees are no longer charged. Specifically, the Exchange proposes to delete the RAES Market Maker Input charge because the RAES system is no longer in use, and the CBOE Hand Held Terminal Input charge because such terminals also are no longer in use.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'')[14] in general, and furthers the objectives of Section 6(b)(4) of the Act[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the Liquidity Provider and Member Firm Proprietary Sliding Scale fee discounts are reasonable and appropriate in that they are based on the amount of business transacted on the Exchange. The Exchange believes the other proposed fee changes are equitable and reasonable in that they are designed to recoup or help offset costs incurred by the Exchange in making products and services available to members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(2) of Rule 19b–4[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–128 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2008–128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[12] The procedure for on-floor transfers of positions is set forth in Rule 6.49A(c).

[13] See Securities Exchange Act Release No. 58127 (July 9, 2008), 73 FR 41140 (July 17, 2008).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–128 and should be submitted on or before January 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E9–156 Filed 1–8–09; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59196; File No. SR–ISE–2008–100]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Amendment of International Securities Exchange Holdings, Inc.'s Certificate of Incorporation

January 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act≥),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 24, 2008, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') 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 ISE. ISE has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 19b–4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make technical changes to the certificate of incorporation (the ''Certificate of Incorporation'') of its parent, International Securities Exchange Holdings, Inc. (''Holdings''), which will be adopted in connection with a corporate transaction (the ''Transaction''), in which the ISE Stock Exchange, LLC (''ISE Stock''), a Delaware limited liability company, will merge with and into Maple Merger Sub, LLC (''Maple Merger Sub''), a Delaware limited liability company and a wholly owned subsidiary of Direct Edge Holdings LLC (''Direct Edge''), with Maple Merger Sub being the surviving entity.

Certificate of Incorporation

The Exchange is proposing to make additional technical change to the Certificate of Incorporation to: (1) Remove the word ''FIRST'' before the opening paragraph and (2) add new text below the opening paragraph stating that the name of the corporation is International Securities Exchange Holdings, Inc.

Text of the Proposed Rule Change

Underlining indicates additions; [Brackets] indicate deletion.

Amended and Restated Certificate of Incorporation of International Securities Exchange Holdings, Inc.

[FIRST:] The name of the corporation is International Securities Exchange Holdings, Inc. (the ''Corporation''). The Corporation was incorporated on November 16, 2004 by filing its Certificate of Incorporation with the Secretary of State of the State of Delaware under the name International Securities Exchange Holdings, Inc.

FIRST: The name of the corporation is International Securities Exchange Holdings, Inc. (the ''Corporation'').

* * * * *

The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 22, 2008, the Commission approved a rule filing submitted by the Exchange in connection with the Transaction[5] which included the Certificate of Incorporation. On December 23, 2008, the Exchange submitted a technical rule filing to make changes requested by the Delaware Secretary of State.[6] The purpose of this rule filing is to make additional technical changes to the Certificate of Incorporation that were subsequently requested by the Delaware Secretary of State that are necessary to permit Holdings to file the Certificate of Incorporation to effect the Transaction. The Exchange is proposing to make technical changes to the Certificate of Incorporation to: (1) Remove the word ''FIRST'' before the opening paragraph and (2) add new text below the opening paragraph stating that the name of the corporation is International Securities Exchange Holdings, Inc.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(1) that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations

[5] Release No. 34–59135 (December 22, 2007); File No. SR–ISE–2008–85.

[6] *See* File No. SR–ISE–2008–97 (December 23, 2008).

thereunder and the rules of the exchange. The Exchange also believes this proposed rule change furthers the objective of Section 6(b)(5) that an exchange have rules that, among other things, are designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to effect the Transaction, which was approved by the Commission on December 22, 2008.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[8] and Rule 19b–4(f)(3)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–100 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–ISE–2008–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–ISE–2008–100 and should be submitted on or before January 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–157 Filed 1–8–09; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* footnote 5.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59194; File No. SR–NYSEArca–2008–135]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Amending Rule 6.47A To Reduce the Order Exposure Period From Three Seconds to One Second

January 5, 2009.

I. Introduction

On December 9, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the **Federal Register** on December 18, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which order entry firms may not execute as principal against orders they represent as agent from three seconds to one second. Under the current NYSE Arca Rule 6.47A, Order Exposure Requirements–OX, order entry firms may not execute as principal, orders they represent as agent unless (i) the agency orders are first exposed on the NYSE Arca OX trading system for at least three seconds or (ii) the order entry firm has been bidding or offering for at least three seconds prior to receiving the agency order that is executable against such bid or offer. During this three-second exposure period, other market participants may enter orders to trade against the exposed order. Under this proposal, the exposure period contained in Rule 6.47A would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59082 (December 11, 2008), 73 FR 77091 (''Notice'').

applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[6] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of NYSE Arca OX, reducing the exposure period from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that NYSE Arca members could receive, process, and communicate a response back to the Exchange within one second, the Exchange stated that it distributed a survey to its members that regularly access the Exchange on an electronic basis. NYSE Arca stated that all but one responding firm indicated that their approximate turnaround time for responding to trading interest was equal to, or less than, 100 milliseconds, while the other responding firm simply stated that their turnaround time was ''less than one second.'' [7] NYSE Arca also stated that none of the responding firms anticipated any problems related to order processing, if the Exchange was to reduce the exposure period to one second.[8] Based on NYSE Arca's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for NYSE Arca to reduce the exposure time discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that the Exchange's market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure period was reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC, and NASDAQ OMX PHLX, Inc.[9] Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[10] to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSEArca–2008–135), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–137 Filed 1–8–09; 8:45 am]

BILLING CODE 8011–01–P

[4] 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).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] *See* Notice.

[8] *Id.*

[9] *See* Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008)(SR–CBOE–2008–16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR–ISE–2007–94); and 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008) (SR–Phlx–2008–79).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6477]

Culturally Significant Objects Imported for Exhibition Determinations: ''A Circus Family: Picasso to Leger''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''A Circus Family: Picasso to Leger,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Baltimore Museum of Art, Baltimore, MD, from on or about February 22, 2009, until on or about May 17, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 22, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–208 Filed 1–8–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6478]

Culturally Significant Objects Imported for Exhibition Determinations: ''Turner to Cezanne: Masterpieces from the Davies Collection, National Museum Wales''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Turner to Cezanne: Masterpieces from the Davies Collection, National Museum Wales,'' imported from abroad for temporary

exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Columbia Museum of Art, Columbia, South Carolina, from on or about March 6, 2009, until on or about June 7, 2009; Oklahoma City Museum of Art, Oklahoma City, OK, from on or about June 25, 2009, until on or about September 20, 2009; Everson Museum of Art, Syracuse, NY, from on or about October 8, 2009, until on or about January 3, 2010; Corcoran Gallery of Art, Washington, DC, from on or about January 30, 2010, until on or about April 25, 2010, and the Albuquerque Museum of Art & History, Albuquerque, NM, from on or about May 16, 2010, until on or about August 8, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 23, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–209 Filed 1–8–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending December 6, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0373.

Date Filed: December 2, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 23, 2008.

Description: Application of Thomson Airways Limited (''Thomson Airways'') requesting an exemption and an amended foreign air carrier permit authorizing (i) foreign scheduled and charter foreign air transportation of persons, property and mail from any point(s) behind any European Community Member State via any point(s) in the European Community Member States and intermediate points to any point(s) in the United States and beyond; (ii) foreign scheduled and charter foreign air transportation of persons, property and mail between any point(s) in the United States and any point(s) in the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to prior approval, (v) and additional transportation authorized in the future under the U.S.-E.U. Agreement.

Docket Number: DOT–OST–2008–0377.

Date Filed: December 5, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 26, 2008.

Description: Application of Cargo Three, Inc. d/b/a PanAir Cargo (''PanAir Cargo'') requesting an exemption and a foreign air carrier permit authorizing PanAir Cargo to provide non-scheduled foreign air transportation of property and mail between any point or points in the Republic of Panama and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, whether or not it constitutes part of a continuous operation that includes service to Panama, consistent with the United States-Republic of Panama Air Transport Agreement dated May 8, 1997.

Barbara J. Hairston,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. E9–195 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 6, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0375.

Date Filed: December 3, 2008.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 578—Resolution 010g, TC23 Middle East-TC3, Special Passenger Amending Resolution (Memo 0400).

Intended Effective Date: 1 April 2009.

Barbara J. Hairston,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. E9–193 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (Final EIS) for the Development and Expansion of Runway 9R/27L and Other Associated Airport Projects at Fort Lauderdale-Hollywood International Airport (FLL), Broward County, FL, Published in June 2008

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: The FAA is issuing this notice to advise the public that it has issued a ROD for the Final EIS that evaluated the proposed expansion of Runway 9R/27L and other associated airport projects at FLL. Broward County, the Airport Sponsor, owns and operates FLL. The Airport Sponsor has proposed airport development at FLL to address existing and forecast aviation demand. This ROD provides final agency determinations and approvals for those federal actions by the FAA necessary for the proposed airport projects.

SUPPLEMENTARY INFORMATION: The FAA has completed and is publishing its

ROD for the proposed expansion of Runway 9R/27L and other associated airport projects at FLL. The Environmental Protection Agency (EPA) published a notice of availability of the Final EIS for this proposed airport project in the **Federal Register** on June 27, 2008. The Final EIS was prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321, *et seq.*], the implementing regulations of the Council on Environmental Quality (CEQ) [40 CFR Parts 1500–1508] and FAA directives [Order 1050.1E and Order 5050.4B], and assessed the potential impacts of eight runway development alternatives, as well as the No Action Alternative. The FAA accepted comments on the Final EIS and these comments, along with the FAA's responses, are included in Appendix A of the ROD. The FAA identified Alternative B1b as its preferred alternative in the Final EIS and selected alternative in the ROD.

The selected alternative B1b includes the expansion of Runway 9R/27L to an overall length of 8,000 feet and width of 150 feet with an Engineered Materials Arresting System (EMAS) at both runway ends. The runway extends to the east without encroaching onto NE 7th Avenue and would be elevated over the Florida East Coast (FEC) Railway and U.S. Highway 1. The western extent of the runway is the Dania Cut-Off Canal. The selected alternative includes the following: construct a new full-length parallel taxiway 75 feet wide on the north side of Runway 9R/27L with separation of 400 feet from 9R/27L; construct an outer dual parallel taxiway that would be separated from the proposed north side parallel taxiway by 276 feet; construct connecting taxiways from the proposed full-length parallel taxiway to existing taxiways; construct an Instrument Landing System (ILS) for landings on Runways 9R and 27L; Runway ends 9R and 27L would have a Category I ILS, which includes a Medium Intensity Approach Light System with runway alignment indicator lights (MALSR), localizer, and glideslope.

Runway 13/31 would be decommissioned and permanently closed due to the increased elevation of the expanded Runway 9R/27L at its intersection with Runway 13/31. The terminal redevelopment envelope can accommodate a total of 67 to 77 gates and would accommodate the FAA-forecast levels of passenger-related activity through 2020. The terminal redevelopment envelope accommodates the potential redevelopment of Terminals 2, 3, and 4 including aircraft parking positions, taxilanes, and remote parking positions. During project design, the Airport Sponsor will consider the refinement of airfield and terminal area elements that include the design, location, and number of taxiway exits, aircraft holding pads, and runway access areas.

Connected actions associated with the selected alternative include: close Airport Perimeter Road located within the approach to Runway 9R; relocate Airport Surveillance Radar (ASR–9); acquire all, or a portion, of the Hilton Fort Lauderdale Airport Hotel (formerly the Wyndham Fort Lauderdale Airport Hotel); acquire all, or a portion, of the Dania Boat Sales.

The FAA is granting approval to amend the airport layout plan (ALP) with the conditions noted in Section 8 of the ROD, *Conditions of Approval,* for the projects summarized in Section 1 of the ROD, *Description of Airport Sponsor's Proposed Action,* which constitutes the selected alternative in the ROD—FAA's Preferred Alternative (B1b).

Paper copies and CD copies of the ROD are available for review at various libraries in Broward County, the FAA Headquarters Office in Washington, D.C. and its Southern Regional Office in College Park, Georgia and Airports District Office in Orlando, Florida and at the administrative offices of the City of Cooper City, City of Dania Beach, City of Fort-Lauderdale, City of Hollywood, City of Lauderhill, City of Pembroke Pines, City of Plantation, City of Sunrise, and the Town of Davie, as well as the Fort Lauderdale-Hollywood International Airport. The addresses and telephone numbers for these locations are provided in the Final EIS, in Chapter Nine.

The Final EIS is available on Broward County's airport Web site: *http://www.broward.org/airport/community_airportexpansion.htm*. This ROD is available on the FAA's Web site: *http://www.faa.gov/airports_airtraffic/airports/environmental/records_decision/.*

FOR FURTHER INFORMATION CONTACT: Virginia Lane, Environmental Specialist, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, Telephone (407) 812–6331 Extension 129.

Issued in Orlando, Florida on December 19, 2008.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. E9–190 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2008–0177]

Agency Information Collection Activities; Request for Comments; Clearance of a Renewal Information Collection; Highways for LIFE Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew two information collections, which are summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 22, 2008. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 9, 2009.

ADDRESSES: You may submit comments identified by Docket ID Number FHWA–2008–0177 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mary Huie, 202–366–3039, Department of Transportation, Federal Highway Administration, Office of Infrastructure, 1200 New Jersey Ave., SE, E76–106, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Highways for LIFE Pilot Program. OMB # 2125–0607.

Background: Section 1502 of SAFETEA–LU establishes the

''Highways for LIFE'' Pilot Program. The purpose of the Highways for LIFE pilot program is to advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges. ''Highways for LIFE'' is focused on accelerating the rate of adoption of proven technologies. The program will provide funding to States to accelerate technology adoption to construct, reconstruct, or rehabilitate Federal-aid highway projects that incorporate innovative technologies that will improve safety, reduce congestion due to construction, and improve quality. Those States interested in participating in the ''Highways for LIFE'' program will submit an application for project funding. The information to be provided on the application includes a description of the project, the innovative technologies to be used and a description of how these technologies will improve safety, reduce construction congestion, and improve quality. The collected information will be used by FHWA to evaluate and select projects for ''Highways for LIFE'' funding.

Respondents: The fifty State Departments of Transportation, the District of Columbia, and Puerto Rico.

Frequency: The information will be collected annually beginning in fiscal year 2009 and ending in fiscal year 2015.

Estimated Average Burden per Response: 8 hours per respondent per application.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 30 applications for an estimated 240 total annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: January 6, 2009.

James R. Kabel,

Chief, Management Programs and Analysis.

[FR Doc. E9–173 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2003–15818]

Exemption To Allow Werner Enterprises, Inc. To Use Global Positioning System (GPS) Technology To Monitor and Record Drivers' Hours of Service

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA announces that Werner Enterprises, Inc.'s (Werner's) exemption from the Agency's regulatory requirements regarding Automatic On-Board Recording Devices is no longer required for the Werner Paperless Log System (WPLS). Based on information provided by Werner, the Agency has determined that the exemption is no longer required due to recent technological changes in the WPLS.

DATES: This notice is effective January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations: Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Prior Werner Exemption

Following public notice and comment, on September 21, 2004, FMCSA granted Werner a 2-year exemption from the requirement that its commercial motor vehicle (CMV) drivers prepare handwritten records of duty status (49 CFR 395.8) or use an Automatic On-Board Recording Device (AOBRD) (49 CFR 395.15). A determination was made that the Global Positioning System (GPS) technology and complementary safety management computer systems in the Werner Paperless Log System (WPLS) would achieve the requisite level of safety. At that time, the primary reason for the exemption was that the Werner system was not integrally synchronized with the CMV as required by the definition of an AOBRD in 49 CFR 395.2. Certain information regarding miles driven and road speed was obtained from the GPS. The exemption was effective on September 21, 2004 and expired on September 21, 2006 (69 FR 56474).

In 2006, Werner applied for renewal of this exemption. Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption for a period of up to 2 years if it finds ''* * *such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.* * *'' FMCSA evaluated Werner's application, and in a September 7, 2006 notice, announced its decision to renew Werner's exemption for 2 years (71 FR 52846).

Request for Determination

In July 2008, Werner requested that FMCSA review the modified WPLS to determine whether an exemption is still necessary. Werner advised that changes made in the WPLS have brought it into compliance with 49 CFR 395.15, and provided detailed information to FMCSA in support of its request.

A subsequent analysis of technical compliance with 49 CFR 395.15 was undertaken by FMCSA based on Werner's documentation. Regarding the primary issue of integral synchronization with the CMV to record engine use, road speed, miles driven, and date and time of day, Werner responded that except for date and time of day, all of this data is now obtained directly from the engine control module of the CMV. The date and time of day are obtained from the computer-satellite link. The GPS capability is only used to establish vehicle location, as permitted by 49 CFR 395.15.

FMCSA Determination

Based on the information provided by Werner, FMCSA has determined that the WPLS is in compliance with 49 CFR 395.15, and Werner no longer requires an exemption for use of the WPLS.

Issued on: December 29, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–192 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–3637; FMCSA–00–8203; FMCSA–02–12844; FMCSA–04–17984; FMCSA–06–24015; FMCSA–06–26066]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 9 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective February 7, 2009. Comments must be received on or before February 9, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–98–3637; FMCSA–00–8203; FMCSA–02–12844; FMCSA–04–17984; FMCSA–06–24015; FMCSA–06–26066, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 9 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 9 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Jose C. Azuara, Timothy A. DeFrange, Casey R. Johnson, Thomas J. Boss, Scott D. Goalder, Myriam Rodriguez, Fabian L. Burnett, Robert J. Johnson, James E. Savage.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 9 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 66293; 68 FR 1654; 69 FR 71098; 72 FR 1054; 67 FR 68719; 68 FR 2629; 69 FR 71100; 72 FR 1053; 69 FR 33997; 69 FR 61292; 72 FR 184; 72 FR 5490; 71 FR 14566; 71 FR 30227; 71 FR 63379; 72 FR 1050). Each of these 9 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data

concerning the safety records of these drivers submit comments by February 9, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 9 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: December 29, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–191 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28535]

Atlantic Sea Island Group LLC, Safe Harbor Energy Liquefied Natural Gas Deepwater Port License Application

AGENCY: Maritime Administration, DOT.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration announces that the Coast Guard, in coordination with the Maritime Administration, will prepare an environmental impact statement (EIS) as part of the environmental review of this license application. The application describes a project that would be located approximately 13.5 miles south of the City of Long Beach, New York, 19 miles east of Highlands, New Jersey, and 23 miles southeast of the Ports of New York and New Jersey. The proposed port would consist of a 60.5 acre island at the surface, 116 to 140 acres at its base and constructed in approximately 60 to 70 feet of water covering the area known as Cholera Bank.

The EIS will be prepared with the New York State Department of Environmental Conservation (NYSDEC) as a cooperating agency in the environmental review with the Coast Guard. The EIS will meet the requirements of both the National Environmental Policy Act (NEPA) and the New York State Environmental Quality Review Act (SEQRA). In addition, the Coast Guard and the Maritime Administration will be working with appropriate state agency representatives from New Jersey to ensure potential impacts and concerns of New Jersey are addressed in the EIS.

Publication of this notice begins a 30 day scoping process that will assist in the identification and determination of the environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process and provides information regarding how to participate in the process. It announces a public meeting to be held in connection with the EIS; requests for public comment on the scope of the EIS; and also serves as a notice of public scoping sessions as provided for under SEQRA, 6 NYCRR § 617.8. At least one public meeting will take place in each adjacent coastal state. For purposes of the Deepwater Port Act (Act), New York and New Jersey are adjacent coastal states for this application.

DATES: Public meetings will be held in Eatontown, New Jersey on January 27, 2009; and in Long Beach, New York on January 29, 2009. The public meetings will be held from 6 p.m. to 8 p.m. and will be preceded by an open house from 4:30 p.m. to 6 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak.

Material submitted in response to the request for comments on the license application must reach the Docket Management Facility by February 9, 2009 (30 days after NOI is published in the FR).

ADDRESSES: The open house and public meeting on January 27, 2009 will be held at: The Sheraton of Eatontown, 6 Industrial Way East, Eatontown, NJ 07724; 732–542–6500.

The open house and public meeting on January 29, 2009 will be held at: The Jackson by the Beach Hotel, 405 East Broadway, Long Beach, NY 11561; 516–431–3700.

The license application, comments and associated documentation is available for viewing at the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2007–28535.

Docket submissions for USCG–2007–28535 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Prescott, U.S. Coast Guard, telephone: 202–372–1440, e-mail: *Mark.A.Prescott@uscg.mil;* or LT Hannah Kawamoto, U.S. Coast Guard, telephone: 202–372–1438, e-mail: *Hannah.K.Kawamoto@uscg.mil;* or Yvette Fields, U.S. Maritime Administration, telephone: 202–366–0926, e-mail: *Yvette.Fields@dot.gov;* or John Ferguson, New York State Department of Environmental Conservation, telephone: 518–402–9167, e-mail: *jjfergus@gw.dec.state.ny.us.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on environmental issues related to the proposed deepwater port. Your comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS.

In order to allow everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization

you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility (see Request for Comments).

Our public meeting locations are wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public hearing is not the only opportunity you have to comment. In addition to or in place of attending a hearing, you can submit comments to the Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2007–28535.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, *http://www.regulations.gov*.
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*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 on the FDMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT.

You may view docket submissions at the Federal Docket Management Facility electronically or on the FDMS Web site (see **ADDRESSES**).

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for the proposed Safe Harbor Energy liquefied natural gas (LNG) deepwater port appeared in the **Federal Register** on August 27, 2007 (72 FR 49041), which can be accessed at: *edocket.access.gpo.gov/2007/pdf/E7–16857.pdf*. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's natural and human environmental impacts. The Coast Guard is the lead agency for determining the scope of this review, and in this case the Coast Guard has determined that review must include preparation of an EIS. This notice of intent is required by 40 CFR 1501.7, and briefly describes the proposed action, possible alternatives, and our proposed scoping process.

The New York State Department of Environmental Conservation has determined that the proposed port and subsea pipeline may result in significant adverse environmental impacts, as defined under the State Environmental Quality Review Act (SEQRA) and that compliance with SEQRA requires preparation of an Environmental Impact Statement (EIS). Because of the many similarities in requirements, the Coast Guard, Maritime Administration and NYS Department of Environmental Conservation (NYSDEC) have agreed to cooperate in preparing a single document that satisfies both the NEPA and SEQRA.

The EIS will be consistent with the Deepwater Port Act (DWPA) of 1974, as amended (33 U.S.C. 1501 *et seq.*); the NEPA (Section 102[2][c]), as implemented by Council on Environmental Quality regulations (40 Code of Federal Regulations 1500 to 1508); and SEQRA (6 NYCRR Part 617). The environmental review and analysis will be completed according to the timeline prescribed by the DWPA, which requires a decision within 356 days of the publication of the Notice of Application. The period to complete all NEPA/SEQRA documents is approximately 240 days. This timeline will govern the activities related to the processing of the license application and the completion of all NEPA and SEQRA related actions needed to support the Maritime Administrator's decision regarding whether to approve, approve with conditions, or disapprove the proposed license.

This notice of intent provides compliance with the requirements of the NEPA regulations and also serves as the notice of a scoping session under SEQRA. It briefly describes the proposed action, possible alternatives, and our proposed scoping process. Address any questions about the proposed action, the scoping process, or the EIS to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), or (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when the Coast Guard, Maritime Administration and NYSDEC have completed the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates, from detailed study, those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing EIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identifies other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options for scoping provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the Coast Guard, Maritime Administration, and NYSDEC will prepare a draft EIS, and we will publish

a **Federal Register** notice announcing its public availability. (If you want that notice to be sent to you, please contact the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**). You will have an opportunity to review and comment on the draft EIS. The Coast Guard, Maritime Administration, and NYSDEC will consider those comments and then prepare the final EIS. As with the draft EIS, we will announce the availability of the final EIS and once again give you an opportunity for review and comment.

Availability of EIS

A notice of availability (NOA) will be published in the **Federal Register** when the DEIS is available, and NYSDEC will publish a notice of completion of Draft EIS, prepared in accordance with 6 NYCRR § 617.12, in NYSDEC's online Environmental Notice Bulletin (ENB). The ENB is accessible on NYSDEC's Web site at: *dec.state.ny.us*. The DEIS in hardcopy or electronic format will be distributed to agencies, local public libraries and interested parties that have requested copies. Anyone who wishes to comment on the draft report will be provided with an opportunity to review the DEIS and to offer comments on the environmental effects of the proposed project. Comments received during the DEIS review period will be available in the public docket and responded to in the FEIS. A Notice of Availability of the FEIS will also be published in the **Federal Register**, and NYSDEC will publish a notice of completion of the final EIS and file copies of the final EIS in accordance with 6 NYCRR § 617.12. Additional public meetings will be held after the draft and final documents are published.

