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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Doc. No. AMS–PY–09–0116]

Egg Research and Promotion Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures that the Agricultural Marketing Service (AMS) will use in conducting a referendum to determine whether egg producers favor increasing the assessment they pay to the American Egg Board (AEB) from a rate of 10 cents per 30-dozen case of commercial eggs to 15 cents per case. An amendment to increase the assessment rate in the Egg Research and Promotion Order (Order) will be implemented if it is approved by two-thirds of the egg producers voting in the referendum or by a majority of producers voting if they produced two-thirds of the eggs produced by all voters. These procedures will also be used for subsequent referenda. AEB, which administers the Order, recommended this action to sustain and expand its national promotion, research, and consumer information program.

DATES: *Effective Date:* September 13, 2010.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 3932–S, Stop 0256; Washington, DC 20250–0256; telephone: (202) 720–4476; fax (202) 720–2930; or e-mail: *angie.snyder@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Egg Research and Consumer Information Act (7 U.S.C. 2701–2718) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Section 14 of the Act allows those subject to the Order to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has considered the economic impact of this action on the small producers that will be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

According to AEB, approximately 245 producers are subject to the provisions of the Order, including paying assessments. Under the current Order, producers in the 48 contiguous United States and the District of Columbia who own more than 75,000 laying hens each pay a mandatory assessment of 10 cents per 30-dozen case of eggs. Assessments under the program are used by AEB to finance promotion, research, and consumer information programs designed to increase consumer demand for eggs in domestic and international markets. At the current rate of 10 cents per case, assessments generate about $20 million in annual revenues. The Order is administered by AEB under supervision of the U.S. Department of Agriculture (USDA).

In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as those having annual receipts of no more than $7 million. Under this definition, the vast majority of the egg producers that will be affected by this rule would not be considered small entities. Producers owning 75,000 or fewer laying hens are exempt from this program.

Given that a laying hen produces approximately 22 dozen eggs per year, production from 75,000 laying hens would result in 1.65 million dozen eggs. With a farmgate price of $0.837 per dozen, total annual receipts would be $1.38 million, which is well above the definition used to describe a small farm. The wholesale price of eggs would need to drop to approximately $0.45 per dozen before a producer with 75,000 hens could be classified as a small farm under the SBA definition.

This final rule establishes procedures under which egg producers vote on whether they favor an increase in the assessments they pay to AEB. This rule adds a new subpart and establishes procedures to conduct this referendum as well as future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

AMS will keep egg producers who are eligible to vote informed throughout the referendum process to ensure that they are aware of and are able to participate. AMS will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if egg producers choose to vote, the burden of voting is minimal. AMS considered electronic voting, but the use of computers is not universal. Conducting the referendum from one

central location by mail ballot would be more cost-effective and reliable.

In accordance with OMB regulation 5 CFR part 1320 that implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection requirements contained in this rule have been approved previously under OMB control number 0581–0093. This rule does not result in a change to those information collection and recordkeeping requirements.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Regulatory Flexibility Analysis regarding the impact of these referendum procedures on small entities, and we invited comments concerning potential effects of these amendments on small businesses. No comments were received.

Background

The Act established a national egg research and promotion program—administered by AEB—that is financed through industry assessments and subject to oversight by AMS. This program of promotion, research, and consumer information is designed to strengthen the position of eggs in the marketplace and to establish, maintain, and expand markets for eggs.

This program is financed by assessments on egg producers owning more than 75,000 laying hens. The Order specifies that handlers are responsible for collecting and remitting the producer assessments to AEB, reporting their handling of eggs, and maintaining records necessary to verify their reports.

Only producers in the contiguous United States and the District of Columbia are subject to the program, and producers owning 75,000 or fewer laying hens are eligible to obtain an exemption from paying assessments.

This final rule establishes procedures under which egg producers may vote on whether they want to increase the rate of assessments they pay to AEB from 10 cents to 15 cents per 30-dozen case of eggs. These procedures will also be used for any future referenda. A proposed rule and request for comments was published in the **Federal Register** on September 28, 2009 (74 FR 49342), with a 60-day comment period. No comments were received. A separate proposed rule to increase the assessment rate was published in the September 25, 2009, issue of the **Federal Register** (74 FR 48865).

This final rule adds a new subpart and establishes procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of the rule until 30 days after publication in the **Federal Register** in order to conduct a referendum on whether producers favor increasing the assessment rate as soon as possible.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

■ 1. The authority citation of Part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 2. Part 1250 is amended by adding a new subpart consisting of §§ 1250.200 through 1250.207 and titled "Referendum Procedures" to read as follows:

Subpart—Referendum Procedures

Sec.

1250.200 Referenda.
1250.201 Definitions.
1250.202 Voting.
1250.203 Instructions.
1250.204 Subagents.
1250.205 Ballots.
1250.206 Referendum report.
1250.207 Confidential information.

Subpart—Referendum Procedures

§ 1250.200 Referenda.

Referenda for the purpose of ascertaining whether the issuance by the Secretary of Agriculture of an Egg Research and Promotion Order, or the continuance, termination, or suspension of such an order, is approved or favored by producers shall, unless supplemented or modified by the Secretary, be conducted in accordance with this subpart.