Summary of the Application

Atlantic Sea Island Group LLC (ASIG), proposes to own, construct, and operate a deepwater port, named Safe Harbor Energy, in the Federal waters of the Atlantic Outer Continental Shelf in the area known as the New York Bight region in MMS lease area NK18–12 block 6655. The proposed location is approximately 13.5 miles south of the City of Long Beach, 19 miles east of Highlands, New Jersey, and 23 miles southeast of the Ports of New York and New Jersey, in an area between the Ambrose-to-Nantucket and Hudson Canyon-to-Ambrose shipping lanes, located at approximately 40°23′ N and 73°36′ E, in water depth of between 60 and 70 feet covering an area known as Cholera Bank.

The deepwater port, Safe Harbor Energy, consists of three components: A 60.5 acre island to be constructed of natural sand, gravel, and rock materials surrounded by armored breakwaters, consisting of prefabricated caissons, armor units, and rock; an LNG receiving, storage, and regasification facility; and a subsea pipeline that would transport the natural gas to an offshore connection with the Transcontinental Gas Pipeline Corporation's pipeline system. The pipeline would consist of two parallel 36-inch diameter pipe segments extending 12.8 miles from the island. Safe Harbor Energy will include berthing and offloading space for two conventional LNG vessels with capacity of 70,000 m^3 to 270,000 m^3. Additionally, it will accommodate support vessels including docking/firefighting tugs and crew support launches. The storage portion would include four (4) 180,000 m^3 full-containment storage tanks. The regasification equipment would be an ambient air heat exchange type. Safe Harbor Energy would have an average throughput capacity of approximately 1.15 billion cubic standard feet per day (bscfd).

A shore based facility would be used to facilitate movement of personnel, equipment, supplies, and disposable materials between the port and shore.

Construction of the deepwater port would be expected to take approximately five (5) years; with startup of commercial operations following construction, should a license be issued. The deepwater port would be designed, constructed, and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov*.

(Authority 49 CFR 1.66)

Dated: January 6, 2009.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–291 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2008–1239]

Texas Offshore Port System Crude Oil Deepwater Port License Application

AGENCY: Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Maritime Administration and the Coast Guard announce that they have received an application for the licensing of a crude oil deepwater port and that the application contains the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: The Deepwater Port Act of 1974, as amended, requires a public hearing on this application within 240 days of the publication of this notice, and a decision on the application not later than 90 days after the final public hearing.

ADDRESSES: The public docket for USCG–2008–1239 is maintained by the: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *Raymond.W.Martin@uscg.mil* or Linden Houston, U.S. Maritime Administration, telephone: 202–366–4839, e-mail: *Linden.Houston@dot.gov*. If you have questions on viewing the Docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Receipt of application

On December 8, 2008, the Coast Guard and the Maritime Administration received an application from Texas Offshore Port System for all Federal authorizations required for a license to own, construct, and operate a deepwater port authorized under the Deepwater Port Act of 1974, as amended, 33 U.S.C.

1501 *et seq.* (the Act). On January 5, 2009, we determined that the application contains all information required by the Act to initiate processing.

Background

According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed by the Maritime Administrator (by delegated authority of the Secretary of Transportation, published on June 18, 2003 (68 FR 36496)). Statutory and regulatory requirements for licensing appear in 33 U.S.C. 1501 *et seq.* and in 33 CFR Part 148. Under delegations from and agreements between the Secretary of Transportation and the Secretary of Homeland Security, applications are processed by the Coast Guard and the Maritime Administration. Each application is considered on its merits.

The Act requires adherence to a strict timeline for processing an application. Once we determine that an application contains the required information, we must hold public hearings on the application within 240 days, and the Maritime Administrator must render a decision on the application within 330 days. We will publish additional **Federal Register** notices to inform you of these public hearings and other procedural milestones, including the environmental review. The Maritime Administrator's decision, and other key documents, will be filed in the public docket.

At least one public hearing must take place in each adjacent coastal state. For purposes of the Act, Texas is the adjacent coastal state for this application. Other states can apply to the Maritime Administrator for adjacent coastal state status in accordance with 33 U.S.C. 1508(a)(2).

Summary of the Application

Texas Offshore Port System, a general partnership consisting of Oiltanking Freeport, L.P., TEPPCO O/S Port System, LLC and Enterprise Offshore Port System, LLC, proposes to own, construct, and operate a deepwater port (DWP), named Texas Offshore Port System (TOPS), in the Federal waters of the Outer Continental Shelf in Minerals Management Service (MMS) lease block Galveston Area A56 (GA 56), approximately 30 statute miles southeast of Freeport, Texas, in a water depth of approximately 120 feet. The proposed DWP will serve as an offshore crude oil receiving terminal and transmission facility. An average of 1,700,000 barrels of oil per day will be offloaded at the terminal and will be delivered via a new pipeline that will terminate at a crude oil storage terminal located in Texas City, Texas.

Two Single Point Mooring (SPM) Buoys will be installed to offload crude oil from crude oil tankers. A third SPM may be added in the future. Dual 42-inch outside diameter (OD), 4,000-ft (1,219-m) long offloading pipelines will carry the crude oil to a new Metering and Pumping Platform. At the platform the crude oil will be increased in pressure to 1,950 pounds per square inch gauge discharge pressure to achieve a flow rate of up to 100,000 barrels per hour into the departing Offshore Pipeline. A Quarters and Control Platform will be connected by a bridge to the Metering and Pumping Platform. A new 8⅝-inch OD fuel gas pipeline that will be approximately 36 miles long (58 km) will supply natural gas to the Metering and Pumping Platform. It will originate from an existing platform in MMS lease block Brazos Area BR 538 (BR 538).

The new Offshore Pipeline will be a 42-inch OD pipeline and approximately 34.86 miles long. It will transport the crude oil to a new valve station located in Freeport, Texas. From the valve station a new 48-mile, 42-inch OD Onshore Pipeline will transfer the crude oil to a new crude oil storage terminal in Texas City, Texas. A new intermediate Onshore Pump Station will be located along the Onshore Pipeline to boost the pressure of the crude oil. The new crude oil storage terminal, the Texas City Crude Terminal, will consist of seven tanks, six with a storage capacity of 600,000 barrels and one with a storage capacity of 300,000 barrels.

Pipelines and structures such as the moorings may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act which are administered by the U.S. Army Corps of Engineers (USACE).

TOPS will also require permits from the Environmental Protection Agency (EPA) pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

The new pipeline will be included in the National Environmental Policy Act (NEPA) review as part of the deepwater port application process. EPA and the USACE, among others, are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6; may participate in scoping meetings; and will incorporate the environmental impact statement (EIS) into their permitting processes. Comments sent to EPA or USACE will also be incorporated into the DOT docket and EIS to ensure consistency with the NEPA Process.

Should a license be issued, TOPS anticipates being able to offload and transport crude oil in November 2010. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov*.

(Authority 49 CFR 1.66)

Dated: January 6, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–293 Filed 1–8–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35180]

Delray Connecting Railroad Company—Trackage Rights Exemption—Consolidated Rail Corporation

Pursuant to a written trackage rights agreement, Consolidated Rail Corporation (Conrail) has agreed to grant local trackage rights to Delray Connecting Railroad Company (DCRR) from Tecumseh Yard Lead to No. 1 and No. 2 Hill Tracks and Marion Track 1 (a/k/a the Marsh Industrial Track), Marion Track 2, and Marion Track 3 to their connections with Canadian National Railway Company's (CN) line to Zug Island.[1] The entire line of railroad is located in the State of Michigan.

[1] According to DCRR, United States Steel Corporation (USS), a noncarrier, owns all of the issued and outstanding stock of Transtar, Inc. (Transtar), which is a noncarrier holding company. Transtar owns all of the issued and outstanding stock of seven common carrier railroads, including DCRR, a Class III rail carrier. Conrail is the owner and operator of certain railroad tracks that connect with both Tecumseh Yard and track owned by CN.

DCRR states that the trackage rights agreement has been consummated but that, after it was consummated, USS management was advised by counsel that a grant of trackage rights would require Board approval. Thus, this notice of exemption is filed on a nunc pro tunc basis. Under 49 CFR 1180.4(g), in order to qualify for an exemption under 49 CFR 1180.2(d), a railroad must file a verified notice of the transaction with the Board at least 30 days in advance of consummation. In this case, the verified notice was filed on December 24, 2008. Therefore, the earliest this transaction could be consummated is January 23, 2009, the effective date of the exemption (30 days after the exemption was filed). The purpose of the trackage rights is to permit DCRR to move trains consisting of empty ''bottle cars'' between Tecumseh Yard and CN's line to USS's facility on Zug Island, which will enhance operational efficiencies.

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by January 16, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35180, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John A. Vuono, Esq., Vuono & Gray, LLC, 310 Grant Street, Suite 2310 Grant Building, Pittsburgh, PA 15219; and Robert N. Gentile, Esq., Assistant General Counsel-Commercial, Intellectual Property & Special Litigation, United States Steel Corporation, 600 Grant Street 18th Floor, Room 1880, Pittsburgh, PA 15219.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 2, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–47 Filed 1–8–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 17, 2009, at 10 a.m. Eastern Time. For more information please contact Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085. If you would like to have the TAP consider a written statement, please write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or you can post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–146 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 18, 2009.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, February 18, 2009, at 2:30 p.m. Eastern Time. For more information please contact Donna Powers. Ms. Powers may be reached at 1–888–912–1227 or 954–423–7977, or you can write to Donna Powers, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–145 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Correction to notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy

Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, February 9, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or (954) 423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, February 9, 2009, at 12:30 p.m. Eastern Time. You can submit written comments to the panel by faxing the comments to (954) 423–7975, or by mail to Taxpayer Advocacy Panel, Room 340, 1000 South Pine Island Road, Plantation, FL 33324, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Sallie Chavez at 1–888–912–1227 or (954) 423–7979 for more information.

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–144 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of correction.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227, or (414) 231–2369.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, February 17, 2009, at 1 p.m. Central Time. For more information, please contact Ellen Smiley. Ms. Smiley may be reached at 1–888–912–1227, or (414) 231–2369, or you can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can post comments to the Web site at *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–170 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, February 10, 2009, at 9:30 a.m. Central Time. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53201–2221, or you can contact us at *http://www.improveirs.org*. Please contact Ellen Smiley at 1–888–912–1227 or (414) 231–2360 for more information.

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–171 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 3, 2009.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or (206) 220–6096

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, February 3, 2009, at 1 p.m. Pacific Time. For more information, please contact Dave Coffman. Mr. Coffman may be reached at 1–888–912–1227, or (206) 220–6095. You can submit written comments to the panel by faxing the comments to (206) 220–5760, or by mail to Taxpayer Advocacy Panel, 915 Second Avenue, Stop W–406, Seattle, WA 98174, or you can post comments to the Website at *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–153 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 7 Taxpayer Advocacy Panel (including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 18, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227, or (206) 220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, February 18, 2009, at 2 p.m. Pacific Time. You can submit written comments to the panel by faxing the comments to 206–220–5760, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Ms. Spinks can be reached at 1–888–912–1227 or 206–220–6098, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–152 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Forms and Publications Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the IRS Forms and Publications Issue Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 4, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the IRS Forms and Publications Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, February 4, 2009, at Noon, Eastern Time. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7978, or write Marianne Ayala, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Ms. Ayala can be reached at 1–888–912–1227 or 954–423–7979, or you can post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–150 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 25, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at (404) 338–7185.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, February 25, 2009, at 3 p.m. Eastern Time via a conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call (404) 338–7185 or write Susan Gilbert, TAP Office, Stop 211-D, 401 West Peachtree Street NW., Atlanta, GA, 30308–3520, or Fax to (404) 338–8691, or you can contact us at *http://www.improveirs.org.* For information to join the Joint Committee meeting, contact Susan Gilbert.

The agenda will include the following: Discussion of issues and responses brought to the Joint Committee, office report, and discussion of annual meeting.

Dated: *December 22, 2008.*

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–162 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Small Business/Self Employed Issue Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 26, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, February 26, 2009, at 8:30 a.m. Pacific Time. You can submit written comments to the panel by faxing the comments to 206–220–5760, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Ms. Spinks can be reached at 1–888–912–1227 or 206–220–6098, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–168 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, February 11, 2009, at 1 p.m. Eastern Time. For information, please contact Ms. Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085. Send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–149 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Language Services Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Language Services Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 12, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Language Services Issue Committee will be held Thursday, February 12, 2009, at 2 p.m. Eastern Time. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY, 11201, or you can contact us at *http://www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Marisa Knispel at 1–888–912–1227 or (718) 488–3557 for additional information.

The agenda will include the following: Various IRS Issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–164 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or (718) 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, February 10, 2009, at 2 p.m. Eastern Time. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201, or you can contact us at *http://www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Marisa Knispel at 1–888–912–1227 or (718) 488–3557 for additional information.

The agenda will include the following: Various VITA Issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–167 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 24, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2369.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, February 24, 2009, at 1 p.m.

Central Time. For more information, please contact Ellen Smiley. Ms. Smiley can be reached at 1–888–912–1227 or 414–231–2369. If you would like to have the TAP consider a written statement, write to Ellen Smiley at 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–166 Filed 1–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 19, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, February 19, 2009, at 2 p.m. Eastern Time. For more information, please contact Ms. Sallie Chavez. Please call Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: December 22, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–147 Filed 1–8–09; 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 establishment of new system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552(e) (4)) all agencies are required to publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled ''Freedom of Information Act (FOIA) Records—VA'' 119VA005R1B.

DATES: Comments on the establishment of this system of records must be received no later than February 9, 2009. If no public comment is received, the new system will become effective February 9, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov* by mail or hand-delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. 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: VA FOIA–PA Officer (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7457.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs is establishing a new system of records under the Freedom of Information Act (FOIA) and the Privacy Act (PA) of 1974 (5 U.S.C 552a). The proposed system of records will consist of initial FOIA requests from individuals, replies to those requests, and of FOIA appeals and replies to those appeals. The purpose of the system of records is to assist the Department in carrying out its responsibilities under FOIA–PA.

The Privacy Act permits 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 the information was collected. In all of the routine use disclosures described below, the recipient of the information will use the information in connection with a matter relating to one of VA's programs or to provide a benefit to VA, or the disclosure is required by law.

The notice of intent to publish, and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of 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: December 19, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

119VA005R1B

SYSTEM NAME:

Freedom of Information Act (FOIA) Records—VA.

SYSTEM LOCATION:

Records are maintained at the VA Central Office FOIA Offices, 810 Vermont Avenue, NW., Washington, DC 20420; AINS, Inc., 1355 Piccard Drive, Rockville, MD 20850, and all VA field facilities. A list of the field facilities may be found at the following Internet address: *http://www2.va.gov/directory/guide/home.asp.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with VA:

a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests.

b. Requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by individuals to VA for:

a. Information under the provisions of the Freedom of Information Act (5 U.S.C 552), including requests for review of initial denials of such requests.

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under VA's Privacy Act regulations regarding requests for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

The Privacy Act of 1974 (5 U.S.C. 552a); the Freedom of Information Act, as amended (5 U.S.C. 552); 5 U.S.C. 301; and 38 U.S.C. 501.

PURPOSE(S):

The system is maintained for the purpose of processing an individual's record request made under the provisions of the Freedom of Information and Privacy Acts. These records are also used by VA to prepare reports required by the Freedom of Information and Privacy Acts to the Office of Management and Budget and the Department of Justice. The proposed system of records will assist the Department of Veterans Affairs in carrying out its responsibilities under the Freedom of Information and Privacy Acts. The records maintained in the proposed system can originate in both paper and electronic format.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System information may be accessed and used by authorized VA employees, with a legitimate need to know, to conduct duties associated with the management and operation of the FOIA–PA program. Information may also be disclosed as a routine use for the following purposes:

1. VA may disclose information from this system of records to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

2. VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

3. VA may disclose information from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

4. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44 U.S.C.

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

6. VA may, on its own initiative, disclose information in this system, except the names and home addresses 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 and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

7. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

9. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

10. VA may, on its own initiative, disclose information from this system 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.

11. 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.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic data are maintained on Direct Access Storage Devices at AINS Inc., 1355 Piccard Drive, Rockville, Maryland. AINS Inc. stores registry tapes for disaster back up at the storage location. Registry tapes for disaster back up are also maintained at an off-site location. VA Central Office and VA field facilities also maintain paper reports and electronic data.

RETRIEVABILITY:

Records are indexed by name of requester, date and any other identifier deemed appropriate.

SAFEGUARDS:

This list of safeguards furnished in this System of Records is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information.

All records are maintained in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information, including protection from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks and password protection identification features.

Authorized personnel are required to take annual VA mandatory data privacy and security training. Access to data storage areas is restricted to authorized VA employee or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. File areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel. 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. Access to electronic files is controlled by using an individually unique password entered in combination with an individually unique user identification code.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. Routine records will be disposed of when the agency determines they are no longer needed for administrative, legal, audit or other operational purposes. These retention and disposal statements are pursuant to the National Archives and Records Administration (NARA) General Record Schedules GRS–20, item 1c and GRS 24, item 6a.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, D.C. 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personnel identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where the request or appeal was submitted or to the Director, FOIA Service (005R1B), 810 Vermont Avenue, NW., Washington, DC 20420. Such requests must contain a reasonable description of the records requested. Inquires should also include the following:

a. Name.

b. Telephone Number and Return Address.

c. Date of Request or Appeal.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records maintained under his or her name may write or visit the nearest VA facility or write to their regional VA Public Liaison/FOIA officer listed at *http://www.foia.va.gov/FOIA_Contacts.asp*.

CONTESTING RECORDS PROCEDURES:

(See ''Record Access Procedures above.'')

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the following: Requests and administrative appeals submitted by individuals and organizations pursuant to the FOIA and Privacy Acts; VA personnel assigned to handle such requests and appeals; Agency records searched and identified as responsive to such requests and appeals; and requests referred by Agencies or other entities concerning VA records.

[FR Doc. E9–229 Filed 1–8–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
January 9, 2009

Part II

Department of Energy

Privacy Act of 1974; Publication of Compilation of Privacy Act Systems of Records; Notice

DEPARTMENT OF ENERGY

Privacy Act of 1974; Publication of Compilation of Privacy Act Systems of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (OMB) Circular A–130, the Department of Energy including the National Nuclear Security Agency (NNSA) (hereinafter referred to collectively as ''DOE'' or ''the Department'') is publishing its compilation of Privacy Act Systems of Records. This notice provides an accurate and complete text of the agency's systems of records, and adopts many of the recommendations that were made to DOE in comments that were submitted concerning proposed amendments to the compilation published by DOE on April 2, 2008.

DATES: The compilation of Privacy Act Systems of Records is effective January 9, 2009. The proposed new system of records will be open for comments until February 18, 2009. A final notice will be published addressing any comments received and adopting the notice.

ADDRESSES: Written comments on the proposed new system of records should be directed to Verlette L. Gatlin, Deputy Director, Office of Information Resources, U.S. Department of Energy, MA–90, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955.

FOR FURTHER INFORMATION CONTACT: Verlette L. Gatlin, Deputy Director, Office of Information Resources, MA–90, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955, Jerry Hanley, Chief Privacy Officer, Office of Information Resources, MA–90, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0483, and Isiah Smith, Deputy Assistant General Counsel for General Law, GC–77, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion on Comments
III. Proposed New System of Records
IV. Comment Procedures

I. Background

DOE published a notice of its proposed compilation of its Privacy Act systems of records on April 2, 2008, at 73 FR 18044. The notice provided an accurate and complete text for the sixty-two systems of records established by DOE under the Privacy Act. Each system notice provided a description of the system of records, identified the purpose and authority for collecting and maintaining the information, reflected administrative changes that had been made, identified the appropriate DOE locations, and incorporated all routine uses. In addition, the notice proposed amendments to three existing systems of records, added a new routine use to all systems of records, established a new system of records, and deleted a system of records.

In the April 2, 2008 **Federal Register** Notice, DOE provided a date of April 2, 2008 for the public to comment on the proposed amendments to the Privacy Act compilation. However, on April 9, 2008 at 73 FR 19198, DOE published a notice correcting the comment date to May 9, 2008, effectively providing a 37-day period for the public to comment on the proposed amendments. The Department received numerous internal comments and no public comments. An analysis of the comments and the response by the DOE are provided in this notice.

II. Discussion of Comments

Comment: The Department received a comment stating that the DOE Headquarters, Washington, DC System Location for new system DOE–60 General Correspondence Files, should not be specific to Forrestal Building, and should be changed to the broader U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585 to provide broader coverage.

Response: The comment is accurate. The text has been revised accordingly with this notice.

Comment: The Department received several comments related to the Correlations section of the proposed Compilation. One commenter stated that, pursuant to an Office of Science (SC) restructure since the last publication of the Privacy Act Compilation, Field Site Offices may no longer be offices under the Field Location Office organization, but in all instances the Field Site Offices and their M&O Laboratories do maintain records under Field Location Office jurisdiction. Accordingly, in the Correlations section, the title *''Correlation of DOE Field Locations and Their Offices''* should be changed to *''Correlation of DOE Field Locations and Field Site Offices, M&O Laboratories, and Other Offices Maintaining Records under Field Location Jurisdiction.''* That commenter also stated that with respect to the offices that constitute the SC Integrated Support Center (Chicago and Oak Ridge), some information is outdated or inconsistent with the SC Integrated Support Center Service Provider Matrix under which they operate. Other commenters suggested additional updates to the Correlation section and provided supplemental information for updating that section.

Response: The comments are accurate. The text has been revised accordingly with this notice.

Comment: The Department received several comments related to System Locations in the proposed Compilation. One commenter stated that Field *System Locations* in all Field portions of Privacy Act Systems should be the location having jurisdiction over records in the System, *i.e.* , the location where the jurisdictional System Manager and cognizant Privacy Act Officer reside, not necessarily the physical location of the records. This is especially necessary in the 31 Systems of Records that provide that the *System Manager* for the Field portion of the System is the Manager (or Field subject matter Manager) of the *System Location* listed (DOE–1, 3, 5, 8, 13, 14, 16, 26, 28, 31, 33, 34, 35, 38, 41, 43, 44, 45, 46, 48, 50, 51, 52, 55, 56, 60, 63, 75, 77, 81, and 84). Field Locations (the DOE Field Locations listed in the *''Correlations''* section) should be listed accordingly as the only *System Locations* for their respective portions of the system, and any correlating Field Site Offices, M&O laboratories, and other offices maintaining records for the Field Location should be removed as *System Locations,* because they fall under the umbrella of the Field Location and would be listed as such under that Field Location in the *Correlations* section. *Notification and Records Access* provisions of those Systems are consistent with this revision, because they direct public and routine users to submit their requests to the Privacy Act Officer at the respective *System Location* listed. Also, if Field Site Offices, M&O laboratories, and other offices maintaining records for Field Locations were listed as *System Locations,* the public would be misdirected to submit their requests to locations where no Privacy Act Officer exists. Other commenters requested updates to specific System Locations and provided updated supplemental information for updating System Locations.

Response: The Privacy Act of 1974, 5 U.S.C. 552a Section (e)(4)(A) requires agencies to publish the name of the system and the location where the records are being maintained. On July 9, 1975 at 40 FR 28948, the Office of

Management and Budget (OMB) published guidance to agencies implementing the Privacy Act. With respect to section (e)(4)(A), the OMB guidance stated ''agencies will specify each city/town and site at which the system of records is located.'' This includes the locations where records have been retired and sent to record centers. As currently structured the *''Correlation Section''* provides the public and routine users with the additional information necessary to determine which Field Location has jurisdiction over the records maintained for and by its correlating Field Site Offices, M&O and Laboratory sites. To determine the appropriate Privacy Act Officer for these locations, the additional information included in the *''Correlation Section''* and the updated language in the *''Notification Procedures''* directs the reader to the appropriate site. Although, the requester made a good point, the agency however, is correct providing a listing in the individual notices all of the field locations where records are being maintained. The various system managers for the systems of records were contacted and it was determined that this is consistent with the Privacy Act and the guidance provided by OMB. Therefore, the comment is not being adopted.

Comment: The Department received a comment stating that in DOE–5, Personnel Records of Former Contractor Employees, in the Purpose section, ''with'' should be added to the last line to now read ''associated with their employment.''

Response: The comment is accurate. The text has been revised accordingly with this notice.

Comment: The Department received a comment stating that in the *Categories of Individuals Covered* section of DOE–11, Emergency Operations Notification Call List, ''in DOE–11'' should be added to the parenthetical to read (''hereinafter referred to in DOE–11 collectively as ''DOE''). The commenter stated that without this change, from that point forward in the Compilation, the term ''DOE'' would mean DOE and NNSA.

Response: The comment is inaccurate. The text is not being revised because NNSA is a part of DOE.

Comment: The Department received a comment stating that, in spite of the fact that the *Categories of Individuals Covered* section under DOE–14, Report of Compensation includes DOE employees, the *Purpose* section only refers to reasonableness of compensation paid to top contractor personnel. If the full scope of data is compensation data on Contractor Key Personnel, DOE employees should not be mentioned in the *Categories* section. The commenter also stated that ''up to $100,000'' should be ''exceeding $100,000.00,'' based upon current salary information.

Response: DOE agrees that the Categories of Individuals section should be revised to include only contractor employees, and the text of that section has been revised accordingly with this notice. DOE also agrees that the Categories of Records section should reflect the appropriate salary dollar threshold. However, based on unique provisions in DOE's contracts with its contractors, contractual salary dollar thresholds may differ. Therefore, DOE has revised with this notice the text of the Categories of Records section to replace ''current salary up to $100,000'' with ''current salary meeting the threshold level for reporting as specified in the respective contract.''

Comment: The Department received a comment stating that the new DOE–60 General Correspondence Files is missing the *Purpose* section. The commenter also stated that the supplementary information in the Preamble to the notice is inconsistent with the discussion in the *Categories of Records in the System* section. The Preamble states (1) that records to be maintained in this system ''pertain to general correspondence submitted to the Heads of the Departmental Program Offices and the Heads of the Departmental Field Offices,'' (2) that the categories of records to be covered by the system include ''incoming correspondence that may include name, address, telephone number, organization, date of birth, and supporting documentation'', and (3) that ''Files may also contain a copy of any response letters and documentation required to prepare the response.'' In contrast, the *Categories of Records in the System* section description is limited to ''Name, address of correspondent, and copies of the agency response.'' It doesn't include the balance of the items listed in the supplementary information, and it doesn't restrict the correspondence to ''general correspondence submitted to the Heads of the Departmental Program Offices and the Heads of the Departmental Field Offices.'' The commenter suggested revising the *Categories of Records in the System* to provide the additional clarification expressed in supplementary information at the beginning of the proposed Compilation. Also, the commenter stated that like DOE–60, the system DOE–58 General Correspondence Files of Office of Secretary, Deputy Secretary and Under Secretary of Energy, also should include in its *Categories of Records in the System* section general correspondence submitted to those offices by individuals. DOE–58 currently only includes copies of the agency's response to the individual.

Response: The comments are accurate. The text has been revised accordingly with this notice.

Comment: The Department received a comment stating that the Counterintelligence organizations in the field report directly to the Office of Intelligence and Counterintelligence in Headquarters. The Field Offices and Support/Service Centers do not have responsibility for their records and any FOIA/PA requests should be directed to the Headquarters Counterintelligence Director. Accordingly, in DOE–84 Counterintelligence Investigative Records, the *System Manager* section should be revised to remove the ''Field Offices,'' and the *Notification Procedures* section should be revised to remove the following: ''or the Privacy Act Officer at the appropriate address identified above under *System Locations*. For records maintained by the Laboratory, Site or Area Office, the request should be directed to the Privacy Act Officer that has jurisdiction over that site.''

Response: The system manager(s) section of the notice informs the public of the physical address of the manager of the record. This is in conjunction with the *''System Location''* section (See comment on *''System Locations.''*) It is inaccurate to say that these field managers do not have responsibility for these records. As managers of these records they are responsible for the records and must follow the rules set by the Department for collecting, maintaining, safeguarding and storing the records. By removing the field system managers from the notice would be inconsistent with OMB's guidance. Therefore, this portion of the comment will not be adopted.

The Privacy Act does not preclude individuals from submitting requests to those offices where records are maintained. If requests have been misdirected, the Department's regulation implementing the Privacy Act (Title 10 Code of Federal Regulations Section 1008) provides procedures how to process misdirected requests. We have considered the comment and the *''Notification Procedures''* section will be revised to instruct individuals to submit Privacy Act requests for these records to the Headquarters Privacy Act Officer.

Comment: The Department received a comment stating that if the address of the *System Location* were included in

the *Correlation* list, it would not have to be repeated each time the *System Location* is identified in the System.

Response: DOE believes that although there may be some efficiency in the suggested change, such a change would only be applicable to certain locations and would cause potential requesters to take an extra step to locate the information needed to submit a request. Also, not repeating the system locations within the individual notices would not be consistent with OMB's guidance (see comment on *''System Locations.''*) Therefore, the comment is not being adopted and the text is not being revised.

Comment: The Department received a comment stating that because *''Purpose''* sections throughout the Compilation provide clarification or add to the *''Categories of Records in the System''* sections, the commenter suggests adding language to the beginning of each Purpose section to tie the two sections, *e.g.*, ''For those records described in *Categories of Records in the System,* such records are maintained. * * *''

Response: DOE agrees with this suggested administrative change. The text has been revised accordingly with this notice.

Comment: The Department received a comment stating that in all Systems involving records maintained in the Field, it would be clearer to the public if there was a revision to the *''Notification Procedures''* boilerplate sentence beginning ''For the records maintained. * * *'' to ''For records maintained by the M&O Laboratory or Field Site Office, the request should be directed to the Privacy Act Officer at the System Location listed as having jurisdiction over that site—see the *Correlation of DOE Field Locations and Field Site Offices, M&O Laboratories, and Other Offices Maintaining Records under Field Location Jurisdiction* at the beginning of this Compilation of Systems of Records.''

Response: DOE agrees with this comment with two minor revisions. (1) Consistent with this commenter's previous comment regarding the organization within the Office of Science, such requests should be directed to the Privacy Act Officer at the System Location listed as having jurisdiction over ''the records'' for that site; and (2) better direction to requesters can be provided by stating ''* * * as listed in the *Correlation* * * *'' rather than ''see the *Correlation* * * *'' The text has been revised accordingly with this notice.

Comment: The Department received a comment stating that the *''Retrievability''* sections in some of the Systems specify that the records in the System are those retrieved by name or other personal identifier (*e.g.*, SSN, badge number). Other Systems indicate that the record MAY BE retrieved by name or personal identifier. The commenter stated that this language is contrary to the Privacy Act and its implementing regulations (10 CFR 1008), which define ''System of Records'' as ''a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.'' The commenter stated that the *Retrievability* sections should be amended to reflect that records in the system ARE retrieved by name and/or whatever other personal identifier(s) are applicable to the system.

Response: The comment is accurate. The text has been revised accordingly with this notice.

Comment: The Department received a comment stating that in the *Purpose* section of DOE–38 Occupational and Industrial Accident Records, ''contract'' should be ''contractor.''

Response: The comment is accurate. The text has been revised accordingly with this notice.

Comment: The Department received a comment stating that in DOE–24 Land Records System, something is missing in the first sentence of the *''Purpose''* section, before ''grants, licenses.''

Response: After consultation with the Privacy Act Officer and Counsel at one of the System Locations for this system, DOE has determined that there is in fact text missing from the language in the *Purpose* section of this system. The missing text in the *''Purpose''* section has been added accordingly with this notice.

Comment: The Department received a comment stating that since ''Department of Energy'' has been defined in the Introduction as either ''DOE'' or ''Department'' there is no need to add the parenthetical in subsequent usage (*e.g.*, DOE–9, *Categories of Individuals*).

Response: DOE agrees with the suggested administrative changes. The text has been revised throughout the Compilation accordingly with this notice.

III. Proposed New System of Records

DOE–17 DOE Alert System

The Department proposes to establish a new system of records entitled DOE–17 ''DOE Alert System.'' The Roam Secure Alert Network (RSAN) software is the prime component of the DOE Alert System. It provides the capability to send text messages to text-capable devices of DOE Headquarters employees in the event of an emergency. It is one of numerous communication systems that allow quick, effective, and efficient information dissemination. It is not the primary notification system for an event, however, it can be used to provide additional information following an even occurrence.

The information in the system will pertain to DOE employees and contractor employees. It is a voluntary system that employees sign up to be alerted in case of an event or emergency. The information will be used by the Department to contact only the registered users of the system in case of an event.

The records will be stored as paper records and electronic media. Information is retrieved by the name of the individual. The authorities for the DOE Alert System are Title 42 United States Code (U.S.C.) Section 7101 *et seq.*; and 50 U.S.C. 2401 *et seq.*

The Department does not believe the maintenance of this system will have any substantial effect on privacy and other rights of individuals, particularly since the participation in the program is strictly voluntary and the information is provided by the employee. The system is necessary to efficiently administer the program.

IV. Comment Procedure

As provided by 5 U.S.C. 552a(e)(11) interested persons are invited to submit written data, views or comments related to the proposed new system of records to the U.S. Department of Energy, Office of Information Resources, MA–90, 1000 Independence Avenue, SW., Washington, DC 20585. ''Comments'' should be written on the outside of the envelope and on the documents submitted to DOE with the designation ''Department of Energy Privacy Act Systems of Records Proposal.'' The comments and all other relevant information will be considered by DOE before the proposed new system of records is adopted in its final form.

A final notice will be published addressing any comments received and adopting the notice upon the expiration of the 40-day advance notice period for informing Congress and the Office of Management and Budget (OMB) of the proposed new system.

The Department is submitting to Congress the report on the new system as required by OMB Circular A–130 concurrently with publication of this **Federal Register** notice.

Set forth below is the compilation of DOE's Privacy Act Systems of Records that includes a Table of Contents,

Correlation of Offices and the text of the individual systems of records.

Issued in Washington, DC on December 17, 2008.

Ingrid Kolb,

Director, Office of Management.

Compilation of Systems of Records

Correlation of DOE Field Locations and Field Site Offices, M&O Laboratories, and Other Offices Maintaining Records Under Field Location Jurisdiction

Bonneville Power Administration

Carlsbad Field Office:
Waste Isolation Pilot Project Office.

Environmental Management Consolidated Business Center:
West Valley Demonstration Project.

Golden Field Office:
National Renewable Energy Laboratory

Idaho Operations Office:
Idaho National Laboratory;
Radiological and Environmental Sciences Laboratory.

National Energy Technology Laboratory (NETL) Pittsburgh:
NETL Albany, OR,
NETL Fairbanks, AK,
NETL Morgantown, WV,
NETL Tulsa, OK.

NNSA Service Center (Albuquerque) (formerly Albuquerque Operations Office):
Kansas City Site Office,
Kansas City Plant,
Lawrence Livermore National Laboratory,
Livermore Site Office,
Los Alamos Site Office,
Los Alamos National Laboratory,
Nevada Site Office (formerly NNSA Service Center (Nevada),
Pantex Site Office,
Pantex Plant,
Sandia Site Office,
Sandia National Laboratory,
NNSA Y–12 Site Office (formerly Y–12 Area Office),
Y–12 National Security Complex (formerly Y–12 Plant).

NNSA Naval Reactors Laboratory Field Office—Pittsburgh Naval Reactors:
Bettis Atomic Power Laboratory,
Naval Reactors Facility, Idaho Falls, ID.

NNSA Naval Reactors Laboratory Field Office—Schenectady Naval Reactors:
Knolls Atomic Power Laboratory, Kesselring Site.

Office of Repository Development (formerly Yucca Mountain Site Characteristic Office):

Office of Science Chicago Office (formerly Chicago Operations Office):
Ames Site Office,
Ames Laboratory,
Argonne Site Office,
Argonne National Laboratory,
Brookhaven Site Office,
Brookhaven National Laboratory,
Fermi Site Office,
Fermi National Accelerator Laboratory,
Berkeley Site Office,
Lawrence Berkeley National Laboratory,
Princeton Site Office,
Princeton Plasma Physics Laboratory,
New Brunswick Laboratory.

Office of Science Oak Ridge Office (formerly Oak Ridge Operations Office)

Oak Ridge Gaseous Diffusion Plant (K–25),
Oak Ridge National Laboratory (X–10),
Oak Ridge Institute for Science and Education (ORISE),
Melton Valley TRU Waste Storage Facility,
Spallation Neutron Source, Oak Ridge Reservation,
Thomas Jefferson Site Office,
Thomas Jefferson National Accelerator Facility,
Paducah Gaseous Diffusion Plant,
Portsmouth Gaseous Diffusion Plant,
Portsmouth/Paducah Project Office, Lexington, KY,
Horizon Center,
East Tennessee Mechanical Contractors,
Pacific Northwest Site Office,
Pacific Northwest National Laboratory,
Stanford Site Office,
Stanford Linear Accelerator Center.

Richland Operations Office

AdvanceMed Hanford Inc.,
Office of River Protection.

Savannah River Operations Office

Savannah River Site Office (formerly Savannah River Area Office), including Savannah River,
Ecology Laboratory and Savannah River Technology Center,
NNSA Tritium Facility.

Southeastern Power Administration:
Alaska Power Administration.

Southwestern Power Administration

Strategic Petroleum Reserve Project Management Office:

Western Area Power Administration

Colorado River Storage Project Management Center,
Desert Southwest Regional Office,
Rocky Mountain Region,
Sierra Nevada Region,
Upper Great Plains Regional Office.

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DOE–44 Special Access Authorization for Categories of Classified Information
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Text of Systems of Records DOE–1

SYSTEM NAME:

Grievance Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science—Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Tulsa), One West Third Street, Suite 1400, Tulsa, OK 74103–3519.

U.S. Department of Energy, National Energy Technology Laboratory (Alaska) 2175 University Avenue South, Suite 201, Fairbanks, AK 99709.

U.S. Department of Energy, National Energy Technology Laboratory, 1450 Queen Avenue, SW., Albany, OR 97321–2198.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science—Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including National Nuclear Security Administration (NNSA) employees, consultants, board members, and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grievances; names; social security numbers; work and home address; work and home telephone numbers; job titles, series, and grade levels; organization; supervisors' names and telephone numbers; copies of employee records, such as personnel actions, performance appraisals, pay and leave records, and security clearance documents; management reports; witness statements; affidavits; checklists; notes; and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. 7121, and 5 CFR Part 771.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records maintained in the system pertain to grievances subject to the negotiated grievance process and the agency's administrative grievance process. The records in this system will be used by management officials in the resolution of employee concerns about working conditions, administration of the agency's grievance process, employee-supervisor relations, work processes, or other similar issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to union officials acting in their official capacity as a representative of the grievant or affected employees under 5 U.S.C. Chapter 71.

2. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system may be disclosed as a routine use to an

appropriate Federal, State, or local agency that is authorized to review and resolve the issue(s) raised in the grievance.

4. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department or assisting in such representation; (2) others involved in the matter, their representatives and persons assisting such persons; and (3) witnesses, potential witnesses, their representatives and assistants, and any other persons possessing information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

5. A record from this system may be disclosed as a routine use to a contractor of the Department who is authorized to review and resolve the issue(s) raised in the grievance, including a mediator or arbitrator in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the grievant or complainant or other personal identifier, such as social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director of Human Capital Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Human Capital Directors of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records generally are kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The grievant or complainant, applicable management officials, program office records, congressional offices, and fact finders' notes and reports.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–2

SYSTEM NAME:

DOE-Personnel Supervisor Maintained Personnel Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science—Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Tulsa), One West Third Street, Suite 1400, Tulsa, OK 74103–3519.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 8913–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including National Nuclear Security Administration (NNSA) employees, who have departed within the last year, assigned military or detailed personnel, and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, copies and summaries of employment history; SF–171; job description; education; address; next of kin; home and work telephone numbers; date of birth; awards and commendations received; participation in professional or community activities; training; earnings and leave data; travel actions; certification or qualification examinations; injury reports; appraisals; copy of ADP-produced Form 702; Form 50; assignment records; security infraction notices; records of supervisor-employee discussions; supervisor observations; reprimands; admonitions; adverse actions; commendations; contingency planning data; security clearance status; and Government property in employee possession.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*, and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by DOE to maintain a file of personnel information that would allow DOE managers to make informed personnel and management decisions concerning employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to a Federal, State, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

2. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

3. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

4. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters and Field Offices: The immediate supervisor of the subject of the record(s).

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject employee, employee's supervisor(s), personnel action documents, payroll documents, and personnel security documents.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

DOE–3

SYSTEM NAME:

Employee Concerns Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Tulsa), One West Third Street, Suite 1400.

U.S. Department of Energy, National Energy Technology Laboratory (Alaska) 2175 University Avenue South, Suite 201, Fairbanks, AK 99709.

U.S. Department of Energy, National Energy Technology Laboratory, 1450 Queen Avenue SW., Albany, OR 97321–2198.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Office of River Protection, P.O. Box 550, MS A1–61, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including National Nuclear Security Administration (NNSA) employees and DOE contractor and subcontractor employees who file concerns or complaints with the DOE Employee Concerns Program offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee concerns, informal whistleblower reprisal complaints, names, social security numbers, work and home addresses and telephone numbers, job titles, series, grade or pay levels; organization; supervisors names and telephone numbers; copies of employee records such as personnel actions, performance appraisals, pay and leave records and security clearance documents; management reports; witness statements; affidavits; checklists; notes; and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 2201(p); 42 U.S.C. 7254; 42 U.S.C. 5801(a).

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to document and resolve employee concerns about environmental, safety and health issues, employee-supervisor relations, work processes and practices, and other work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to union officials acting in their official capacity as a representative of the grievant or affected employees under 5 U.S.C. Chapter 71.

2. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member of Congress with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department or assisting in such representation; (2) others involved in the matter, their representatives and persons assisting such persons; and (3) witnesses, potential witnesses, their representatives and assistants, and any other persons possessing information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

5. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the concerned employee or complainant

or other personal identifier, such as social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE records schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Employee Concerns, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers of the Office of Employee Concerns at the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records generally are kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The concerned employee or complainant; applicable management officials; program office records; and congressional offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The system is exempt under subsections 552a(k)(1), (2) and (5) of the Privacy Act to the extent that information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3); 5 U.S.C. § 552a (d); 5 U.S.C. 552a (e)(1) of the Act; see the Department's Privacy Act regulation at 10 CFR Part 1008.

DOE–4

SYSTEM NAME:

Form EIA–457 Survey Reports, Residential Energy Consumption Survey (RECS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Energy Information Administration (EIA), 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons responding to the Form EIA–457, Residential Energy Consumption Survey (RECS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identification number, age, gender, race, ethnicity, home address, home telephone number, income, family size and composition, characteristics of household, characteristics of housing unit, fuels used, household vehicles, name and address of landlord, names and addresses of energy suppliers, and records of energy purchases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such information is collected and maintained by the DOE to measure the levels of energy consumption by homeowners and the cost of energy consumed. The information also is used for monitoring, analyzing, and modeling changes in the residential sector and its energy consumption.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties.

2. A record may be disclosed to an agent under a written agreement to maintain the confidentiality of the record, to use the information for exclusively statistical purposes, and to use the information consistent with the purpose cited above. Those provided information under the routine uses are subject to the Privacy Act.

3. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member of Congress with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

4. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or identification number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established computer center procedures

(personnel screening and physical security), and they are password protected. Passwords are known only by authorized system users. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Administrator, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual and energy supply companies.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–5

SYSTEM NAME:

Personnel Records of Former Contractor Employees.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Naval Petroleum Reserves in California, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 North Poplar, Suite 150, Casper, WY 82601.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Grand Junction Office, 2597 B ¾ Road, Grand Junction, CO 81503.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550 Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former employees of companies that currently have or have had a contract with the DOE including the National Nuclear Security Administration (NNSA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment history, earnings, medical history, and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*, 50 U.S.C. 2401 *et seq.* and the Memorandum of Understanding between the Department of Energy and the Department of Health and Human Services, 56 FR 9701, March 7, 1991.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the DOE to verify employment of contractor employees who have worked at a DOE facility or for a prime management and operating contractor for the DOE to settle or pay claims associated with their employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. A record from the system may be disclosed as a routine use to a Federal, State, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any person possesses information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) is relevant to, and necessary for, the proceeding; (2) compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official

capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

5. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

6. A record from the system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from the system of records may be disclosed to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

8. A record from the system may be disclosed to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, State and local health and medical agencies or authorities; subcontractors in order to determine a subject's vital status or cause of death; health care providers to verify a diagnosis or cause of death; or third parties to obtain current addresses for participants in health-related studies, surveys, and surveillance. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

9. A record from this system may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the DOE concerning health, safety, or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the DOE or to the Department of Health and Human Services. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy and to disclose or use personally identifiable information only for the purpose of providing advice to the DOE or to the Department of Health and Human Services.

10. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

11. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as paper records.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Contractor Human Resource Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Human Resource Managers of the ''System Locations'' listed above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The employer of the subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–7

SYSTEM NAME:

Whistleblower Investigation, Hearings, and Appeals Records.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION(S):

Headquarters: U.S. Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585–1615.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of DOE including National Nuclear Security Administration (NNSA) employees, contractors and subcontractors whose complaints are received at the Office of Hearings and Appeals pursuant to Title 10, Code of Federal Regulations, Part 708, and pursuant to Section 3164 of the National Defense Authorization Act for FY 2000, Public Law 106–65, codified at 42 U.S.C. 7239.

CATEGORIES OF RECORDS IN THE SYSTEM:

Whistleblower reprisal complaints; names, social security numbers, case numbers, work and home addresses and telephone numbers, job titles, series, grade or pay levels; organization information; supervisors' names and telephone numbers; copies of employee records such as personnel actions, performance appraisals, pay and leave records, and security clearance documents; management reports; witness statements; affidavits; checklists; notes; reports of investigation; and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 2201(b), (c), (I), (p), 5814, 5815, 7251, 7254, 7255, 7257; 42 U.S.C. 7239.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the DOE to document and resolve complaints made by employees of DOE and its contractors and subcontractors who allege retaliation by their employer for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congressional proceedings; or for refusal to participate in dangerous activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed to any source from which additional information is requested when necessary to obtain information relevant to the processing of a whistleblower complaint by the Office of Hearings and Appeals. The source will be provided such information from the system of records only to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

2. A record from this system may be disclosed as a routine use to the appropriate local, State or Federal agency in the event that a record within this system of records, alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether or arising by general statute or particular program pursuant thereto.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department or assisting in such representation; (2) others involved in the matter, their representatives and assistants; and (3) any other person possessing information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings, or discussion in open court) when such disclosure (1) is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the record; and (3) the proceeding involves:

(a) The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

5. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. Decisions, opinions, reports of investigation, orders and other determinations signed by investigators, hearing officers or the Director of the Office of Hearings and Appeals that are records contained in this system of records may be published for the general public, for precedential or educational purposes, in paper format and electronically on the Office of Hearings and Appeals' Web site, the current address of which is *http://www.oha.doe.gov*.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by complainant's name or other personal identifier or case number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE records schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1615.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The complainant; individuals and organizations that have pertinent knowledge about the subject of the complaint; those authorized by the complainant to furnish information; confidential informants; and Congressional offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The system is exempt under subsections 552a(k)(1), (2) and (5) of the Privacy Act to the extent that information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(d) and (e)(1) of the Act; see the DOE Privacy Act regulation at Title 10, Code Federal Regulations, Part 1008.

DOE–8

SYSTEM NAME:

Intergovernmental Personnel Act (IPA) Agreements.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Headquarters, Germantown, 19901 Germantown Road, Germantown, MD 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE, Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, Office of Naval Reactors, Crystal City, VA 22202.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are now, or have been, under an IPA agreement to or from the DOE including the National Nuclear Security Administration (NNSA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home and work addresses, social security number, home and work telephone numbers, salary, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. Chapter 33, Subchapter VI, and 5 CFR Part 334.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by DOE to provide a basis for payments under the terms of the IPA agreements, provide employment histories, and provide information for reports and program evaluations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed to State and local governments, institutions of higher education, Federally Funded Research and Development Centers, or other ''eligible'' organizations for the purpose of assigning prospective individuals for temporary periods.

2. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to

Department officers and employees under the Privacy Act.

3. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member of Congress with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

4. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as electronic media and paper records.

RETRIEVABILITY:

Records are retrieved by name or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director of Human Capital Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Human Capital Directors at the field locations listed above under ''Systems Locations'' are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual and current or prospective employer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–9

SYSTEM NAME:

Members of DOE Advisory Committees.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of the Executive Secretariat, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who are members of DOE including the National Nuclear Security Administration (NNSA) Advisory Committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, biographical information, home address and telephone number, work address and telephone number, type of business or organizational affiliation, present position with business or other organization, number of years in present position, other related experience, congressional district, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; and the Federal Advisory Committee Act, 5 U.S.C. App. 2.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the DOE to keep a current listing of advisory committee members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

2. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise

and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of the Executive Secretariat, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, members of Congress, and public interest groups.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–10

SYSTEM NAME:

Energy Employees Occupational Illness Compensation Program Act Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

U.S. Department of Energy, Albany Research Center, 1450 Queen Avenue, SW., Albany, OR 97321.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Amarillo Site Operations, Highway 60, FM2373, Amarillo, TX 79177.

U.S. Department of Energy, Bettis Atomic Power Laboratory, Bechtel Bettis, Inc., 814 Pittsburgh McKeesport Blvd., West Mifflin, PA 15122–0079.

U.S. Department of Energy, Office of Energy, Efficiency and Renewable Energy, Boston Regional Office, John F. Kennedy, Federal Bldg., Room 675, Boston, MA 02203–0002.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Office of Energy, Efficiency and Renewable Energy, Denver Regional Office, 1617 Cole Blvd., MS–1721, Golden, CO 80401.

U.S. Department of Energy, Fernald Environmental Management Project, 7400 Wiley Road, Cincinnati, OH 45030.

U.S. Department of Energy, General Atomics Site Office, 3550 General Atomic Court, B–7, Room 119, San Diego, CA 92121.

U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401.

U.S. Department of Energy, Hanford Environmental Health Foundation, 3080 George Washington Way, Richland, WA 99352.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Idaho National Engineering and Environmental Laboratory, CF 690 MS 4149, Scoville, ID 83415.

U.S. Department of Energy, Kansas City Site Office, 2000 East 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Sandia Site Office, Pennsylvania & H Street, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Knolls Atomic Power Laboratory, 2401 River Road, Niskayuna, NY 12309.

U.S. Department of Energy, Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley, CA 94720.

U.S. Department of Energy, University of California, Livermore Site Office, 7000 East Avenue, P.O. Box 808, L–1, Livermore, CA 94550.

U.S. Department of Energy, Livermore Site Office, Nevada Test Site, University of California, P.O. Box 45, Mercury, NV 89023.

U.S. Department of Energy, Lockheed Idaho Technical Center, 765 Lindsay Blvd., Idaho Falls, ID 84303.

U.S. Department of Energy, The Office of Site Operations, 528 35th Street, Los Alamos, NM 87545.

U.S. Department of Energy, NNSA Los Alamos National Laboratory, SM #30 Bikini Road, Los Alamos, NM 87545.

U.S. Department of Energy, Miamisburg Environmental Management Project, 1 Mound Road, Miamisburg, OH 45343–0066.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Blvd., Golden, CO 80401–3393.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Nevada Test Site Mercury, Nevada, Building 111, P.O. Box 677, Mercury, NV 89023–0677.

U.S. Department of Energy, Oak Ridge Institute for Science and Education, 230 Warehouse Road, Bldg. 1916T2, Oak Ridge, TN 37830.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Pacific Northwest National Laboratory, 902 Battelle Blvd., P.O. Box 999, Richland, WA 99352.

U.S. Department of Energy, Paducah Site Office, 5600 Hobbs Road, West Paducah, KY 42086.

U.S. Department of Energy, Philadelphia Regional Office, 1880 John F. Kennedy Blvd., Suite 501, Philadelphia, PA 19103–7483.

U.S. Department of Energy, Portsmouth/Paducah Project Office, 3930 U.S. 23, Perimeter Road, Piketon, OH 45661.

U.S. Department of Energy, Radiological & Environmental Health Laboratory, University of California, San Francisco, Box 0750, 3rd Avenue & Parnassos Avenue, San Francisco, CA 94143–0750.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, NNSA Sandia Site Office, 1515 Eubank Blvd., SE, Albuquerque, NM 87123.

U.S. Department of Energy, Savannah River Ecology Laboratory, Drawer E, Aiken, SC 29802.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Seattle Regional Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104.

U.S. Department of Energy, Stanford Linear Accelerator Center, 2575 Sand Hill Road, Menlo Park, CA 94025.

U.S. Department of Energy, Stanford Site Office, 2575 Sand Hill Road, B–41, MS: 8–A, Menlo Park, CA 94025.

U.S. Department of Energy, Stanford Synchrotron Radiology Laboratory, Stanford University, PO Box 4349, MS 69, Stanford, CA 94025.

U.S. Department of Energy, Thomas Jefferson National Accelerator Facility, 12000 Jefferson Avenue, Newport News, VA 23606.

U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, West Valley Demonstration Project, 10282 Rock Springs Road, West Valley, NY 14171–9799.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records covers individuals or their survivors who claim benefits under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). These individuals include, but are not limited to, federal employees or survivors of federal employees, employees or survivors of employees of the Department of Energy including the National Nuclear Security Administration (NNSA), its predecessor agencies, and their contractors and subcontractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records is created by DOE in response to requests from the Department of Labor (DOL), the National Institute for Occupational Safety and Health (NIOSH), and claimants for information for the adjudication of claims. The records are compiled as part of DOE's responsibilities under the EEOICPA.

The system may contain, but is not limited to, the following kinds of records: claim forms filed by or on behalf of claimants or their survivors seeking benefits under the EEOICPA; employment records; exposure records; medical reports; personnel security questionnaires; safety records or other incident reports, including but not limited to area sampling data, accidental releases, explosions, spills, etc.; and correspondence from individuals, the DOL, and the NIOSH.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; The Energy Employees Occupational Illness Compensation Program Act of 2000, Public Law 106–398.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are collected and maintained as needed by the Department to comply with the provisions of the EEOICPA. These provisions of the Act that govern DOE responsibilities with regard to providing information to NIOSH, and to the DOL include: § 734n(e), § 738o(f), § 7384q(d), § 7384w–1(b) and § 7385c–10(c) and (d).

ROUTINE USERS OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to DOE contractors (past and present) in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use to DOE financial assistance recipients in performance of their financial assistance agreements, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

3. A record from this system may be disclosed as a routine use to other state and federal agencies or entities whose mission entails reviewing or managing workers' compensation claims or administering other benefits programs. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system may be disclosed as a routine use to members of a physician's panel(s) established to review and provide a determination regarding whether the illness or death that is the subject of an application for compensation arose out of and in the course of employment by or for DOE. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

5. A record from this system may be disclosed as a routine use to medical specialists in fields that include occupational medicine, pulmonology, immunology, toxicology, dermatology, hematology/oncology, rheumatology, neurology, neurotoxicology, psychiatry, psychology, endocrinology, pathology, and any other specialty that the physicians panel member(s) deem necessary to reach a conclusion in a case. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act.

Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

7. A record from this system may be disclosed as a routine use to the members and the staff of the DOE advisory committee established to provide advice on workers' compensation issues, and the members and the staff of an advisory board on Radiation and Worker Health required to be established under the Energy Employees Occupational Illness Compensation Program Act. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice relating to workers' compensation.

8. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to a (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants; and (4) any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

9. A record from this system may be disclosed as a routine use to the Department of Justice when DOE determines that an individual may be eligible for compensation under the Radiation Exposure and Compensation Act of 1990 (42 U.S.C. 2210, note, and as further clarified in 28 CFR Part 79), a compensation program administered by the Department of Justice.

10. A record from this system may be disclosed as a routine use to the appropriate local, State or Federal agency when the record alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature.

11. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

12. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

13. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the individual and/or social security number and/or at some locations by employee number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Chief, Health, Safety and Security, Office of Health, Safety and Security, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers of the Office of Health, Safety and Security of ''Systems Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' having jurisdiction over the records for that site, as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Records in this systems will be obtained from sources, including, but not limited to the individual who is the subject of the records; physicians and other medical professionals; medical institutions; state and federal workers' compensation offices; family members of the subject; attorneys representing the individual; individuals' employer, including DOE and its contractors and subcontractors; medical laboratories; other state and federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

DOE–11

SYSTEM NAME:

Emergency Operations Notification Call List.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, Office of Naval Reactors, Crystal City, VA 22202.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, Pittsburgh, PA 15122.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Naval Reactors Field Office, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy and National Nuclear Security Administration senior officials, office directors, managers, key support staff, and DOE contractors involved in DOE emergency management and operations activities, Continuity of Government activities and Continuity of Operations activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, home telephone number, home address, pager numbers, cellular phone numbers, and electronic mail addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 42, United States Code (U.S.C.), Section 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; The Homeland Security Act of 2002; and the Homeland Security Presidential Directive-5 (HSPD–5), ''Management of Domestic Incidents.''

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by DOE to create a list that will enable 24 hour contact with DOE personnel and contractors in the event of an emergency in order to marshal a coordinated, unified response to catastrophic events that may impact DOE facilities or activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

3. A record of this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants; and (4) any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name of the individual.

SAFEGUARDS:

Paper records are maintained in a secure area and locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security). Passwords are protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Deputy Administrator for Defense Nuclear Nonproliferation in the National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–12

SYSTEM NAME:

Automated Materials and Property Systems (AMPS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Germantown, 19901 Germantown Road, Germantown, MD 20784–1290.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current DOE including National Nuclear Security Administration (NNSA) Headquarters employees who purchase supply products at the three Self Service Stores in the Washington, DC area and vicinity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of DOE employee, badge number, organization, date of purchase, quantity, and price.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 7263, and 42 U.S.C. 5815G.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department for billing purposes under the Working Capital Fund (WFC). The WCF issues bills to Headquarters program offices for both stock and non stock supplies that were purchased for use by employees to perform their duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

2. A record in this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or badge number of the DOE employee.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) ADDRESS:

Headquarters: Director, Assets Management and Support Services Group, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notifications procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Sources of information for the system include: supplies and their respective price lists that are purchased and placed into the supply system for sale; purchases made by DOE employees; and the information contained on the employee's badge.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–13

SYSTEM NAME:

Payroll and Leave Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Atlanta Regional Support Office, 730 Peachtree, NE, Suite 876, Atlanta, GA 30308.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Boston Regional Support Office, One Congress Street, Room 1101, Boston, MA 02203–0002.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601.

U.S. Department of Energy, Naval Petroleum Reserves in California, 1601 New Stine Road, Suite 240, Bakersfield, CA 93309.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Scientific & Technical Information, P.O. Box 62, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Philadelphia Regional Support Office, 1880 John F. Kennedy Boulevard, Suite 501, Philadelphia, PA 19103–7483.

U.S. Department of Energy, Pittsburgh Naval Reactors Office, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Seattle Regional Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104.

U.S. Department of Energy, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration (NNSA) personnel and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance records, earning records, payroll actions, deduction information requests, authorizations for overtime and night differential, and Office of Personnel Management (OPM) retirement records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Privacy Act of 1974, Public Law 93–579 (5 U.S.C. 552a); General Accounting Office Policy and Procedures Manual; Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104–193.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the DOE to document historical information on employee wages, deductions, retirement benefits, and leave.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Department of Treasury to collect withheld taxes, process payroll payments, and issue savings bonds.

2. A record from this system may be disclosed as a routine use to the Internal Revenue Service to process Federal income tax payments and tax levies.

3. A record from this system may be disclosed as a routine use to state and local governments to process state and local income tax deductions and court ordered child support or alimony payments.

4. A record from this system may be disclosed as a routine use to OPM to establish and maintain retirement records and benefits.

5. A record from this system may be disclosed as a routine use to the Thrift Savings Board to update Section 401K type records and benefits.

6. A record from this system may be disclosed as a routine use to the Social Security Administration to establish Social Security records and benefits.

7. A record from this system may be disclosed as a routine use to the Department of Labor to process workmen's compensation claims.

8. A record from this system may be disclosed as a routine use to the Department of Defense to adjust military retirement.

9. A record from this system may be disclosed as a routine use to financial institutions to credit net check deposits, savings allotments, and discretionary allotments.

10. A record from this system may be disclosed as a routine use to the employee unions to credit accounts for employees with union dues deductions.

11. A record from this system may be disclosed as a routine use to health insurance carriers to process insurance claims.

12. A record from this system may be disclosed as a routine use to the General Accounting Office to verify accuracy and legality of disbursement.

13. A record from this system may be disclosed as a routine use to the Department of Veterans Affairs to evaluate veteran's benefits to which the individual may be entitled.

14. A record from this system may be disclosed as a routine use to States' departments of employment security to determine entitlement to unemployment compensation or other State benefits.

15. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether

arising by general statute or particular program pursuant thereto.

16. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

17. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

18. A record from this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

19. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System (FPLS) and Federal Tax Offset System to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

20. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, FPLS and Federal Tax Offset System, for release to the Social Security Administration to verify social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

21. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, FPLS and Federal Tax Offset System, for release to the Department of Treasury to administer the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verify a claim with respect to employment in a tax return.

22. A record from this system may be disclosed as a routine use to the Defense Finance and Accounting Service (DFAS) so that DFAS may perform payroll processing services for DOE. These services may include the issuance of salary payments to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, many of which are through electronic funds transfer.

23. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number, and/or payroll number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Financial Accounting, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Directors, Office of Financial Accounting of the DOE offices of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, timekeepers, official personnel records, and the Internal Revenue Service.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–14

SYSTEM NAME:

Report of Compensation.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Naval Petroleum Reserves in California, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 North Poplar, Suite 150, Casper, WY 82601.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contractor employees of DOE, including National Nuclear Security Administration (NNSA) contractor employees, performing and operating onsite service work in the DOE-owned or controlled facilities, including long-term architect-engineering and cost-reimbursement construction contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, job title, contractor, current salary meeting the threshold level for reporting as specified in the respective contract, amount reimbursed, and other compensation (actual and amount reimbursed).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the DOE to aid Managers of Field Offices, Program Secretarial Officers and Headquarters Program Managers in determining the reasonableness of compensation paid to top level contractor employees and to monitor the growth of contractor compensation at all levels.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

4. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

5. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as magnetic tape and paper records.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Contractor and Resource Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: Field Directors, Office of Contractor and Resource Management, of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Contractor salary administrative personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–15

SYSTEM NAME:

Intelligence-Related Access Authorization.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Intelligence, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Livermore Site Office, 7000 East Avenue, B–261, Livermore, CA 94551.

U.S. Department of Energy, Idaho National Engineering & Environmental Laboratory Systems Analysis Facility, 2271 N. Boulevard, Idaho Falls, ID 83403.

U.S. Department of Energy, Idaho Operations Office, 1955 Freemont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Service Center (Albuquerque), P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Pacific Northwest National Laboratory, Energy & Environmental Sciences Building (EESB), 3230 Q Avenue, Richland, WA 99352.

U.S. Department of Energy, NNSA Sandia Site Office, Center for National Security & Arms Control, Building 810W, Albuquerque, NM 87185.

U.S. Department of Energy, Remote Sensing Laboratory, EG&G/EM, 4600 N. Hollywood Blvd., Nellis AFB, Bldg 2211, Las Vegas, NV 89191–6403.

U.S. Department of Energy, NNSA Los Alamos National Laboratory, Nonproliferation & National Security, TA–3, Building SM–43, Los Alamos, NM 87544.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Special Technologies Laboratory, 5520 Elkwill Street, Santa Barbara, CA 93111.

U.S. Department of Energy, Lockheed Martin Energy Systems, P.O. Box 2003, Blair Road Oak Ridge, TN 37831–7312.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including National Nuclear Security Administration (NNSA) employees, and contractor employees; applicants for employment at DOE; individuals who may be assigned or detailed to Federal positions at DOE; consultants to DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following information may be maintained in the system:

Results of background investigations, law enforcement records, reports and files; reports on foreign contacts/travel; records, reports and files received from other DOE elements and other Federal agencies related to intelligence activities; polygraph examination records, reports and videotapes of the polygraph session; eligibility evaluation reports; and electronic mail stored on CD.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C., 2401 *et seq.*; The Atomic Energy Act of 1954, as amended; 42 U.S.C. 7239; Executive Order 12333, United States Intelligence Activities (December 4, 1981); Department of Energy Procedures for Intelligence Activities, approved by the Attorney General under Executive Order 12333 (October 19, 1992); Executive Order 12958, Classified National Security Information (April 17, 1995); Executive Order 12968, Access to Classified Information (August 2, 1995); Presidential Decision Directive-61, U.S. Department of Energy Counterintelligence Program, and DOE Order 5670.1A, Management and Control of Foreign Intelligence.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the DOE to conduct eligibility determinations, adjudications, revocations and appeals from denials and revocations. Under DOE Order 5670.1A the Director of Intelligence is directed to control access to and use of Sensitive Compartmented Information (SCI) and other classified Intelligence information bearing the Director, Central Intelligence (DCI) authorized control markings; and approve access to SCI in compliance with DCI directives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. A record from the system may be disclosed as a routine use to a federal, state or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant

and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) a witness, potential witness, or their representatives and assistants, and any person possessing information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to and necessary for, the proceeding; (2) compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

6. A record from this system may be disclosed as a routine use to foreign governments in accordance with treaties, international conventions, or executive agreements.

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

8. A record from the system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

9. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records may be stored as paper records, electronic media, and videotapes.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records and videotapes are maintained in locked cabinets. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), secured for classified information and are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Intelligence, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Directors of Field Intelligence Elements of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the Director, Headquarters Freedom of Information Act and Privacy Act Group, U.S. Department of Energy. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, present and former DOE employees and DOE contractor employees; consultants; publicly available material; other agencies within the Intelligence Community; other agencies within the U.S. Government, other offices within the DOE; the FBI, and other Federal, State and local law enforcement agencies; and sources contacted during investigations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt pursuant to (k)(1), (2) and (5) of the Privacy Act, 5 U.S.C. 552a, to the extent that information within the system meets the requirements of those subsections of the Act. To the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k)(1), (2) and (5), the system has been further exempted from subsections (c)(3) and (4), (d), (e)(1), (e)(4)(G) and (H) and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. See DOE's Privacy Act Regulation at 10 CFR Part 1008.12.

DOE–16

SYSTEM NAME:

Federal Employee Subsidy Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE including National Nuclear Security Administration (NNSA) employees, who participate in the child care assistance program and the Transit Subsidy Program (Commuter Choice).

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Child Care Tuition Assistance-Program Application forms for child care tuition assistance containing personal information, including employee's (parent) name, social security number, grade, home and work telephone numbers, home address, salary and total family income, other child care subsidies, and each child's name and date of birth; earnings statements; income tax returns. (2) Transit Subsidy Program (Commuter Choice)—Application forms that contain personal information, including employee's name, social security number, home and work telephone numbers, home address, and method(s) and cost(s) of commuting; and records of vouchers or payments distributed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Child Care Tuition Assistance Program—Public Law 106–58, section 643 and E.O. 9397; Transit Subsidy Program (Commuter Choice)—Transportation Equity Act of 1998, E.O. 13150, and 26 CFR Parts 1 and 602.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are used by the Department to determine eligibility for a program, administer the program, make payments to child care providers or providers of transportation and/or parking services, and/or reimburse employees for transportation and/or parking expenses.

OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to local and state officials and child care providers in determining eligibility for child care tuition assistance that is available through their programs.

2. A record from this system may be disclosed as a routine use to a panel of DOE employees to determine the amount of the child care subsidy with names and social security numbers deleted.

3. A record from this system may be disclosed as a routine use to other agency and/or public transportation officials when they assist in administering the Department's transit subsidy program.

4. A record from this system may be disclosed to union officials acting in their official capacity as a representative of the affected employee under 5 U.S.C. Chapter 71.

5. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

6. A record from this system may be disclosed as a routine use for the purpose to investigate, settle a claim, or prepare and conduct litigation to (a) a person representing the Department or assisting in such representation; (b) others involved in the matter, their representatives, and persons assisting such persons; and (c) witnesses, potential witnesses, their representatives and assistants, and any other persons possessing information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

7. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic data.

RETRIEVABILITY:

Records are retrieved by the name of the applicant or other personal identifier, such as a social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic

records are controlled through established computer procedures within DOE and its representatives and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE records schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Headquarters: Director of Human Capital Management, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585.

Field Offices: The Human Capital Directors of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above. Records generally are kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORDS PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The applicant, and applicable management officials, child care subsidy providers, transportation officials, and reports.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–17

SYSTEM NAME:

DOE Alert System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current DOE employees and contractor employees including National Nuclear Security Administration (NNSA) employees, consultants, and board members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include the name of the individual, work and home electronic mail addresses, work and home telephone numbers, and pager numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are used by the Department to alert those employees who have requested and registered to be notified in the event of an emergency at DOE or its facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

5. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the

suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Headquarters: Director, Office of Safety and Health, Office of Management and Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above. Records generally are kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORDS PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains provides all information maintained in the system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–18

SYSTEM NAME:

Financial Accounting System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 19901 Germantown Road, Germantown, MD, 20874.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Atlanta Regional Support Office, 730 Peachtree, NE., Suite 876, Atlanta, GA 30308.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office Energy Efficiency and Renewable Energy, Boston Regional Support Office, One Congress Street, Room 1101, Boston, MA 021144–2021.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601.

U.S. Department of Energy, Naval Petroleum Reserves in California, 1601 New Stine Road, Suite 240, Bakersfield, CA 93309.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Scientific & Technical Information, P.O. Box 62, Oak Ridge, TN 37831.

U.S. Department of Energy, Philadelphia Regional Support Office, 1880 John F. Kennedy Boulevard, Suite 501, Philadelphia, PA 19103–7483.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Seattle Regional Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, current and former contractor employees, vendors and others who are either due money from or owe money to DOE including the National Nuclear Security Administration (NNSA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, date of birth, employment date, gender, tax payer identification number; amount owed and services or goods received; amounts due; underpayments, overpayments and, or other accounting information; invoice number; servicing bank name and address; account number; amount and status of claim; history of claim, including collection actions taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; the GAO Policy and Procedures Manual; Statement of Federal Financial Accounting Standards published by the

Government Accountability Office and the Office of Management and Budget; Debt Collection Improvement Act of 1996, 31 U.S.C. 3512; 5 U.S.C. 5701–09; Federal Property Management Regulations 101–107; Treasury Financial Manual; Executive Order 12009; and Executive Order 9397.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the DOE to substantiate obligations and payments to individuals for goods and services received by the agency and to record and manage the Department's accounts receivables.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the appropriate local, state or Federal agency when that record alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program thereto.

2. A record from this system may be disclosed as a routine use to a Federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from the system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use to other federal agencies, consumer reporting agencies for acquiring credit information, and collection agencies to aid in the collection of outstanding debts owed to the Federal Government.

5. A record from this system may be disclosed as a routine use to Defense Manpower Data Center, Department of Defense, the United States Postal Service, and other federal, state, or local agencies to identify and locate, through computer matching, individuals indebted to DOE who are receiving federal salaries or benefit payments. Information from the match will be used to collect the debts by voluntary repayment, by administrative offset, or by salary offset procedures.

6. A record from the system may be disclosed as a routine use to the Internal Revenue Service (1) to collect the debt by offset against the debtor's tax refunds under the Federal Tax Refund Offset Program, and (2) to obtain the mailing address of a taxpayer to collect a debt owed to the DOE. Subsequent disclosure by DOE to a consumer reporting agency is limited to the purpose of obtaining a commercial credit report on the particular taxpayer. The mailing address information will not be used for any other DOE purpose or disclosed by DOE to another federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

7. A record from the system may be disclosed as a routine use to the Department of Treasury for the purpose of administrative offset and debt recovery under section 31001 (m)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

8. A record of this system may be disclosed as a routine use to the Department of Treasury for the purpose of paying creditors for services or goods provided to the Department.

9. A record from this system may be disclosed as a routine use to a ''consumer reporting agency'' as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collections Act of 1966, 31 U.S.C. 3701(a)(3), in accordance with 31 U.S.C. 3711(f).

10. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those individuals provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

11. A record from this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

12. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, electronic media and magnetic tapes.

RETRIEVABILITY:

Records are retrieved by name, taxpayer identification number, voucher, invoice, or payment reports.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of the Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The field Chief Financial Officers at the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, contracting officer, and accounting records.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–21

SYSTEM NAME:

Asset Readiness Management System (ARMS).

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION(S):

Headquarters: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees including DOE and National Nuclear Security Administration (NNSA) employees, military personnel, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following information may be maintained in the system: Name, home address, home and work telephone numbers, e-mail address, social security number, employee number, date of hire, DOE badge number, security clearance number, date of birth, tourist passport number, official passport number, education level, blood type, immunization record, and other medical information.

AUTHORITY OF MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Homeland Security Presidential Directive 5 (HSPD–5), ''Management of Domestic Incidents,'' The Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002), Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 106–390, 114 Stat. 1552—1575 (October 30, 2000).

PURPOSE:

For those records described in Categories of Records in the System, such records are maintained and used by the Office of Emergency Response to quantify, monitor, and track readiness of and deploy personnel and equipment as part of a coordinated Federal government response to an emergency involving nuclear and/or radiological materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to officials of the Federal Bureau of Investigation, Department of Defense, Nuclear Regulatory Commission, Environmental Protection Administration, National Aeronautics Space Administration, Department Homeland Security, and Department of State who have been approved as agents by NNSA Office of Emergency Response for purposes of managing and assessing state of readiness, to obtain visas for official foreign travel, and to provide information to gain access to incident areas controlled by one or more U.S. government agencies under the National Response Plan.

2. A record from this system may be disclosed as a routine use to a DOE contractor employee who has been approved as an agent by NNSA Office of Emergency Response in performance of the contract. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

4. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored as electronic records in a computer database.

RETRIEVABILITY:

Records are retrieved by name, employee number, e-mail address, work telephone number, and/or home telephone number.

SAFEGUARDS:

Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Passwords are known only by the system administrator and users of the system. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Headquarters: U.S. Department of Energy, Director, Office of Emergency Response, National Nuclear Security Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and time period for which records are sought.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above. In accordance with the DOE Privacy Act regulation, proper identification is required before the request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual and site training records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

DOE–23

SYSTEM NAME:

Property Accountability System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Southeastern Area Power Administration, 2 S. Public Square, Elberton, GA 30635–2496.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration (NNSA) employees, and contractor employees authorized to be custodians of controlled DOE equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Item description, date of purchase, acquire date, purchase price, purchase order number, vendor and manufacturer, model/serial/license number, property tag identification, status/date, condition of property, operation number, high risk field, disposal code, responsible officer, the name and employee identification and position numbers of employees assigned equipment, account numbers, organization, organization code, and location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Federal Property and Administrative Services Act of 1949, Section 202(b), 40 U.S.C. 483(b); and 41 CFR 109, Federal Property Management Regulation (FPMR), Subchapter E, Part 109.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the DOE (a) to provide inventories to satisfy other Federal Procurement Management Regulation requirements; (b) to maintain a record of location of emergency equipment; (c) to control equipment assignments authorized under union contracts; (d) to provide management information necessary for the budgeting and allocation of equipment; and (e) to provide evidence of assignment, location, and value in the event that government property is stolen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to any law enforcement agency as needed to provide evidence of assignment, location, and value in the event that Government property is stolen.

2. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

5. A record from the system may be disclosed as a routine use to a Federal, State, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

6. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which

the Department collected the information.

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

8. A record from this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

9. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by tag number, license number, custodian name, employee identification number, position number, accounting information, catalog number, contract number, make, model, security logon identification, serial number, and/or storage location.

SAFEGUARDS:

Paper records and microfilm are maintained in secured areas and/or maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Passwords are protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Managers of the ''System Locations'' listed above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Information in this system comes from the Payroll/Personnel system application, various internal forms, accountable property representative and employees, data processing personnel, and supply officers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–24

SYSTEM NAME:

Land Records System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208

U.S. Department of Energy, Southwestern Power Administration: One West Third Street, Tulsa, OK 74103

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from whom or to whom Southwestern Power Administration, Western Area Power Administration and Bonneville Power Administration have acquired or given interests in land.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual, agency, and/or company names; description of land tract, type of agreement; rights granted or received; history of the transaction, and IRS Form 1099 information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the DOE to track and manage land rights information resulting from property right acquisitions, licenses, transfer, exchanges, permits, outgrants, encroachments and disposals in support of Southwestern Power Administration, Western Power Administration and Bonneville Power Administration construction and maintenance programs, right-of-way tracking for transmission line vegetation management, and line maintenance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department or assisting in such representation; (2) others involved in the matter, their representatives and persons assisting such persons; and (3) witnesses, potential witnesses, their representatives and assistants, and any other persons possessing information

pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

4. A record from the system may be disclosed as a routine use to the Internal Revenue Service to provide notification of individuals who have received payment exceeding $600 on any one land right transaction.

5. A record from the system may be disclosed as a routine use to the Department of Justice to provide support of land right condemnation actions.

6. A record from the system may be disclosed as a routine use to courts and attorneys for the purpose of land right settlement disputes or litigation.

7. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

8. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

9. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by line identification, personal identification, cross referenced by name of landowner, grantee, or grantor.

SAFEGUARDS:

Paper records and microfilm are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Field Offices: The Managers and Directors of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer at the Power Administrations identified above under ''System Locations.'' The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Information in this system comes from individual landowners, grantees, or grantors; agency officials; and State and local authorities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

DOE–25

SYSTEM NAME:

U.S. Commuter Locator and Parking Space Information System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

Headquarters: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DOE including National Nuclear Security Administration (NNSA) employees, and contractor employees who apply as members of a car pool or van pool for parking spaces managed and controlled by DOE under the general direction of the General Services Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of driver and car or van pool members, Federal service computation date, payroll and other assigned number, office address and telephone number, home addresses, home telephone numbers, make and year of

automobile, State of registration, tag number of vehicles, number of days per week in the car pool or van pool, and other car pooling or van pooling information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Executive Order 12778; DOE HQ 0344.1 Parking.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by DOE to maintain information of existing car pools, van pools, and other categories of parking, in order to keep a current record on employees who commute to work.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Council of Governments for commuter connections.

2. A record from this system may be disclosed as a routine use to individuals seeking to car pool or van pool operating from their community or residential area.

3. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name, location of parking assignment, home address, assigned number, and/or license number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Building Operations, Office of Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Individual car poolers and van poolers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–26

SYSTEM NAME:

Official Travel Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE, Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves in

Colorado, Utah, and Wyoming, 907 North Poplar, Suite 150, Casper, WY 82601.

U.S. Department of Energy, Naval Petroleum Reserves in California, 28950 Highway 119, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who travel or relocate at the expense of DOE including the National Nuclear Security Administration (NNSA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, authorization number, travel itinerary, mode and purpose of travel, advance amount, expenses claimed, amounts reimbursed, charge card account numbers, residential sales records, and receipts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. 301; 5 U.S.C. Chapter 57; Policy and Procedures Manual for Guidance of Federal Agencies, Titles 3 and 4; Federal Travel Regulation; Federal Property Management Regulations 101–41; Department of Energy Order DOE 1500.2A, Travel Policy and Procedures.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by DOE to document official domestic and foreign travel and relocation expenditures and to support reimbursement of allowable expenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the U.S. Treasury for payment of claim.

2. A record from this system may be disclosed as a routine use to the U.S. General Accounting Office for audit and verification of accuracy and legality of disbursements.

3. A record from this system may be disclosed as a routine use to the Internal Revenue Service for notification regarding taxable reimbursements.

4. A record from this system may be disclosed as a routine use to the General Services Administration for audit of transportation services.

5. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

6. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

7. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number, and/or travel authorization number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The field Chief Financial Officers of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above.

Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Individual travelers, supervisors, Government travel offices, and finance office standard references.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–27

SYSTEM NAME:

Foreign Travel Management System (FTMS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Germantown, 19901 Germantown Road, Germantown, MD 20874–1290.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees including National Nuclear Security Administration (NNSA) and contractor employees authorized to travel to foreign countries on official business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Traveler's name and social security number, background data relating to proposed foreign travel; authorization number, travel itinerary; expenses; and summary report following completion of travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 5 U.S.C. Chapter 3, Section 301; 5 U.S.C. Chapter 57; Federal Travel Regulation; Department of Energy Order 1500.2A, ''Travel Policy and Procedures''; Department of Energy Order DOE 551.1A, ''Official Foreign Travel''.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by DOE to document all official foreign travel, by DOE employees and contractor employees, approvals and expenditures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the General Services Administration for verification of transportation services.

2. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record from this system may be disclosed as a routine use to the Department of State for purpose of obtaining foreign country clearance for the traveler.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number, and/or travel authorization number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (Personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposals authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Security Operations, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with DOE regulation implementing the Privacy Act, Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as notification procedures above. Paper records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Individual travelers, supervisors, and travel offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–28

SYSTEM NAME:

General Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Headquarters, Germantown, 19901 Germantown Road, Germantown, MD 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Office of Amarillo Site Operations, P.O. Box 30030, Amarillo, TX 79120–0030.

U.S. Department of Energy, Atlanta Support Office, 730 Peachtree, NE., Suite 876, Atlanta, GA 30308.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Bonneville Power Administration, Lower Columbia Area, 1500 NE. Irving Street, Portland, OR 97232.

U.S. Department of Energy, Bonneville Power Administration, Puget Sound Area, 201 Queen Ann Avenue, N., Suite 400, P.O. Box C–19030, Seattle, WA 98109–1030.

U.S. Department of Energy, Bonneville Power Administration, Snake River Area, 101 West Poplar, Walla Walla, WA 99362.

U.S. Department of Energy, Bonneville Power Administration, Upper Columbia Area, Room 561, U.S. Court House, W. 920 Riverside Avenue, Spokane, WA 99201.

U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Boston Support Office, One Congress Street, Room 1101, Boston, MA 02114–2021.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, VA 23606.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342–0066.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Kansas City Site Office, P.O. Box 410202, Kansas City, MO 64141–0202.

U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Room 1411, Kansas City, MO 64106.

U.S. Department of Energy, NNSA Sandia Site Office. P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, University of California, NNSA Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM 87545.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road, East, New Orleans, LA 70123.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, New York Support Office, 26 Federal Plaza, Room 3437, New York, NY 10278–0068.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Philadelphia Support Office, 1880 John F. Kennedy Blvd., Ste 501, Philadelphia, PA 19103–7483.

U.S. Department of Energy, Pittsburgh Naval Reactors Office, Idaho Branch Office, P.O. Box 2469, Idaho Falls, ID 83403–2469.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

U.S. Department of Energy, Western Area Power Administration, Billings Area Office, P.O. Box 35800, Billings, MT 59107–5800.

U.S. Department of Energy, Western Area Power Administration, Loveland Area Office, P.O. Box 3700, Loveland, CO 80539–3003.

U.S. Department of Energy, Western Area Power Administration, Salt Lake City Area Office, P.O. Box 11606, Salt Lake City, UT 84147–0606.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DOE employees including National Nuclear Security Administration (NNSA) employees and contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; résumé; assigned number; occupational series; training requests and authorizations; grade; organization; date of birth; social security number; home address and telephone number; special interest area, education completed; course name; justification for attending the course; direct and indirect costs of training; coded information dealing with purpose, type, source of training; training evaluations; course evaluation forms; training examinations; training attendance records; lesson plans; training assignment sheets; reading assignment sheets; position qualification statement; self study sheet; position descriptions; accounting records; and quarterly training report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Nuclear Waste Policy Act of 1982 (Pub. L. 97–425); Nuclear Waste Policy Amendment Act of 1987 (Pub. L. 100–203); Government Employees Training Act of 1958; and 5 CFR Parts 410 and 412.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to document planning, completion, funding and effectiveness of employee training and

development. Appropriate local, state and federal agencies use certain records maintained in this system to ensure Departmental compliance with other regulatory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to Federal agencies, including the Office of Personnel Management, for purposes of determining eligibility or suitability for training and as source documents for training reports; to training institutions that personnel have requested to attend; and to other federal agencies as necessary for payment of training.

2. A record from this system may be disclosed as a routine use to state and local governments, the Nuclear Regulatory Commission (NRC), and other federal agencies that conduct research, investigations, or audits to determine whether DOE and contractor personnel satisfy quality assurance requirements for activities necessary to obtain a license from the NRC for the construction, operation and closing of a nuclear waste repository and/or a Monitored Retrievable Storage facility. These activities also will include research and development, site characterization, transportation, waste packaging, handling, design, maintenance, performance confirmation, inspection, fabrication, and development and production of repository waste forms.

3. A record from this system may be disclosed as a routine use to federal, state or local government officials where the regulatory program being implemented is applicable to the DOE or contractor program and requires that such access be provided for the conduct of the regulatory agencies' activities. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject of the record; the member must provide a copy of the constituent's request for assistance.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the record.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Training and Human Resource Development, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0702.

Field Offices: The Directors, Training and Human Resource Development of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individuals and their supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–31

SYSTEM NAME:

Firearms Qualification Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, Wet Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Argonne National Laboratory-West, P.O. Box 2528, Idaho Falls, ID 83403–2528.

U.S. Department of Energy, Brookhaven National Laboratory, 24 S. Upton Road, Building 50, Upton, NY 11973.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Nonproliferation and National Security Institute, Building 30132, Kirtland Air Force Base, Albuquerque, NM.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Amarillo Site Office, Highway 60 FM2373, Amarillo, TX 79177.

U.S. Department of Energy, Kansas City Site Office, P.O. Box 410202, 2000 E. 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, NNSA Sandia Site Office, 1515 Eubank Blvd., S.E., Albuquerque, NM 87123.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration (NNSA) Federal and contractor employees who are required to conduct and/or to maintain firearms qualification, training, and proficiency activities in the performance of their regular duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of an individual's annual qualification scores; social security numbers, approvals of arming authority and issue of Security Police Officer and Federal Officer Credentials and firearms accountability and maintenance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained to document DOE protective force firearms programs information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any person possesses information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

5. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

6. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record from the system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

8. A record from the system of records may be disclosed to training, administrative, and operations personnel of local law enforcement agencies in the performance of their regular duties in order to process and to maintain documentation for protective force personnel who have been commissioned as reserve officers or deputies.

9. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised

information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Directors of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE Privacy Act regulation, identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Arming and arrest credential notifications and firearm qualifications results from individuals and training personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–33

SYSTEM NAME:

Personnel Medical Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Office of Amarillo Site Operations, P.O. Box 30030, Amarillo, TX 79120–0030.

U.S. Department of Energy, Ashtabula Area Office, P.O. Box 579, Ashtabula, OH 44005–0579.

U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, P.O. Box 1398, Bartlesville, OK 74003.

U.S. Department of Energy, Battelle Columbus Laboratories, 505 King Avenue, Room A–496 Columbus, OH 43201.

U.S. Department of Energy, Batavia Area Office, P.O. Box 2000, Batavia, IL 60510.

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, Pittsburgh, PA 15122–0079.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, VA 23606.

U.S. Department of Energy, Dayton Area Office, P. O. Box 66, Miamisburg, OH 45342–0066.

U.S. Department of Energy, EG&G Mound Applied Technologies, P.O. Box 3000, Miamisburg, OH 45343–3000.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, P.O. Box 398704, Cincinnati, OH 45239–8704.

U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Grand Junction Office, 2597 B 3/4 Road, Grand Junction, CO 81503.

U.S. Department of Energy, Hanford Environmental Health Foundation, 3080 George Washington Way, Richland, WA 99352.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Kansas City Site Office, P.O. Box 410202, Kansas City, MO 64141–0202.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, NNSA Sandia Site Office, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Livermore Site Office, P.O. Box 808, Livermore, CA 94551.

U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, CA 94720.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, P.O. Box 2009 Oak Ridge, Tennessee 37831–8103.

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, P.O. Box 2003 Oak Ridge, TN 37831–7422.

U.S. Department of Energy, MK Ferguson of Oak Ridge Company, P.O. Box 2011, Oak Ridge, TN 37831–2011.

U.S. Department of Energy, National Energy Technology Center, (Morgantown) 3610 Collins Ferry Road, Morgantown, WV 26507–0080.

U.S. Department of Energy, National Energy Technology Center (Pittsburgh), P. O. Box 10940, Pittsburgh, PA 15236–0940.

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401–3393.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150 Casper, WY 82601.

U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615.

U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 7021, Groton, CT 06340.

U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard P.O. Box 2053, Vallejo, CA 94592.

U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, P.O. Box 973, Newport News, VA 23607.

U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard P.O. Box 848, Portsmouth, VA 23705–0848.

U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard P.O. Box 128, Pearl Harbor, HI 96860.

U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard Naval Base Branch, P.O. Box 2008, Portsmouth, NH 03801–2008.

U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, P.O. Box 1A, Bremerton, WA 98314.

U.S. Department of Energy, Nevada Test Site Mercury, Mercury, NV 89023.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005.

U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, P.O. Box 451, Princeton, NJ 08543.

U.S. Department of Energy, Portsmouth Site Office, P.O. Box 700, Piketon, OH 45661.

U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, P.O. Box 7922, Department 056 EA08, Canoga Park, CA 91309–7922.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Stanford Linear Accelerator Center, P.O. Box 4349, Stanford, CA 94309.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304.

U.S. Department of Energy, West Valley Nuclear Service Company, Inc., P.O. Box 191, MS: F, West Valley, NY 14171.

U.S. Department of Energy, Waste Isolation Pilot Project Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOE including National Nuclear Security Administration (NNSA) employees, and DOE contractor employees. This system includes in-patients at Kadlec Hospital, Richland, WA, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, medical histories on contractor employees resulting from medical examination; in cases of injury, description of injury occurrence and treatment; medical records of periodic physical examinations and psychological testing, blood donor program records, audiometric testing, routine first aid, and other visits; hospital in-patients at Kadlec Hospital; records on the results of workplace and medical monitoring of individuals for exposure to chemical and physical agents (not covered in DOE–35) and related work history data, including drug testing information and results; contractor employee-completed health questionnaires not resulting from a medical examination; information from the contractor employee's private medical doctor or other health care providers, such as hospitals or laboratories not generated from workplace medical examinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954, (42 U.S.C. 2051a), section 31a; Economy Act of 1932, as amended, (31 U.S.C. section 1535); 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; and DOE Order 440.1.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to: (a) Provide data necessary for proper medical evaluations, diagnosis, treatment and care; (b) provide an accurate medical history, including job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual; (c) provide a method for evaluating quality of health care rendered and job-health protection including engineering protection provided, protective equipment, workplace monitoring, and medical examinations monitoring required by the Occupational Safety Health Administration (OSHA) or by good practice; (d) provide data for health hazard evaluations, epidemiologic studies and public health activities; (e) ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records, including decisions pertaining to the fitness-for-duty and disability retirement; (f) document possible re-employment rights under statutes governing that program; (g) document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by the agency or by the employing agency; and (h) ensure proper and accurate operation of the agency's employee drug testing program under Executive Order 12564.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to physicians, the U.S. Department of Labor, various state departments of labor and industry groups, and contractors to: (a) Ascertain suitability of an employee for job assignments with regard to health; (b) provide benefits under federal programs or contracts; and (c) maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

2. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractor of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

4. A record from this system of records may be disclosed to a federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

6. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record from this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

8. A record from this system may be disclosed as a routine use to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

9. A record from this system may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, when conducting health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to conduct such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to Federal, State and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillance. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

10. A record from this system may be disclosed as a routine use to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

11. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

12. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

13. A record from this system may be disclosed as a routine use when (1) it is

suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Chief, Health, Safety and Security Officer, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Health, Safety and Security Officers of ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, Office of Personnel Management retirement life insurance and health benefits records system, and the personnel management records systems of the Office of Personnel Management.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–34

SYSTEM NAME:

Employee Assistance Program (EAP) Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Idaho Branch Office, P.O. Box 2469, Idaho Falls, ID 83403–2469.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Office of Amarillo Site Operations, Highway 60 FM2372, Amarillo, TX 79120.

U.S. Department of Energy, Atlanta Regional Support Office, 730 Peachtree, NE., Suite 876, Atlanta, GA 30308.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Boston Regional Office, JFK Federal Building, Room 675 Boston, MA 02203–0002.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, The Office of Site Operations, 2000 E 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Superconducting Super Collider, 2550 Beckleymeade Avenue, MS 1020, Dallas, TX 75237–3946.

U.S. Department of Energy, Environmental Management Consolidated Business Center, 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE including National Nuclear Security Administration (NNSA) employees, and contractor employees who have contacted a service provider and have received counseling and/or have been referred for assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Employee profile—name; social security number; work and home addresses, and work, cellular, and home telephone numbers; job title and grade level; employee identification number; organization; supervisor's name and telephone number; sex; race; marital status; spouse and family members' names; name, address, and telephone number of any previously seen counselor or treatment facility; security clearance; (b) interest inventory and/or psychological test results; (c) issue(s) inventory; (d) case notes; (e) consent/release forms; (f) correspondence, including referrals to community resources and/or treatment facilities; and (g) medical and/or psychological reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Public Law 91–616, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; Public Law 102–142, The Omnibus Transportation Employee Testing Act of 1991; 5 U.S.C. 301, 7901, and 7904; 5 CFR Part 792; and 15 U.S.C. 764.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to document employees seeking assistance on personal or work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

2. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency in the event that a record within this system of records, alone or in conjunction with other information, if the employee is suspected of child, spousal, or elder abuse.

3. A record from this system may be disclosed as a routine use to any person or entity to the extent necessary to prevent an imminent or potential crime which directly threatens loss of life or serious bodily injury.

4. A record from this system may be disclosed as a routine use to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report, or otherwise disclose patient identities in any manner.

5. A record from this system may be disclosed as a routine use to the Department of Justice or other appropriate Federal agencies in defending claims against the United States, when the claim results from action against an individual based upon the individual's behavior, or mental or physical condition, or is alleged to have arisen because of activities of any Federal agency in connection with the individual.

6. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

7. A record from this system of records may be disclosed as a routine use to a member of Congress submitting a request involving the constituent when the constituent has requested the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: (Federal Employees) Director of Human Capital Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. (Contractor Employees) Director, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: (Federal Employees) The Human Capital Directors of the ''System Locations'' listed above are the system managers for their respective portions of this system. (Contractor Employees) The Environment, Safety and Health Managers listed above are the system managers for their respective portion of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE Privacy Act regulation, identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject employee, employee's supervisor(s), employee assistance program coordinator, staff of the applicable servicing personnel office, staff of the applicable personnel security office, and therapists or institutions providing treatment.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Amarillo Site Office, P.O. Box 30030, Amarillo, TX 79120–0030.

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, Pittsburgh, PA 15122–0079.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, VA 23606.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342–0066.

U.S. Department of Energy, EG&G Mound Applied Technologies, P.O. Box 3000, Miamisburg, OH 45343–3000.

U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, P.O. Box 398704, Cincinnati, OH 45239–8704.

U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Grand Junction Project Office, 2597 B 3/4 Road, Grand Junction, CO 81503.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Inhalation Toxicology Research Institute, P.O. Box 5890, Albuquerque, NM 87185.

U.S. Department of Energy, Kansas City Site Office, 2000 E 9th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Sandia Site Office, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Livermore Site Office, P.O. Box 808, Livermore, CA 94551.

U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, CA 94720.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, P.O. Box 2009, Oak Ridge, TN 37831–8103.

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, P.O. Box 2003, Oak Ridge, TN 37831–7422.

U.S. Department of Energy, MK Ferguson of Oak Ridge Company, P.O. Box 2011, Oak Ridge, TN 37831–2011.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM–Oklahoma, Inc., P.O. Box 2565, Bartlesville, OK 74005.

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401–3393.

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601.

U.S. Department of Energy, Naval Petroleum Reserves in California, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615.

U.S. Department of Energy, Naval Reactors Representative Office, P.O. Box 7021, Groton, CT 06340.

U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, P.O. Box 2053, Vallejo, CA 94592.

U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, P.O. Box 973, Newport News, VA 23607.

U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, P.O. Box 848, Portsmouth, VA 23705–0848.

U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, P.O. Box 128, Pearl Harbor, HI 96860.

U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, P.O. Box 2008, Portsmouth, NH 03801–2008.

U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, P.O. Box 1A, Bremerton, WA 98314.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–98518.

U.S. Department of Energy, Nevada Test Site Mercury, Mercury, NV 89023.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center, 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Pacific Northwest National Laboratory, 902 Battelle Boulevard, P.O. Box 999, Richland, WA 99352.

U.S. Department of Energy, Phoenix Area Office, P.O. Box 6457, Phoenix, AZ 85005.

U.S. Department of Energy, Portsmouth Site Office, P.O. Box 700, Piketon, OH 45661.

U.S. Department of Energy, Princeton Area Office, P.O. Box 102, Princeton, NJ 08542.

U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 850 Energy Drive, Idaho Falls, ID 83402.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, P.O. Box 7922, Department 056 EA08, Canoga Park, CA 91309–7922.

U.S. Department of Energy, NNSA Sandia Site Office, P.O. Box 5800, Albuquerque, NM 87115.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Stanford Linear Accelerator Center, P.O. Box 4349, Stanford, CA 94309.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304.

U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, P.O. Box 191, MS: F, West Valley, NY 14171.

U.S. Department of Energy, Waste Isolation Pilot Project Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees including National Nuclear Security Administration employees, and contractor employees, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

DOE contractor personnel and other individuals' radiation exposure records, social security numbers, and other records, in connection with registries of uranium, transuranic, or other elements encountered in the nuclear industry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department for the purpose of monitoring and recording levels of radiation exposure to individuals working or visiting DOE facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Department of the Navy to monitor radiation exposure of Naval and other personnel.

2. A record from this system may be disclosed as a routine use to the Nuclear Regulatory Commission to monitor radiation exposure of DOE and its contractors and consultants, contractors from other agencies who have been exposed to ionizing radiation during nuclear testing, and to conduct epidemiological studies of radiation effects on individuals so identified.

3. A record from this system may be disclosed to the Department of Defense for the purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing and for conducting epidemiological studies of radiation effects on individuals so identified.

4. A record from this system may be disclosed as a routine use to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

5. A record from this system may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, and collaborating researchers, or the employees of these parties, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to Federal, State and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillance. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

6. A record from this system may be disclosed as a routine use to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

7. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to

Department officers and employees under the Privacy Act.

8. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system of records may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from a member with respect to the subject matter of record. The member of Congress must provide a copy of the constituent's request for assistance.

11. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm and electronic media.

RETRIEVABILITY:

Records are retrieved by name, alphanumeric code, and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Chief Health, Safety and Security Officer, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Managers and Directors of the ''System Locations'' listed above are the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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SYSTEM NAME:

Occupational and Industrial Accident Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Amarillo Site Office, Pantex Plant, P.O. Box 1086, Amarillo, TX 79105.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Carbondale Mining Research Center, P.O. Box 2587, Carbondale, IL 62901.

U.S. Department of Energy, Clinch River Breeder Reactor Plant Project, P.O. Box U, Oak Ridge, TN 37830.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC),

250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Idaho Branch Office, P.O. Box 2469, Idaho Falls, ID 8340.

U.S. Department of Energy, Kansas City Site Office, 2000 E 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, NNSA Los Alamos Site Office, P.O. Box 5800, Los Alamos, NM 87544.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Naval Petroleum Reserve, P.O. Box 11, Tupman, CA 93276.

U.S. Department of Energy, Nevada Test Site, Mercury, NV 89023.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Puerto Rico Area Office, P.O. Box BB, San Juan, PR 00935.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Sandia Area Office, P. O. Box 5800, Albuquerque, NM 87115.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Shippingport Branch Office, P. O. Box 11, Shippingport, PA 15077.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road, East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration (NNSA) employees, contractor employees, and any other persons having access to DOE facilities who have had accidents on DOE facilities. Also individuals involved in accidents with employees or contractor employees or other persons having access to DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, accident/incident information, occupational injury and illness experience, property damage experience, and motor vehicle accidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Federal Tort Claims Act, 28 U.S.C. 2671–2680; Military Personnel and Civilian Employees Claims Act, 31 U.S.C. 240–243; Executive Order 12009.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to monitor and record information about DOE employees, contractor employees, and other persons, who have had accidents on DOE facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to physicians, the Department of Labor, various State departments of labor and industry groups, and contractors who use information to: (a) Ascertain suitability of an employee for job assignments with regard to health (b) provide benefits under Federal programs or contracts, and (c) maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

2. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

6. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction

with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

7. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

8. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

10. A record from this system may be disclosed as a routine use to DOE contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health, the National Center for Environmental Health of the Center for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry when conducting epidemiological studies, or public health activities as required by law performed and pursuant to a Memorandum of Understanding between the Department of Health and Human Services or its components. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

11. A record from this system may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, and collaborating researchers, or the employees of these parties, when conducting health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to conduct the studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subjects vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purpose. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

12. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Project Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety, or environmental issues. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

13. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

14. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Passwords are known only by the system manager. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Chief, Health, Safety and Security Officer, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Health, Safety and Security Officers of field locations listed above under ''System Location(s)'' are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the

request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical is institutions, Office of Workers Compensation Programs, military retired pay system records, Federal civilian retirement systems, retirement life insurance and health benefits records system of the Office of Personnel Management, and the personnel management records systems of the Office of Personnel Management.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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SYSTEM NAME:

Legal Files (Claims, Litigation, Criminal Violations, Patents, and Others).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, Federal Records Center, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bartlesville Energy Technology Center, P.O. Box 1398, Bartlesville, OK 74003.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Grand Forks Energy Technology Center, P.O. Box 8213, University Station, Grand Forks, ND 58201.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons identified in files maintained by the Office of General Counsel, which includes attorneys at all DOE offices including National Nuclear Security Administration (NNSA), from which information is retrieved by name or other personal identifier, including: Litigants and other claimants against the Department and its contractors asserting matters including, but not limited to, personal injury, property damage or infringement (including intellectual property), contract violation and harms resulting from employer-employee relationships; persons who are the subjects of claims by the DOE, such as persons who may have violated criminal laws, DOE regulations and contracts with the DOE and persons against whom the DOE considered asserting such claims; DOE's contractors and potential contractors; persons holding copyrights and issued patents pertaining to the DOE's activities; DOE employees, subject to garnishment or assignments; and DOE employees and contractor employees who use Alternative Dispute Resolution (ADR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning legal matters include, but are not limited to, documents pertaining to: (1) Litigation and all other claims against, and by, the DOE and its contractors, which have been assigned to the Office of General Counsel; (2) DOE contracts; (3) issued patents and copyright matters; (4) records pertaining ADR. Litigation and claim records may, among others, include correspondence, pleadings such as complaints, answers, and motions; depositions, court orders and briefs. Records in this system also may include accident reports, inspection reports, investigation reports, audit reports, personnel files, contracts, consultant agreements, reports pertaining to criminal matters of interest to the DOE, Personnel Security Review Board documents, medical records, photographs, telephone records, patents and related documents, correspondence, and memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to settle claims and prepare for litigation and resolve disputes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to: (1) A person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) a witness, potential

witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

8. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name, case name, claim name, or assigned identifying number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Deputy General Counsel, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Chief Counsels of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, inspection reports, other agencies, Office of General Counsel attorneys, other agency officers and staff, contractors, investigators, and auditors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under subsection (k)(1), (k)(2), and (k)(5) of the Privacy Act, to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1) of the Act; see the DOE Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–43

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for DOE including National Nuclear Security Administration (NNSA) employment; DOE employees including assignees and detailees, agents and consultants with the DOE, DOE contractors and subcontractors, and DOE access permittees processed for DOE access authorizations for access to classified matter or special nuclear materials; other Federal agency contractor and subcontractor applicants for employment, and their employees, detailees, agents, and consultants processed for DOE access authorizations; and other individuals processed for DOE access authorizations as determined by the Secretary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date and place of birth, social security number, citizenship status, grade, organization, employer(s), initial investigation and reinvestigation history; and access authorization history; the formal request(s) and justification(s) for access authorization processing; security forms, fingerprint cards, and acknowledgments completed by the individual for both the initial investigation and reinvestigation; results of pre-employment checks (if required); request(s) and approval(s) for issuance of a security badge(s); report of investigation provided by an agency which has previously conducted an investigation of the individual for employment or security clearance purposes; approvals for classified visits; photographs; security infraction reports; security termination statement(s), foreign travel document; letters of interrogatory, personnel security interview transcripts or summaries, and/or audio tapes of the interviews, and evaluations of the interviews; reports of hospitalization or treatment for a mental condition or substance abuse, including information provided by an Employee Assistance Program provider; reports of DOE-sponsored mental evaluations conducted by competent medical authorities; reports of security violations; public record information to include law enforcement, financial, divorce, bankruptcy, name change and other court information or reports and copies of information appearing in the media; security advisory letters; information concerning citizenship status, foreign contacts, and spouse and/or individual(s) with whom the individual resides; administrative review processing data; justifications for participation in sensitive DOE activities and/or for Sensitive Compartmented Information access approval; results of required testing for participation in sensitive DOE activities; documents concerning Interim Access Authorization processing or processing under Section 145b of the Atomic Energy Act of 1954, as amended; written evaluations of reported derogatory information; credit check results; copies of correspondence to and from the individual concerning the items above and copies of inter- and intra-agency correspondence concerning the items above; and any other material relevant to the individual's DOE access authorization or special authorization eligibility or processing and, for DOE employees, suitability for Federal employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 10 CFR Part 710, Subpart A; Executive Orders 10450 and 12968; 5 CFR Part 732; DOE O 474.4 Safeguards and Security Program of 8–26–05; DOE M 470.4–5, Personnel Security, of 08–26–05 and Director of Central Intelligence Directive 6/14 of 6–20–00.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department as an official record of all information gathered and evaluated to determine an individual's initial and continued DOE access authorization eligibility and, if applicable, an individual's eligibility for participation in DOE sensitive activities or for access to Sensitive Compartmented Information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to competent medical authority who, under a formal agreement for payment of services with the local DOE personnel security element, conducts evaluations under Title 10, Code of Federal Regulations, Part 710, to determine whether an individual has an illness or mental condition of a nature which causes, or may cause, a significant defect in judgment or reliability, or is alcohol dependent or suffering from alcohol abuse.

2. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or

retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record may be stored as paper records, microfiche, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or assigned DOE file number (alphanumeric code).

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Documents completed and/or furnished by subject; Department of Energy; Office of Personnel Management; Federal Bureau of Investigation; Defense Security Service; medical professionals; and confidential sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under subsection (k)(1), (k)(2), and (k)(5) of the Privacy Act to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1) of the Act. See the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–44

SYSTEM NAME:

Special Access Authorization for Categories of Classified Information.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Amarillo Site Office, Highway 60 FM2373, Amarillo, TX 79120.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Kansas City Site Office, 2000 E 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, NNSA Sandia Site Office, 1515 Eubank Avenue, Albuquerque, NM 87123.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE and National Nuclear Security Administration employees, current and former DOE contractor employees, and employees of other Federal agencies authorized access to special categories of classified information and compartmentalized DOE facilities and/or areas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals, social security numbers, letters and memoranda, and status reports relating to authorized access to special categories of classified information and compartmentalized DOE facilities and/or areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*; 5 U.S.C. 301; Atomic Energy Act of 1954, as amended; Department of Energy Organization Act, including authorities incorporated by reference in Title of the Department of Energy Organization Act; DOE M 471.2–4, Executive Order 12333; Executive Order 12968; Federal Personnel Manual, Chapters 731 and 736.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by DOE to verify individuals who are authorized access to special categories of classified information and compartmentalized DOE facilities and/or areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use to other federal agencies or departments for determining individuals who have access to classified information generated by these agencies.

3. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member of Congress with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

5. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record may be stored as paper records, microfiche, and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records and microfiche are maintained in locked General Services Administration approved security containers. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are locked in General Services Administration approved security containers. Access is limited to those whose official duties require access to the records on a strict need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, present and former DOE employees and contractor employees; publicly available material; other agencies within the Intelligence

Community; other offices and elements within DOE; and other Federal agencies and official records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under subsection (k)(1) of the Privacy Act to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3),and (e)(1) of the Act. See the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–45

SYSTEM NAME:

Weapon Data Access Control System (WDACS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

Headquarters: U.S. Department of Energy, l000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Amarillo Site Office, P.O. Box 30030, Amarillo, TX 79120–0030.

U.S. Department of Energy, The Office of Kansas City Site Operations, P.O. Box 410202, Kansas City, MO 64141–0202.

U.S. Department of Energy, Miamisburg Area Office, P.O. Box 66, Miamisburg, OH 45342–0066.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831.

U.S. Department of Energy, NNSA Sandia Site Office, Albuquerque, P.O. Box 5800, Albuquerque, NM 87185–5800.

U.S. Department of Energy, NNSA Sandia Site Office, P.O. Box 969, Livermore, CA 94551–0969.

U.S. Department of Energy, NNSA Sandia Site Office, Tonopah Test Range, P.O. Box 871, Tonopah, NV 89049.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, University of California, Livermore Site Office, 7000 East Avenue, P.O. Box 808, Livermore, CA 94550.

U.S. Department of Energy, University of California, NNSA Los Alamos National Laboratory, P.O. Box 1663, Los Alamos, NM 87545.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration, Department of Defense (DOD), and other Government agency employees, contractors, and consultants requiring access to classified weapons information and/or DOE nuclear weapons program facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, date of birth, citizenship, employer, type of clearance, number and date of clearance, categories of information requested and authorized, locations to be visited and dates of visit, purpose of visit, point of contact, Government agency certifying need-to-know, and classified mail/shipping addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained by the Department to document all persons who have been authorized access to nuclear weapon information through a visit to one of the DOE Nuclear Weapons Complex facilities or to receive classified data via a classified mail/shipping channel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member of Congress with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as microfiche, paper records, or electronic media.

RETRIEVABILITY:

Records are retrieved by social security number and/or name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Deputy Administrator, NNSA, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Managers and Directors of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address

identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individuals, DOE, DOD, and other Government agencies, and their contractors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–46

SYSTEM NAME:

Administrative Review Files.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 1099, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals processed for or granted DOE access authorization who are subsequently processed under 10, CFR Part 710 for denial or revocation of access authorization. These individuals may be applicants for employment; employees including assignees and detailees; agents, and consultants with the DOE including National Nuclear Security Administration (NNSA); DOE and NNSA contractors and subcontractors, and DOE access permittees. Other Federal agencies' applicants for employment, and their employees, assignees, detailees, agents, consultants, contractors, and subcontractors. Other individuals as determined by the Secretary of Energy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transcript of the hearing convened under 10 CFR Part 710 procedures (when an individual does not avail himself/herself of the right to a hearing under 10 CFR Part 710 procedures, his/her DOE Personnel Security File [see DOE–43, Personnel Security File] becomes the basis of the administrative record); exhibits submitted by the DOE and the respondent to the Hearing Officer for inclusion in the administrative record; the Hearing Officer's opinion; decisions rendered by the Manager, Chief, Health, Safety, and Security Officer, and/or the Appeal Panel; evidence submitted by the DOE or the respondent subsequent to the closing of the administrative record; correspondence to and from the individual (and his/her counsel or representative) related to the conduct of proceedings; intra-agency correspondence related to the conduct of proceedings; and information concerning reconsideration of the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 10 CFR Part 710, Subpart A; Executive Order 12968; DOE O 470.4, Safeguards and Security Program, of 8–26–05, and DOE M 470.4–5, Personnel Security, of 08–26–05.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to maintain an official administrative record of 10 CFR Part 710 proceedings that are conducted to determine an individual's DOE access authorization eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. A record from this system may be disclosed to competent medical authority who, under a formal agreement for payment of services with the local DOE personnel security element, conducts evaluations under Title 10, Code of Federal Regulations, Part 710, to determine whether an individual has an illness or mental condition of a nature that causes, or may cause, a significant defect in judgment or reliability, or is alcohol dependent or suffering from alcohol abuse.

2. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of an access authorization, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with

treaties, international conventions, or executive agreements

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES OR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, audio tape, video tape, microfiche and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or assigned DOE file number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the ''System Locations'' listed above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual's Personnel Security File, and DOE staff.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under subsections (k)(1), (k)(2), and (k)(5) of the Privacy Act, to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1) of the Act; see the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–48

SYSTEM NAME:

Security Education and/or Infraction Reports.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Amarillo Site Office, Highway 60 FM2373, Amarillo, TX 79120.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Kansas City Site Office, 2000 E. 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, NNSA Sandia Site Office, Pennsylvania & H Street, Albuquerque, NM 87185–5400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration employees and DOE contractor employees possessing DOE access authorizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, records of security education briefings, and investigative and summary reports of security infraction incidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to inform individuals of their responsibilities for protecting classified matter, and the procedures established by the Department to ensure authorized disclosure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system of records may be disclosed to a federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper files and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the ''System Locations'' above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where

the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Training officers, security personnel, individual's supervisor, and local, State, and Federal authorities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–49

SYSTEM NAME:

Security Communications File.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who communicated verbal, electronic, written or telephonic expressions of interest about DOE including National Nuclear Security Administration (NNSA) personnel, facilities or activities in a manner that causes security concerns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Threat communications received from individuals as well as individuals who have been identified from articles in the news media as being potential threats to DOE officials, DOE employees and DOE contractor employees. Also includes name, social security number, date of birth, other personal identifiers, profiles and informational reports on any of the individuals who may have made threats against DOE personnel or property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*, and the implementing directive of E.O. 12958.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by DOE to maintain a database and profiles of all individuals who have made threats of any kind, and through any medium, against DOE officials, DOE employees, DOE contractor employees, DOE facilities and/or DOE buildings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. A record from the system may be disclosed as a routine use to a federal, state or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

5. A record from the system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfiche, and electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number, date of birth, and/or other miscellaneous personal identifiers.

SAFEGUARDS:

Paper records are maintained in locked General Services Administration approved security containers. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records on a strict need-to-know basis and other law enforcement authorities, as applicable.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE records schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Security Operations, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of

records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, complainants, witnesses, agency files and records, official Federal, State, or local records, and publicly available material.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under subsections (k)(1), (k)(2), and (k)(5) of the Privacy Act, to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1) of the Act; see the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–50

SYSTEM NAME:

Human Reliability Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors Office, P.O. Box 109, Pittsburgh, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, NNSA Amarillo Site Office (Pantex), P.O. Box 30030, Amarillo, TX 79120.

U.S. Department of Energy, NNSA Kansas City Site Office, 2000 E 9th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Livermore Site Office, P.O. Box 808, Livermore, CA 94551.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 89193–8518.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, NNSA Office of Secure Transportation, NA–121, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Sandia Site Office, P.O. Box 5800, Albuquerque, NM 87115.

U.S. Department of Energy, NNSA Y–12 Site Office, P.O. Box 2050, Oak Ridge, TN 37831–8009.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy, including National Nuclear Security Administration, and contractor employees performing work that affords both technical knowledge and access to assembled nuclear explosives or certain nuclear weapon components and assigned to, or applying for a position that: (1) Affords access to Category I Special Nuclear Material (SNM) or has responsibility for transportation or protection of Category I quantities of SNM; (2) involves nuclear explosive duties or has responsibility for working with, protecting, or transporting nuclear explosives, nuclear devices, or selected components; (3) affords access to information concerning vulnerabilities in protective systems when transporting nuclear explosives, nuclear devices, selected components, or Category I quantities of SNM; or (4) affords the potential to significantly impact national security or cause unacceptable damage and has been approved as an HRP position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of medical examination; employment review; credit/consumer reports; data pertaining to access authorizations (clearances); training records pertaining to individual's duties involving assembled nuclear explosives or certain nuclear weapon components; employee name; department division; job title; L-code (mail code); telephone number; pager number; employee number; and social security number; Acknowledgement and Agreement to Participate in the Human Reliability Program (HRP) Form; Authorization and Consent to Release Human Reliability Program (HRP) Records in Connection with HRP Form; Refusal of Consent Form; Human Reliability Program (HRP) Alcohol Testing Form; Human Reliability Program (HRP) Certification Form; random alcohol testing results; drug test results and information related to substance abuse; results from the Office of Hearings and Appeals relating to a safety certification issue; psychological evaluations; and polygraph results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 U.S.C. 2165; 42 U.S.C. 2201; 42 U.S.C. 5814–5815; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 as amended; E.O. 10865, 3 CFR 1959–1963, as amended; and 10 CFR 712, Personnel Assurance Program.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to ensure that individuals assigned to nuclear explosive duties do not have emotional, mental, or physical incapacities that could result in a threat to nuclear explosive safety. This is done through a continuous evaluation process that identifies individuals whose judgment or reliability may be impaired by physical or mental/personality disorders, alcohol abuse, use of illegal drugs or the abuse of legal drugs or other substances, or any condition or circumstance that may be a security or safety concern.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and

assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who are acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from this system of records may be disclosed to a federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

7. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper files and electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number and/or employee number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Chief, Health, Safety and Security Officer, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The HRP certifying official, or his or her designee of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at 10 CFR Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, occupational training records, and HRP program and personnel security records. Information also may be obtained from the supervisor, site occupational medical director, and the management official when completing the Human Reliability Program Certification.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–51

SYSTEM NAME:

Employee and Visitor Access Control Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Amarillo Site Office, Highway 60 FM2373, Amarillo, TX 79177.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Kansas City Site Office, 2000 E. 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, NNSA Sandia Site Office, Pennsylvania & H Street, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE including National Nuclear Security Administration (NNSA) employees, DOE and NNSA contractor employees and other individuals seeking access to DOE facilities and classified records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of individuals visiting DOE facilities, employees' identification files, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to track and control individuals accessing Departmental facilities and classified information areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

2. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. Records from this system may be disclosed to Department of Defense contractors and National Aeronautics and Space Administration to authorize access to classified information and areas.

5. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper files and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Passwords are known only by the system manager. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act

regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, Department of Defense, DOE offices and contractors, National Aeronautics and Space Administration, and other Government agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–52

SYSTEM NAME:

Access Control Records of International Visits, Assignments, and Employment at DOE Facilities and Contractor Sites.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION(S):

The centralized data system is located at NNSA Los Alamos National Laboratories.

U.S. Department of Energy, Headquarters, Office of Security and Emergency Operations, Office of Foreign Visits and Assignments, 1000 Independence Avenue, Washington DC 20585.

U.S. Department of Energy, Albany Research Center 1450 Queen Avenue, SW., Albany, OR 97321.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Amarillo Site Office, Highway 60 FM 2373, Amarillo, TX 79120.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97232.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342–0066.

U.S. Department of Energy, Environmental Measurements Laboratory, 201 Varick Street, 5th Floor, New York, NY, 10014–4811.

U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Grand Junction Office 2597 V 3/4th Road, Grand Junction, CO 81503.

U.S. Department of Energy, General Atomics, P.O. Box 85608, San Diego, CA 92186.

U.S. Department of Energy, Hanford Environmental Health Foundation, 3080 George Washington Way, Richland, WA 99352.

U.S. Department of Energy, Idaho National Engineering Laboratory, 850 Energy Drive, Idaho Falls, ID 83401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Kansas City Site Office, 2000 E. 95th Street, Kansas City, MO 64141–3202.

U.S. Department of Energy NNSA Sandia Site Office, Pennsylvania & H Street, Albuquerque, NM.

U.S. Department of Energy, NNSA Lawrence Berkeley Laboratory, 1 Cyclotron Road Berkeley, CA 94720.

U.S. Department of Energy, NNSA Livermore Site Office, 700 East Avenue, P.O. Box 808, L–1, Livermore, CA 94551.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, NNSA Los Alamos National Laboratory, University of California, SM #30 Bikini Road, Los Alamos, NM 87545.

U.S. Department of Energy, Miamisburg Area Office, 1 Mound Road, Miamisburg, OH 45342.

U.S. Department of Energy, National Energy Technology Center (Pittsburgh), P.O. Box 10940, 626 Corchans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Renewable Energy Laboratory Area Office,1617 Cole Blvd., Golden, CO 80401.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Oak Ridge National Laboratory, Bethel Valley Road, Oak Ridge, TN, 37831.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center, (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Pacific Northwest National Laboratory, 902 Battelle Boulevard P.O. Box 999, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Scientific and Technical Information, 175 Oak Ridge Turnpike, Oak Ridge, TN 37830.

U.S. Department of Energy, Stanford Linear Accelerator Center, 2575 Sand Hill Road, Menlo Park, CA 94205.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East New Orleans, LA 70123.

U.S. Department of Energy, Thomas Jefferson National Accelerator Facility, 12000 Jefferson Avenue, Newport News, VA 23606.

U.S. Department of Energy, University of Rochester, 250 East River Road, Rochester, NY 14623.

U.S. Department of Energy, Waste Isolation Pilot Plant, 4021 National Parks Highway, Carlsbad, NM 88220.

U.S. Department of Energy, West Valley Project Office, P.O. Box 191, West Valley, NY 14171.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All non-U.S. citizens seeking access to DOE facilities, laboratories, contractor sites, or DOE including National Nuclear Security Administration (NNSA) sponsored events for unclassified purposes to include employees of DOE or DOE contractors; prospective DOE or DOE contractor employees; employees of other U.S. Government agencies or their contractors of universities, of companies (professional or service staff), or of other institutions; foreign students at U.S. institutions; officials or other persons employed by foreign governments or other foreign institutions who may or may not be involved in cooperation under international agreements; permanent resident aliens; representatives or agents of foreign national governments seeking access to DOE facilities, laboratories, or contractor sites or DOE-sponsored events for purposes of high-level protocol; national security; International Atomic Energy Agency, or international relations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data: Full name (including Also Known As (A.K.A.'s), visitor request number, gender, place of birth, city and country, date of birth, country(ies) of citizenship, date of last visit to country of citizenship, passport number and passport, expiration date, immigration status, type of visa and

expiration date, country of current residence and how long at current residence, language interpretation needs, work phone, e-mail and fax, name of current employer, place of work, street, city, state, zip code, country; position title or description of requesters duties. Visit/Assignment Request Information: Date of request, purpose of request (including subjects to be discussed or researched and specific activities involved); requesters current whereabouts, (*i.e.*, is proposed visitor currently in the US), specific visa status and purpose, (*i.e.*, exchange visitor (J–1) Visa), time duration of proposed visit, assignment or activity (desired start and end dates), identification of specific international agreement(s) or delegations related to the proposed request, name, organization, telephone number of DOE contact, name of financial sponsor, cost if sponsor is other than DOE. Visit/Assignment Facility Information: Name, location and room number of facility or organization to be accessed during visit/assignment, name of the host responsible for the visit/assignment, host's telephone number, building and room numbers, number of days on site, visit assignment relationship to program, subject codes, subjects to be discussed or statement of research, determination of computer access, and sensitive subject designation. Visit/Assignment Program Information and Remark: Designation of high level protocol visit, cost to DOE, visit or assignment purpose code, purpose and justification of visit assignment including benefits to DOE program(s) and certification of DOE mission advancement, technology transfer determination, name of requesting official or contractor, title and organization of requesting officer, signature of requesting official or contractor, date signed, name of site manager and local headquarters approving official, title and organization of local headquarters approving official, signature(s) of site field, headquarters approving official, date signed and remarks, the kind of business or organization of assignee's employer (*e.g.* government, company, Laboratory, university), education background of requestor including college or university training with degrees and dates conferred; field of research, and family members who will accompany or join the applicant later). Management Reviews and Approvals: Level, type or topic of review, name of reviewer and or approval authority(ies), the date of the review approval, and remarks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to document, track, manage, analyze, and or report on foreign visit and assignment access to DOE facilities including Headquarters, Field Offices, National Laboratories, and Contractor Sites.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A records from this system may be disclosed as a routine use to Department of Defense contractors responsible for security controlling access to sensitive information and sensitive equipment, and sensitive property areas.

2. A record from this system may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of national security, international visit and assignment, or foreign access related responsibilities.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

8. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system of records may be disclosed as a routine use to members of the DOE Advisory committees and interagency boards charged with responsibilities pertaining to international visits and assignments and/or national security.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfiche, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or other personal identifiers.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585.

Field Offices: The Security Directors of the ''System Locations'' listed above are system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the Correlation. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Foreign national individuals requesting access to DOE facilities including contractor sites, reports from federal investigation agencies, DOE Office of Counterintelligence, Department of State, Department of Defense, and Immigration and Naturalization Service.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–53

SYSTEM NAME:

Access Authorization for ADP Equipment.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of the Energy Information Administration computer system, including DOE and National Nuclear Security Administration employees and contractor employees and other authorized users of the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employer, citizenship, user identification number, office address and telephone number, organizational code, computer usage figures, data accessed, and other management-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; OMB Circular A–71; Department of Commerce Federal Information Processing Standards Publications (FIPS PUBS) on computer security; GSA Procurement Regulations Amendment 155, adding Section 1–1.327.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the EIA to identify EIA computer users and control access to EIA computer and information resources. The information is frequently reviewed and updated to ensure records are current and accurate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or user identification number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration

(NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, with some information assigned by the ITG Staff.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–54

SYSTEM NAME:

Investigation Files of the Inspector General.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of an investigation, witnesses in an investigation, sources of investigative information, investigative personnel, and DOE employees including National Nuclear Security Administration employees and other individuals involved in an Office of Inspector General investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal, civil, and administrative investigative records and files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department in furtherance of the responsibilities of the Inspector General. These responsibilities include conducting and supervising investigations relating to Departmental programs and operations; promoting economy, efficiency, and effectiveness in the administration of such programs and operations, and preventing and detecting fraud and abuse in such programs and operations. The records are used in investigations of individuals and entities suspected of having committed illegal or unethical acts. The records also are used in any resulting criminal prosecutions, civil proceedings, or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system of records may be disclosed to a federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

8. A record from the system may be disclosed as a routine use to DOE contractors in performance of their

contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system of records may be disclosed as a routine use to authorized officials within Offices of Inspectors General listed in the Inspector General Act of 1978, the Department of Justice, the Federal Bureau of Investigation, or the U.S. Marshals Service, as necessary, for investigative qualitative assessment reviews.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper and electronic media.

RETRIEVABILITY:

Records are retrieved by name of subject(s), case number, title of investigative report, name of complainant, name of subject(s), and/or names of witnesses.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Classified information is maintained in locked General Services Administration approved class 6 security containers. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about the subject; those authorized by the individual to furnish information; confidential informants; the Department of Justice; Federal Bureau of Investigation (FBI); and other Federal, State, and local agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under (j)(2) of the Privacy Act to the extent that the information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections: (c)(3) and (4), (d)(1), (2), (3), and (4), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), (g) of the Act; see the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

This system is exempt under (k)(1), (k)(2), and (k)(5) of the Privacy Act, to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1), (e)(4)(G), (H) and (f) of the Act; see the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–55

SYSTEM NAME:

Freedom of Information and Privacy Act (FOIA/PA) Requests for Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Grand Forks Energy Technology Center, P.O. Box 8213, University Station, Grand Forks, ND 58201.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), 3610 Collins Ferry Road, Morgantown, WV 26507–0940.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting copies of records from DOE including the National Nuclear Security Administration (NNSA) under the provisions of the FOIA and the Privacy Act (PA) of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and telephone number; description or identification of records requested, furnished and/or denied; FOIA and PA division employee assigned responsibility for processing request; dates of request and actions; interim and final actions taken on request; persons or offices assigned actions on requests; copy of records requested, furnished and/or denied; fee data, including payment delinquencies; final determinations of appeals; name/title of officials responsible for denial of records; and case notes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Freedom of Information Act 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to record, control, and determine the status of FOIA and PA requests; produce statistical reports; and as a data source for management information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. A record from this system of records may be disclosed to another federal agency when consultation or referral is required to process requests.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

4. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

5. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper, microfiche, video, audio, and electronic media.

RETRIEVABILITY:

Records are retrieved by name of requester and/or assigned request control number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Freedom of Information Act and Privacy Act Office, Office of Information Resources, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Freedom of Information Act and Privacy Act Officers of the ''Systems Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Individuals requesting copies of records and individuals responsible for processing and/or making determination on requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–56

SYSTEM NAME:

Congressional Constituent Inquiries.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585; U.S. Department of Energy.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested assistance from their Congressional Representative, and the member of Congress who corresponded with the Department of Energy including the National Nuclear Security Administration on behalf of the constituent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of constituent and date of letter by a member of Congress on behalf of the constituent; materials forwarded by a member of Congress; and DOE response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to record Congressional inquiries on behalf of constituents, to ensure proper document control of the response, and to record the Department's responses to such inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to another federal agency when consultation or referral is required to process requests.

2. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

3. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

4. A record from the system may be disclosed as a routine use to the appropriate local, State or Federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

7. A record from this system may be disclosed as a routine use when (1) it is

suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic records.

RETRIEVABILITY:

Records are retrieved by name of constituent and/or name of member of Congress.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: The Executive Secretariat, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Field Offices: The Managers or Directors of the ''System Locations'' listed above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, member of Congress, and the author of the DOE response.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–57

SYSTEM NAME:

Congressional Profiles.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Alaska Power Administration, San Point Way, NE., Seattle, WA 98115.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bartlesville Energy Technology Center, P. O. Box 1398, Bartlesville, OK 74003.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Grand Forks Energy Technology Center, P.O. Box 8213, University Station, Grand Forks, ND 58201.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgan town, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations, Office, P.O. Box A, Aiken, SC 29801

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current members of Congress.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, picture from Congressional Yellow Book, personal background obtained from published sources, demographic information by state or district, committee assignments, and information about energy interests obtained from published sources, information from member's office, abstracts from Congressional Record, committee hearings and other public sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to maintain biographical data on all members of Congress, including a list of their sensitive energy issues or energy related legislation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

2. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary for Congressional and Intergovernmental Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Managers or Directors of the ''System Locations'' listed above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Published sources, committee hearings, and the members' offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–58

SYSTEM NAME:

General Correspondence Files of the Office of the Secretary, Deputy Secretary and Under Secretary of Energy.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, representatives of organizations, and other federal and state agencies and the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address of correspondent, copies of correspondence from individuals, and copies of the agency response. This is the portion of DOE including National Nuclear Security Administration (NNSA) correspondence files that relates to correspondence with individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in Categories of Records in the System, such records are maintained and used by the Department to document and manage information from or to correspondents outside of DOE and to ensure proper document control of the DOE response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

5. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name of correspondent or assigned control number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: The Executive Secretariat, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals and drafter of DOE response.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–59

SYSTEM NAME:

Mailing Lists for Requesters of Energy-Related Information.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting DOE energy-related information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of the subject individual; some mailing lists may also indicate specific interests of publications requested by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to distribute DOE related material to DOE employees, DOE contractors, and others requesting information from DOE.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system may be disclosed as a routine use when (1) it is

suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfiche and electronic media.

RETRIEVABILITY:

Records are retrieved by record identification and code number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Print Media and Mail Services Group, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, generally as the result of a request for information by that individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–60

SYSTEM NAME:

General Correspondence Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Headquarters, Germantown, 19901 Germantown Road, Germantown, MD 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26507.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Naval Reactors, Crystal City, VA 22202.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals communicating with organizational elements of DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of general correspondence submitted to the Heads of the Departmental Program Offices and Heads of the Department Field Offices that may include name, address, telephone number, organization, date of birth, and supporting documentation, and copies of the agency response letters and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE:

For those records described in *Categories of Records in the System,* such records are maintained and used by organizational elements of DOE to document and manage information from or to correspondents outside of DOE and to ensure proper document control of the DOE response.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the

purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicate a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

5. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: The Office Directors for their respective offices.

Field Offices: The Managers and Directors of the ''System Locations'' listed above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals and drafter of DOE response.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–61

SYSTEM NAME:

Census of High Energy Physicists.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Scientists and graduate students in the field of high energy physics including DOE and National Nuclear Security Administration employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, education, employment history, research activities, and technical specialties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to provide a database for statistical and demographic studies of the high energy physics research community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to physicists, research organizations, and various Government organizations engaged in supporting physics research to obtain information for statistical and demographic purposes, on individuals and institutions engaged in high energy physics research.

2. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

3. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

4. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as electronic media.

RETRIEVABILITY:

Records are retrieved by name of individual.

SAFEGUARDS:

Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for High Energy and Nuclear Physics, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–62

SYSTEM NAME:

Historical Files—Published Information Concerning Selected Persons in the Energy Field.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected senior staff officials of the Manhattan Project, Atomic Energy Commission, Nuclear Regulatory Commission, Energy Research and Development Administration, DOE including the National Nuclear Security Administration, and other selected individuals prominent in the energy field.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of selected person, newspaper and magazine articles, press releases, announcements, and speeches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to record, historical records of the DOE and predecessor agencies, including the Atomic Energy Commission, Federal Energy Administration, and the Energy Research and Development Administration. Records are used to prepare histories in responding to informational inquiries from DOE officials and members of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to members of the public and the media when responding to requests for information.

2. A record from the system may be disclosed as a routine use to another federal agency when consultation or referral is required to process requests.

3. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to

Department officers and employees under the Privacy Act.

4. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

5. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Historian, History and Heritage Resources, Office of the Executive Secretariat, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

DOE press releases, DOE News Clips (a daily compilation of energy related newspaper and magazine articles), and other published sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–63

SYSTEM NAME:

Personal Identity Verification (PIV) Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATIONS/OFFICES:

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Ames Site Office, 9800 S. Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Ames Laboratory, 311 TASF, Ames, IA 50011–3020.

U.S. Department of Energy, Argonne Site Office, 9800 S. Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Berkeley Site Office, 1 Cyclotron Road, Berkeley, CA 94720.

U.S. Department of Energy, NNSA Service Center, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621.

U.S. Department of Energy, Brookhaven Site Office, 53 Bell Avenue, Building 464, Upton, NY 11973.

U.S. Department of Energy, Brookhaven National Laboratory, P.O. Box 5000, Upton, NY 11973–5000.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Environmental Management Consolidated Business Center, 250 E. 5th Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Fermi National Accelerator Laboratory, P.O. Box 500, Batavia, IL 60510–0500.

U.S. Department of Energy, Fermi Site Office, P.O. Box 2000, Batavia, IL 60510–0500.

U.S. Department of Energy, General Atomics, 3550 General Atomics Court, San Diego, CA 92121.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Grand Junction Office, 2597 B 3/4 Road, Grand Junction, CO 81503.

U.S. Department of Energy, Idaho National Laboratory, P.O. Box 1625, Idaho Falls, ID 83415.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Lawrence Berkeley National Laboratory, 1 Cyclotron Road, Berkeley, CA 94720.

U.S. Department of Energy, National Energy Technology Laboratory-ARC, 1450 Queen Avenue SW., Albany, OR 97321.

U.S. Department of Energy, National Energy Technology Laboratory-Fairbanks, 2175 University Avenue South, Suite 201, Fairbanks, AK 99709.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), 3610 Collins Ferry Road, P.O. Box 880 Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, National Energy Technology Laboratory (Tulsa), One West Third Street, Suite 1400 Tulsa, OK 74103–3519.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden CO 80401.

U.S. Department of Energy, Oak Ridge Institute of Science and Education, 130 Badger Avenue, Oak Ridge, TN 37831.

U.S. Department of Energy, Oak Ridge National Laboratory, P.O. Box 2008, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Pacific Northwest National Laboratory, P.O. Box 999, K1–46, Richland, WA 99352.

U.S. Department of Energy, Pacific Northwest Site Office, P.O. Box 350, MS K 8–50, Richland, WA 99354.

U.S. Department of Energy, Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200 Lexington KT 40513.

U.S. Department of Energy, Princeton Plasma Physics Laboratory, P.O. Box 451, Princeton, NJ 08543.

U.S. Department of Energy, Princeton Site Office, P.O. Box 102, Princeton, NJ 08042.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802.

U.S. Department of Energy, Savannah River Site Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Stanford Linear Accelerator Center, 2575 Sand Hill Road, MS 75, Menlo Park, CA 94025.

U.S. Department of Energy, Stanford Site Office, 2575 Sand Hill Road, MS 8–A Menlo Park, CA 94025.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East New Orleans, LA 70123–3401.

U.S. Department of Energy, Thomas Jefferson Site Office, 12000 Jefferson Avenue, Newport News, VA 23606.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for a DOE PIV credential under the PIV process.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained in this system of records include all documents submitted during application for the PIV credential or copies of those documents, and any resulting investigative, adjudicative, appeal, or reciprocity documentation. The PIV information contained in the records includes the applicant's name, social security number, date of birth, place of birth, signature, status as Federal or contractor employee or prospective employee, and sponsor's or employer's name, address, and telephone number. The records are the PIV credential request submitted by the applicant's sponsor and may include depending on the applicant's history and actions any of the following: copies of identity source documents; data from source documents used to positively identify the applicant; copies of applicant's photograph; copies of the applicant's background investigation forms [*e.g.*, Standard Form 85 (SF 85), *Questionnaire for Non-Sensitive Positions*; SF 85P, *Questionnaire for Public Trust Positions*; SF 86, *Questionnaire for National Security Positions*; SF 87, *Fingerprint Chart*; FD–258, *Fingerprint Card*; Optional Form 306 (OF 306), *Declaration for Federal Employment*; SF 171, *Application for Federal Employment*; OF 612, *Optional Application for Federal Employment*; a resume or similar document]; adjudication documents; verification of previous adjudication decision by DOE or another Federal agency; disposition of applicant's PIV processing; correspondence and related documents to and from other Federal agencies for reciprocity purposes; and appeal documents. The above information will be used to positively identify individuals and determine the eligibility of those individuals for access to DOE facilities in accordance with HSPD–12.

Note: Executive Order 10450 Section 9(c) stipulates that reports and other investigative material and information that originated from the background investigation (BI) will remain the property of the investigative agency that conducted the investigation. DOE Privacy Act Officers will forward requests for BI results to the agency that conducted the investigation. The requester will be notified of the referral.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*, 5 U.S.C. 552a (the Privacy Act of 1974), Homeland Security Presidential Directive 12, ''Policy for a Common Identification Standard for Federal Employees Contractors,'' August 27, 2004, and Title 5, Code of Federal Regulation, Parts 5 and 736.

PURPOSES:

For those records described in *Categories of Records in the System*, such records are maintained and used by DOE to determine the eligibility of individuals for a PIV credential that provides access to DOE owned or leased facilities in accordance with HSPD–12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing DOE in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use to the Department of Justice when: (a) DOE or any component thereof; or (b) any employee of DOE in his or her official capacity; or (c) any employee of DOE in his or her individual capacity where DOE or the Department of Justice has agreed to represent the employee; or (d) the Federal Government, is a party to litigation or has an interest in such litigation, and after careful review, DOE determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by DOE to be for a purpose compatible with the purpose for which DOE collected the records.

3. A record from this system may be disclosed as a routine use to a court or adjudicative body in a proceeding when: (a) DOE or any component thereof; (b) any employee of DOE in his or her official capacity; (c) any employee of DOE in his or her individual capacity where DOE or the Department of Justice has agreed to represent the employee; or (d) the Federal Government is a party to litigation or has an interest in such litigation and, after careful review, DOE determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by DOE to be for a purpose that is compatible with the purpose for which DOE collected the records.

4. A record from this system may be disclosed as a routine use to a federal, state, local, foreign, tribal, or other public authority that the system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other

benefit. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within DOE or to another Federal agency for criminal, civil, administrative personnel or regulatory action.

5. Except for self-admissions of illegal use of drugs or drug activity on questionnaire Forms SF 85, SF 85P, and SF 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, a routine use disclosure may be made to the appropriate public authority, whether Federal, foreign, State, local, or tribal, or otherwise, responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutorial responsibility of the receiving entity.

6. A record from this system may be disclosed as a routine use to a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from this system may be disclosed as a routine use to DOE contractors in the performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use to the National Archives and Records Administration for records management inspections under 44 U.S.C. 2904 and 2906.

9. A record from this system may be disclosed as a routine use to any source or potential source from which the information is requested in the course of an investigation concerning the retention of an employee or other personnel action (other than hiring), or the retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

10. A record from this system may be disclosed as a routine use to a Federal, State, or local agency, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments, in order to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.

11. A record from this system may be disclosed as a routine use to notify another Federal agency, or verify whether, a PIV credential is no longer valid.

12. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper files and/or electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number, or unique PIV file number.

SAFEGUARDS:

Paper records, when not in use, are maintained in a combination-locked cabinet or safe, or in an equally secure area. Electronic records are controlled through established DOE cyber security directives or procedures, and they are password protected. Both paper and electronic records are protected by screening the personnel who have regular access to them and by physically protecting the locations where they are kept. Access to paper or electronic records is limited to those whose official duties require access to the records and who have a need-to-know. Data from the system of records that is personally identifiable information which may be electronically transmitted is protected by encryption.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are in the National Archives and Records Administration (NARA) General Records Schedule and in supplemental DOE record schedules that have been approved by NARA.

SYSTEM MANAGERS AND ADDRESSES:

Headquarters: Director, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the System Locations listed with their addresses above are the system managers for their respective portions of the system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act at Title 10, Code of Federal Regulations (CFR), Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or to the Privacy Act Officer at the appropriate location identified under System Locations above. For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation at 10 CFR 1008, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Documents completed or furnished by the applicant; Department of Energy; Office of Personnel Management; Federal Bureau of Investigation; other Federal agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–66

SYSTEM NAME:

Power Sales to Individuals.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

U.S. Department of Energy, Western Area Power Administration, 1800 South Rio Grand, Montrose, CO 81401.

U.S. Department of Energy, Colorado River Storage Region, 257 E200S, Suite 475, Salt Lake City, UT 84111.

U.S. Department of Energy, Desert Southwest Region, 615 S. 43rd Avenue, Phoenix, AZ 85009.

U.S. Department of Energy, Rocky Mountain Region, 5555 E. Crossroads Boulevard, Loveland, CO 80538–8986.

U.S. Department of Energy, Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630–4710.

U.S. Department of Energy, Upper Great Plains Region, 2900 4th Avenue North, Billings, MT 59101–1266.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals purchasing power from the Western Area Power Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Executed contracts, agreements, amendments, extensions, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*, and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to bill individuals for sale of purchase power.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper files and/or electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Access is

limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Western Area Power Administration, U.S. Department of Energy, P.O. Box 3402, Golden, CO 80401.

Regional Offices: The Directors of the ''System Locations'' listed above are the system managers for their respective locations.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above.

Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–71

SYSTEM NAME:

The Radiation Accident Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons accidentally exposed to acute dose of ionizing radiation as defined by exposure dose criteria agreed to by DOE including the National Nuclear Security Administration (NNSA) and the Nuclear Regulatory Commission (NRC) by an interagency agreement. The dose criteria established by this agreement include one or more of the following: Greater than or equal to 25 REM (Roentgen Equivalent in Man) to the whole body, active blood forming organs or gonads; greater than or equal to 600 REM to skin of the whole body or extremities; greater than or equal to 75 REM to other tissues or organs from an external source; and greater than or equal to 1/2 NCRP maximum permissible organ burden internally; all those medical administrations of radioisotopes that result in a dose or organ burden equal to or greater than those given above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official accident reports including reports of those accidents that have occurred within the jurisdiction of the NRC and have been transferred to the DOE for the Accident Registry according to the DOE/NRC agreement; names, addresses, social security numbers, date of birth, and sex; medical records compiled at the time of the accident (such records include physician and hospital records, diagnostic and laboratory test reports, radiographs, EKGs, and radiation exposure report); medical records of illnesses, examinations, including routine follow-up examinations, and investigations that have occurred since the radiation exposure; photographs or facsimiles of radiation-induced injuries; search and contact information for registrants not identified and/or located; consent to release information forms completed by registrants; death certificates; anecdotal information; and correspondence relating to the accident and/or the individuals involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; DOE Order 5500.2B, Emergency Categories, Classes, and Notification and Reporting Requirements, April 30, 1991; 42 U.S.C. 7274i. Program to monitor Department of Energy workers exposed to hazardous and radioactive substances.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to provide a current record of radiation accidents; to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

2. A record from this system of records may be disclosed to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law pursuant to a Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

3. A record from this system of records may be disclosed as a routine use to DOE contractors, grantees, participants in cooperative agreements, and collaborating researchers, or the employees of these parties, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements; federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject' s vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system of records may be disclosed as a routine use to members of DOE advisory

committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of federal, state, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety, or environmental issues. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

5. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

6. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

7. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

8. A record from this system of records may be disclosed to foreign governments or international organizations, in accordance with treaties, international conventions, or executive agreements.

9. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–72

SYSTEM NAME:

The DOE Radiation Study Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees, DOE contractor employees, including employees of the National Nuclear Security Administration (NNSA) predecessor agencies and organizations, including the Manhattan District, U.S. Atomic Energy Commission, and Energy Research and Development Administration; and present and former civilian employees in the DOE Naval Reactor Program who received a whole body exposure of ionizing radiation equal to or in excess of 5 REM in any 1 year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rosters of names of individuals meeting the above criteria for inclusion in the Registry submitted through the DOE field operation officers from DOE owned and operated facilities and sites. In addition to names of such individuals, these rosters include social security number or other identifying information, sex, race, date of birth, date and/or place of death, first date of hire, last date of termination, continuity of hire, year in which they received first dose greater than or equal to 5 REM, actual radiation doses in excess of 5 REM, and total career radiation exposure dose.

Original or copied lifetime medical records from plant and private physicians and hospitals including routine physical examinations, reports of diagnostic and laboratory tests, radiographs, EKGs, etc., or abstracted portions of such records as are required for the purposes of this study.

Contact information for registrants who are no longer employed at qualified sites or who are deceased.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; DOE Order 5500.2B, Emergency Categories, Classes, and Notification and Reporting Requirements, April 30, 1991; 42 U.S.C. 7274i.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system of records may be disclosed to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law pursuant to a Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system of records may be disclosed as a routine use to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety, or environmental issues. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

5. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

6. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

7. A record from this system of records may be disclosed as a routine use to the United States Enrichment Corporation and its contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act at the following sites: (1) Portsmouth Gaseous Diffusion Plant at Piketon, Ohio, and (2) Paducah Site Office at Paducah, Kentucky.

8. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the

Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF THE RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–73

SYSTEM NAME:

The US–DTPA Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Science, Oak Ridge Office, P. O. Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or suspected of internal contamination with transuranic elements and have received diethylene triamine pentaacetic acid (DTPA) in the calcium or zinc form during the course of chelation therapy. Administration of the agent DTPA is limited to physicians who are co-investigators with the DOE contractor staff on the Investigative New Drug License of the Food and Drug Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records compiled by the physician administering DTPA in the event of an exposure that was known to have or was suspected of having caused transuranic contamination internally requiring chelation therapy with DTPA. These records include a description of the exposure, the results of serial bioassays and investigations conducted to evaluate the level of internal contamination and the efficacy of subsequent chelation by DTPA.

Name, social security numbers or other identifiers and vital status of treated persons. The name and address of the individual's last known private physicians are included in the DTPA Registry to facilitate the search and contact of individuals; medical records of illnesses, examinations, including routine follow-up examinations, and investigations that have occurred since the initial administration of DTPA; and death certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 7274i.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to provide a current record of individuals treated with DTPA. To identify by epidemiological methods any long-term effects associated with DTPA therapy; and to provide information to Food and Drug Administration in accordance with the Investigative New Drug licenses and issuances, epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING, CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system of records may be disclosed to a member of Congress submitting a request

involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from this system of records may be disclosed to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system of records may be disclosed as a routine use to members of DOE Advisory Committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety, or environmental issues. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

5. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

6. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

7. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

8. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those providing information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or social security number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act

Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–75

SYSTEM NAME:

Call Detail Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Pittsburgh Naval Reactors, P.O. Box 109, Pittsburgh, PA 15122.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of DOE including employees of the National Nuclear Security Administration (NNSA) and those employees of other Federal agencies and contractors who are located on the DOE premises and who have assigned station numbers in the on-premises telecommunications system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Originating and terminating call data records relating to use of DOE telephones, including calling station number; date, time call originated, duration of call, and called number; directory records indicating assignment of telephone numbers to employees; and records relating to location of telephones. Reports may be generated from stored call detail records and may include, but are not limited to, station usage summaries, trunk usage summaries, traffic and network busy hour studies, on-net and off-net pricing, exception reports, bill certification, and cost allocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to help manage and control the costs of operating the Department's telephone systems. To this end, the program will collect information about the use of the agency's telephone system for local, long distance, and other toll calls and may attempt to assign responsibility to an individual person for particular calls. The information also assists the Department in choosing more efficient and cost effective ways of communicating; in making decisions about acquiring hardware, software, and services; and in developing management strategies for more efficient use of existing telecommunications capabilities. Other uses are to deter use of the telephone systems for unofficial purposes, and to recover the cost of unofficial calls.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to representatives of the General Services Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

2. A record from this system may be disclosed as a routine use to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act, 15 U.S.C. 2904 and 2906.

3. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

4. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain

information or testimony relevant to the matter.

5. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

6. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

7. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

8. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

9. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

10. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

11. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by individual telephone extension number.

SAFEGUARDS:

Paper and microfilm records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Information Management, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874.

Field Offices: The Managers and Directors of the ''System Locations'' listed above are the system managers for their respective locations.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Categories include telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of special local and long-distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–77

SYSTEM NAME:

Physical Fitness Test Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 19901 Germantown Road, Germantown, MD 20874–1290.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), P.O. Box 880, Morgantown, WV 26505.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE contractor employees (armed uniformed guards).

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of individual's ability to complete the physical fitness test as set forth in applicable DOE directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department to record physical fitness tests of DOE Federal and contractor employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and

persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Security Officers of the ''System Locations'' listed above are the system managers for their respective portions.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the Director, Headquarters Freedom of Information Act and Privacy Act Group, U.S. Department of Energy, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation*. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

RECORD SOURCE CATEGORIES:

The subject individual, physicians, and persons administering the tests.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–81

SYSTEM NAME:

Counterintelligence Administrative and Analytical Records and Reports.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, Office of Intelligence, 1000 Independence Avenue, SW., Washington, DC 20585;

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 Cass Ave., Argonne, IL 60439.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Livermore Site Office, P.O. Box 808, L–062, Livermore, CA 94551.

U.S. Department of Energy, Lockheed Martin Idaho Technology, P.O. Box 1625, M/S 2800, Idaho Falls, ID 83415–2800.

U.S. Department of Energy, NNSA Los Alamos National Laboratory, Mail Station 5000, P.O. Box 1663, Los Alamos, NM 87545.

U.S. Department of Energy, Martin Lockheed Energy Systems, P.O. Box 2009, Oak Ridge, TN 37831–8107.

U.S. Department of Energy, Pantex Plant, Bldg 11–54, P.O. Box 30020, Amarillo, TX 79177.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Pacific Northwest Laboratory, 902 Battelle Blvd., P.O. Box 999, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, NNSA Sandia National Laboratory, P.O. Box 969, M/S 9020, Livermore, CA 94551–0969.

U.S. Department of Energy, NNSA Sandia National Laboratory, Org 7400, P.O. Box 5800, M/S 0173, Albuquerque, NM 87185.

U.S. Department of Energy, Westinghouse Hanford Co., P.O. Box 1970, Richland, WA 99352.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including employees of the National Nuclear Security Administration (NNSA), contractor employees, and consultants; persons suspected of violating DOE regulations or laws; and, where there are indications of contact with a current or former DOE employee, contractor employee or consultant, persons who are reasonably believed to be officers or employees of, or otherwise acting for or on behalf of, a foreign power; members of an organization reasonably believed to be owned or controlled directly or indirectly by a foreign power; reasonably believed to be targets, hostages, or victims of international terrorist organizations; or reasonably believed to be engaged in or about to engage in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities involving DOE programs, personnel, facilities, information or materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Analytical, training and investigative records, reports and files; travel reports; reports on foreign contacts; records, reports and files received from other DOE elements and other Federal agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; Federal Personnel Manual, Chapters 731 and 736.

PURPOSE(S):

For those records described in *Categories of Records in the System*, such records are maintained and used by the Department in furtherance of the responsibilities of the Office of Counterintelligence (OCI), which include analysis of the foreign intelligence threat; conducting administrative inquiries and investigations to identify and neutralize

the foreign intelligence threat to classified and sensitive DOE programs, personnel, information and activities; reporting on foreign contacts and travel, including briefings and debriefings; conducting counterintelligence investigations and producing intelligence on hostile and foreign intelligence entities; counterintelligence related training; and other activities relating to OCI's responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Federal Bureau of Investigation when such records indicate a violation or probable violation of the law.

2. A record from this system may be disclosed as a routine use to other counterintelligence agency components with whom the Office of Counterintelligence is preparing joint analysis of counterintelligence-related threats which may impact the Department.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

5. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

6. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

7. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

8. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

9. A record from this system of records may be disclosed to foreign governments or international organization in accordance with treaties, international conventions, or executive agreements.

10. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

11. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by name, social security number or other personal identifying data.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Counterintelligence, Analytical Division, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Directors of Field Intelligence Elements of the ''System Locations'' listed above are the system managers for their respective portions.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

RECORD SOURCE CATEGORIES:

The subject individual; present and former DOE employees and contractor employees; publicly available material; other agencies within the Intelligence Community; other offices and elements within DOE; the FBI, and other Federal, State and local law enforcement agencies; sources contacted during administrative inquiries and investigations; and official records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under (k)(1), (k)(2), and (k)(5) of the Privacy Act to the extent that information within the system meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), and (4), (d), and (e)(1), (e)(4)(G) and (H) and (f) of the Act; See the DOE Privacy Act regulation at Title10, Code of Federal Regulations, Part 1008.

DOE–82

SYSTEM NAME:

Grant and Contract Records for Research Projects, Science Education, and Related Activities.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicant/Grantee organization; Principal Investigator, *i.e.*, the scientist or other individual designated by the applicant or proposer to direct the project; Senior Personnel, *i.e.*, scientists or other individuals designated by the applicant or proposer to perform work on the project; Certifying Representative, *i.e.*, the business representative having the authority to accept the obligation to comply with DOE including the National Nuclear Security Administration terms and conditions if DOE makes a grant or contract award. (2) DOE officials DOE Project Officer, *i.e.*, the individual who is responsible for the review and evaluation of the application or proposal and the monitoring of a resulting grant or contract; DOE Program Official, *i.e.*, the individual who is responsible for review and approval of applications or proposals for funding; DOE Budget Official, *i.e.*, the individual who is responsible for certifying funds availability for approved applications or proposals; DOE Contracting Officer or Contract Specialist, *i.e.*, individuals who are responsible for awarding and administering grants or contracts. (3) Merit/Peer Reviewer, *i.e.*, the individual (Federal or non-Federal) who provides a written review or evaluation of the application or proposal to the DOE Project Officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant applications, contract proposals, technical reviews by peer reviewer, records of grant and contract awards, financial data, social security number, and any other pertinent information needed for the tracking or approval of a grant or contract.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PURPOSE(S):

For those records described in *Categories of Records in the Syste*m, such records are maintained and used by the Department to track and monitor the receipt, review, and disposition of grant applications and contract proposals from universities, non-profit organizations, large and small businesses, other Federal agencies, State and local governments, individuals, and DOE national laboratories seeking Federal financial support for research projects, training, and related activities. The system also tracks and monitors funding authorizations and associated financial data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to expert peer reviewers selected by DOE for their expertise in specific research areas to evaluate the application or proposal in accordance with established evaluation criteria.

2. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

3. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system may be disclosed as a routine use to an applicant's principal investigator, sponsored programs office, business office, or similar element, via electronic media for the purpose of checking the status of its grant applications or contract proposals which have been submitted to DOE for support. Safeguards will be employed on a case by case basis to allow access only to authorized persons having a need to know.

5. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the

suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

Records are retrieved by application or proposal number, project number, award number, name of applicant or awardee, name of principal investigator, social security number, name of peer reviewer, DOE project officer, or budget and reporting classification code.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Grants and Contracts Division, Office of Resource Management, Office of Science, U.S. Department of Energy, Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Grant applications and contract proposals.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–83

SYSTEM NAME:

Allegation-Based Inspection Files of the Office of Inspector General.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Inspector General, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Office of Inspector General, P.O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Office of Inspector General, Building 703–41A, Aiken, SC 29802.

U.S. Department of Energy, Office of Inspector General, P.O. Box 2254, Livermore, CA 94551.

U.S. Department of Energy, Office of Inspector General, P.O. Box 2001, Room 502, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of inspections or inquiries concerning allegations or complaints, individuals who have pertinent knowledge about the inspection or inquiry including DOE employees and National Nuclear Security Administration employees, individuals authorized to furnish information, confidential informants, complainants, Office of Inspector General inspections personnel, and other individuals involved in these inspections.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inspection files predicated on allegations or complaints and which identify subjects or sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department in furtherance of the responsibilities of the Inspector General. These responsibilities include evaluating the effectiveness and efficiency of an operation, determining compliance with laws and regulations, evaluating Departmental program operations and results, preventing and detecting fraud and abuse in such programs and operations, and assuring the investigation of complaints by contractor employees alleging retaliation for making disclosures protected under 10 CFR Part 708 and 41 U.S.C. § 265.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

2. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their

components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

3. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

5. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

6. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

7. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

8. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper, microfilm, and electronic media.

RETRIEVABILITY:

Records are retrieved by name of individual involved, case number, report title, or subject matter.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Inspections, U.S. Department of Energy, Room 5B–250, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Inspector General of the ''System Locations'' listed above are the system managers for their respective locations.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about a subject individual or corporate entity; those authorized by an individual to furnish information; confidential informants; and Federal Bureau of Investigation (FBI) and other Federal, State, and local entities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under (k)(1) and (k)(2) of the Privacy Act to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1), (e)(4)(G) and (H) and (f) of the Act; See the DOE Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

DOE–84

SYSTEM NAME:

Counterintelligence Investigative Records.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION(S):

Records maintained in DOE–84, except those pertaining to polygraph examinations and the analysis of electronic communications, will be stored at the following locations:

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Livermore Site Office, 7000 East Avenue, P.O. Box 808, Livermore, CA 94551.

U.S. Department of Energy, Lockheed Idaho Technical Center, 765 Lindsay Boulevard, Idaho Falls, ID 83403.

U.S. Department of Energy, NNSA Los Alamos Site Office, M/S B–236, P.O. Box 1663, Los Alamos, NM 87545.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Pacific Northwest National Laboratory, 902 Battelle Blvd., P.O. Box 999, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, NNSA Sandia National Laboratory—Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5800.

U.S. Department of Energy, NNSA Sandia National Laboratory—California, P.O. Box 969, Livermore, CA 94551.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

Records maintained in DOE–84 in connection with DOE administered counterintelligence-scope polygraph examinations, will be maintained only at the following locations:

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, DOE Test Center, Albuquerque, NM 87106.

Records maintained in DOE–84 in connection with the DOE electronic communications analysis will be maintained only at the following locations:

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Office of Science—Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Idaho National Laboratory, 2525 N. Freemont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, Pacific Northwest National Laboratory, 902 Battelle Blvd., P.O. Box 999, Richland, WA 99352.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees including employees of the National Nuclear Security Administration (NNSA) and contractor employees; applicants for employment at DOE; individuals who may be assigned or detailed to Federal positions at DOE; consultants to DOE; any user of electronic communications systems at the DOE facilities; persons suspected of violating DOE regulations or criminal laws; individuals who voluntarily request a polygraph examination in order to respond to questions that have arisen in the context of a counterintelligence investigation; and those individuals who are (a) reasonably believed to be officers or employees of, or otherwise acting for or on behalf of, a foreign power; (b) members of an organization reasonably believed to be owned or controlled directly or indirectly by a foreign power; (c) reasonably believed to be targets, hostages, or victims of international terrorist organizations; or (d) reasonably believed to be engaged or about to engage in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities involving DOE programs, personnel, facilities, information, or materials and have made personal or impersonal contact with a current or former DOE employee, contractor employee or consultant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Law enforcement records, reports and files; reports on foreign contacts; records, reports and files received from other DOE elements and other Federal agencies related to intelligence activities; counterintelligence evaluation records; polygraph examination records; reports and videotapes of the polygraph session; and electronic mail stored on electronic media.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; The Atomic Energy Act of 1954, as amended; National Defense Authorization Act of Fiscal Year 2000 Public Law 106–65; the Employee Polygraph Protection Act, Public Law 100–347; 29 U.S.C. 2006(b)(1)(B); the Electronic Communications Privacy Act, Public Law 99–508, 18 U.S.C. 2510 *et seq.*; Executive Order 12333, United States Intelligence Activities (December 4, 1981); Department of Energy Procedures for Intelligence Activities, approved by the Attorney General under Executive Order 12333 (October 19, 1992); Executive Order 12958, Classified National Security Information (April 17, 1995); Executive Order 12968, Access to Classified Information (August 2, 1995); and Presidential Decision Directive-61.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to conduct counterintelligence investigations. The records in this system also will be used by the Office of Intelligence and Counterintelligence when participating in joint law enforcement counterintelligence-related investigations with the FBI or other Federal law enforcement agencies or components thereof in order to detect and prevent foreign intelligence threats directed at or involving DOE classified and sensitive information, materials, programs, facilities, personnel, and other Department resources. Finally, the records in this system are collected and maintained by the Office of Counterintelligence in order to fulfill its statutory responsibilities under Section 3154 of the National Defense Authorization Act for Fiscal Year 2000.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to an appropriate Federal, State, local or foreign agency when a record within this system of records, alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute of particular program pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a federal, state or local agency that maintains relevant information to obtain information relevant to a Department decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant

and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. The contractor and its officers receiving information under this routine use are subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records, electronic media, and videotapes.

RETRIEVABILITY:

Records are retrieved by name, e-mail address, and/or social security number.

SAFEGUARDS:

Paper records and videotapes are maintained in locked cabinets. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), secured for classified information and are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Counterintelligence, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The Directors of Field Intelligence Elements of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, present and former DOE employees and DOE contractor employees, applicants for employment, individuals assigned or detailed to Federal positions at DOE, and consultants; any user of a DOE electronic communications system; publicly available material; other agencies within the Intelligence Community; other offices within the DOE; the FBI, and other Federal, State and local law enforcement agencies; and sources contacted during investigations.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt pursuant to subsections (j)(2) and (k)(1), (2) and (5) of the Privacy Act, 5 U.S.C. 552a, to the extent that information within the system meets the requirements of those subsections of the Act. Under subsection (j)(2) of the Privacy Act, this system has been exempted from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) of 5 U.S.C. 552a. See DOE the Privacy Act Regulation at 10 CFR Part 1008.12.

To the extent the information in this system of records is exempt pursuant to 5 U.S.C. 552a(k)(1), (2) and (5), the system has been further exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H) and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. See the DOE Privacy Act Regulation at 10 CFR Part 1008.12(b).

DOE–86

SYSTEM NAME:

Human Radiation Experiments Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Human Radiation Experiments, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, Coordination and Information Center, 3084 S. Highland St., Las Vegas, NV 89109.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who participated in the organizing, conducting, and financing of the Human Radiation Experiments and environmental releases of radiation described in Executive Order 12891, 59 Fed. Reg. 2935 (January 20, 1994). Records are also maintained on persons who were subjects of the experiments or were affected by the releases. Generally, the records pertain to persons in the following categories: (1) Former and current employees of the DOE, including the National Nuclear Security Administration, its predecessor agencies and their contractors and subcontractors; (2) members of the public; (3) persons exposed to radiation as a result of proximity to nuclear facilities or the intentional or accidental release of radiation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records pertaining to the planning, organizing, financing, conducting,

effects and results of experiments and environmental releases, gathered from DOE, its predecessor agencies and their contractors and subcontractors. Such records include correspondence, memoranda, published and unpublished reports, notes, logs, proposals, contracts, minutes of meetings of the Atomic Energy Commission and its advisory committees and subcommittees dealing with radiation, correspondence with members of the public, transcripts of interviews of persons associated with the organizing, financing and conducting of the experiments, reports of Congressional hearings, personal notes, diaries and papers, archival collections, interagency memoranda and agreements, consent forms, medical and laboratory reports, transcripts of medical conferences, and newspaper and magazine articles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 7151; 42 U.S.C. 2201 and 42 U.S.C. 5813 and 5817.

PURPOSE(S):

For those records described in *Categories of Records in the System,* the purpose of this system of records is to assist members of the public in piecing together their own (or immediate family) history of possible involvement in government-sponsored radiation experiments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Advisory Committee on Human Radiation Experiments to perform its assigned task of evaluating the scientific and ethical aspects of the Human Radiation Experiments and environmental releases. A record from this system of records may be disclosed to that Committee to provide it with information concerning experiments or releases of radiation that were sponsored, financed or conducted by DOE, its predecessors, or other Federal agencies, and their contractors and subcontractors. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system may be disclosed as a routine use pertaining to another federal agency if it appears from the record, or other available information, that the other federal agency conducted the Human Radiation Experiment or environmental release or that referral to the other Federal agency is appropriate for remedial purposes.

3. A record from this system may be disclosed as a routine use to DOE contractors and subcontractors conducting epidemiological, industrial safety or hygiene studies to ascertain or determine: (a) How radiation exposure effects the health and well-being of individuals or groups of individuals; and (b) the risks of working with, or being in proximity to, nuclear equipment, devices and facilities and how such risks may be ameliorated. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system may be disclosed as a routine use to the Centers for Disease Control and Prevention, other Federal and State health agencies, and federal and state agencies involved with industrial or employee safety to be used for epidemiological or industrial safety or hygiene studies to ascertain or determine: (a) How radiation exposure effects the health and well-being of individuals or groups of individuals; and (b) the risks of working with, or being in proximity to, nuclear equipment, devices and facilities, and how such risks may be ameliorated.

5. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

6. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

7. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

8. A record from this system of records may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

9. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

10. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

11. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the

same limitations applicable to Department officers and employees under the Privacy Act.

12. A record from this system of records may be disclosed to officials and contractor personnel of the Agency for Toxic Substances and Disease Registry in carrying out that agency's authorized activities at DOE's facilities pursuant to Section 104(I) of the Comprehensive Environmental Response, Compensation, and Liability Act.

13. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

14. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and electronic media.

RETRIEVABILITY:

The records are retrieved by name or other personal identifier as dictated by the needs of the particular researcher.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Director, Office of Human Radiation Experiments, 1000 Independence Avenue, SW., Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Persons conducting or otherwise having a role in the organization and financing of experiments or releases, present and former DOE and predecessor agency contractors and subcontractors, physicians, medical records, dosimetry records, subject individuals, DOE and its predecessor agency officials and operating offices.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–88

SYSTEM NAME:

Epidemiologic and Other Health Studies, Surveys, and Surveillances.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Office of Health, Safety and Security, Office of Health and Safety, Germantown, MD 20874–1290. Portions also may be located with contractors, other entities involved in conducting or managing health studies, surveys, and surveillances, or other Department offices listed below:

U.S. Department of Energy, Headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

U.S. Department of Energy, NNSA Service Center Albuquerque, P. O. Box 5400, Albuquerque, NM 87185–5400.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Bonneville Power Administration, P. O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439.

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 250 E. Fifth Street, Suite 500, Cincinnati, OH 45202.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, National Energy Technology Laboratory (Morgantown), 3610 Collins Ferry Road, Morgantown, WV 26507–0880.

U.S. Department of Energy, National Energy Technology Laboratory (Pittsburgh), P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518.

U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Pacific Northwest National Laboratory, 902 Battelle Boulevard, P.O. Box 999, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Office of Repository Development, P.O. Box 364629, North Las Vegas, NV 89036–8629.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, Williams Tower One, One West Third Street, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road, East New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Data about individuals who were included in any authorized epidemiologic or other health study, survey, or surveillance. Such persons include current and former employees of the Department, including the National Nuclear Security Administration, its predecessor agencies, and their contractors and subcontractors, as well as other individuals included in health studies, surveys, and surveillances pertaining to any potential health hazard (including electromagnetic fields) associated with energy production, transmission, or use. Accordingly, persons having access, or in proximity, to the Department's facilities, persons involved in or effected by energy production activities, and members of the general population selected as control groups also may be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific types of records collected and maintained are determined by the needs of the individual study, survey, or surveillance. Examples include, but are not limited to, questionnaires, demographic information, work history, medical and reproductive history, birth data, radiation and other exposure history, laboratory test results, data from prior studies, surveys, and surveillances, alcohol and tobacco use history, and illness absence information. Information may be collected directly from individuals, as well as extracted as necessary from personnel files and lists, training files, medical records, legal case files, bioassay records, industrial hygiene files, payroll and leave records, radiation and other hazard exposure records, occupational and industrial accident records, employee insurance claims, personnel security clearance questionnaires, personnel assurance program records, and related sources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 7151 and 7297; 42 U.S.C. 2201(c), 2201(I)(3), 5813 and 5817.

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department to conduct epidemiological and other health studies, surveys and surveillances, conducted by the Department and the Department of Health and Human Services performing studies for the Department, their contractors, grantees, and collaborating researchers. The health studies pertain to individual and aggregate population health risks from exposures to radiation, or other chemical, physical, or biological hazards that may occur or may have occurred as a result of the Department's, or its predecessor agencies' operations, or as a result of energy production, transmission, or use. Individually identifiable information does not appear in published epidemiological studies or other published health studies, surveys, and surveillances. However, the system will contain records compiled in completing published and unpublished studies, surveys, and surveillances from which information is retrieved by name or other personal identifier.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health, the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to a Memoranda of Understanding between the Department and the Department of Health and Human Services or its components. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

2. A record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements and collaborating researchers, or the employees of these parties, when conducting health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record: To federal, state, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

3. A record from this system of records may be disclosed to members of Department advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of federal, state, or local government, or government-sponsored entities, authorized to provide advice to the Department concerning health, safety, or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

4. A record from this system of records may be disclosed as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

5. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) a person representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and

litigation, and their representatives and individuals assisting those representatives; (3) witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

6. A record from this system may be disclosed as a routine use in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which the Department collected the records; and (3) the proceedings involve:

(a) The Department, its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, or

(b) A current or former employee of the Department and its predecessor agencies, current or former contractors of the Department, or other United States Government agencies and their components, who is acting in an official capacity, or in any individual capacity where the Department or other United States Government agency has agreed to represent the employee.

7. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

8. A record from this system may be disclosed to Department of Health and Human Services, their contractors, grantees, and cooperative agreement holders, pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000, to estimate radiation doses and other workplace exposures received by Department of Energy and contractor employees. The Secretary of Health and Human Services and the Secretary of Energy shall each make available to researchers and the general public information on the assumptions, methodology, and data used in establishing radiation doses consistent with the protection of private medical records. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

10. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security 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 harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as microfilm, paper records, and electronic media.

RETRIEVABILITY:

Records are retrieved by name, study/surveillance-assigned control number, social security number, or other personal identifier, as dictated by the needs of the particular researcher.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Illness and Injury Prevention Programs, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at location where the work is performed. In accordance with the DOE Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures.

RECORD SOURCE CATEGORIES:

Subject individual and the individual's employer, including DOE and its predecessor agencies and their contractors and subcontractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

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