§ 1250.201 Definitions.

(a) *Act* means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93–428, 7 U.S.C. 2701 et seq.).

(b) *Administrator* means the administrator of the Agricultural Marketing Service, with power to redelegate, or any other officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Egg producer or producer* means any person who either is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(d) *Order* means the order or any amendment thereto promulgated pursuant to the act with respect to which the Secretary has directed that a referendum be conducted.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(f) *Referendum agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(g) *Representative period* means the period designated by the Secretary pursuant to section 9 of the Act (7 U.S.C. 2708).

(h) *Secretary* means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may be hereafter delegated, the authority to act in the Secretary's stead.

§ 1250.202 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum, who was engaged in the production of commercial eggs during the representative period, and who is

not exempt from the provisions of the order as provided for in § 1250.348 thereof, shall be entitled to only one vote in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, or an administrator, executor, or trustee of a producing estate, or an authorized representative of any other entity may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the corporate producer, or an administrator, executor, or trustee of the producing estate, or an authorized representative of such other entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of his authority.

(c) Each producer shall be entitled to cast only one ballot in the referendum.

§ 1250.203 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots must be received by the referendum agent.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining whether the person voting or on whose behalf the vote is cast, is an eligible voter, and the total volume of commercial eggs produced during a representative period.

(d) Give reasonable advance notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate registration, ballot, and certification forms, and, except in the case of a referendum on the termination or continuance of an order, a summary of the terms and conditions of the order: Provided, that no person who claims to be qualified to vote shall be refused a ballot.

(f) If the ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each eligible producer whose name and address are known to the Secretary or the referendum agent.

(g) If the ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots listed are all of the ballots cast and received by the agent and appointees during the referendum period;

(2) A tabulation of all challenged ballots deemed to be invalid; and

(3) A report of the referendum including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 1250.204 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) See the ballots and the aforesaid texts are distributed to producers and receive any ballots which are cast; and

(d) Record the name and address of each person casting a ballot with said subagent and inquire, as deemed appropriate, into the eligibility of such persons to vote in the referendum.

§ 1250.205 Ballots.

The referendum agent and subagents shall accept all ballots cast; but should they, or any of them, deem that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, and the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 1250.206 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1250.207 Confidential information.

The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential. The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

Dated: September 3, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–22644 Filed 9–9–10; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2010–18]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is revising its rules as to the activities that constitute "Federal election activity" under the Federal Election Campaign Act of 1971, as amended. Specifically, these final rules modify the definitions of "voter registration activity" and "get-out-the-vote activity," in response to the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Shays* v. *FEC.*

DATES: These rules are effective on December 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Attorney Mr. David C. Adkins or Attorney Mr. Neven F. Stipanovic, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 [1] ("BCRA") contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act"). The Federal Election Commission ("Commission") is revising its regulations at 11 CFR 100.24 regarding "Federal election activity," including the definitions of the terms "voter registration activity" and "get-out-the-vote activity" ("GOTV activity"). The Court of Appeals for the District of Columbia Circuit found aspects of these rules invalid in *Shays* v. *Federal Election Commission,* 528 F.3d 914 (DC Cir. 2008) ("*Shays III*"). Accordingly, the Commission is revising its rules at 11 CFR 100.24 to comply with the *Shays III* decision.

Transmission of Final Rules to Congress

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least thirty calendar days before they take effect. The final rules that follow were transmitted to Congress on September 7, 2010.

Explanation and Justification

I. Background Information

A. BCRA

The Act, as amended by BCRA, and Commission regulations provide that a State, district, or local committee of a political party must pay for certain "Federal election activities" with either entirely Federal funds [2] or, in other instances, a mix of Federal funds and Levin funds.[3] *See* 2 U.S.C. 441i(b); 11 CFR 300.32. The Act identifies four types of activity that are subject to these funding restrictions, including "voter registration activity"—Type I Federal election activity—and GOTV activity—Type II Federal election activity. *See* 2 U.S.C. 431(20)(A)(i) and (ii), 441i(b); 11 CFR 100.24(a)(2) and (3).[4]

Application of BCRA's Federal election activity funding restrictions for Types I and II Federal election activity is conditioned upon the timing of the activity. Voter registration activity (Type I), for example, constitutes Federal election activity, and therefore is subject to BCRA's funding restrictions, only if it is conducted "120 days before the date a regularly scheduled Federal election is held." 2 U.S.C. 431(20)(A)(i). Similarly, voter identification, GOTV activity, and generic campaign activity are Federal election activity only if they are conducted "in connection with an election in which a candidate for Federal office appears on the ballot," a phrase that is defined in terms of a specific time window.[5] 2 U.S.C. 431(20)(A)(ii) and 11 CFR 100.24(a)(1).

In BCRA, Congress chose to restrict the funds which State, district, and local party committees could use for Federal election activity because it determined that these activities affect Federal elections. *See* 148 Cong. Rec. S2139 (daily ed. Mar. 20, 2002) (statement of Sen. McCain) (noting, for example, that "get-out-the-vote and voter registration drives * * * are designed to, and do have an unmistakable impact on both Federal and non-Federal elections").

Restrictions on the funding of Federal election activity by State, district, and local party committees are critical because they prevent evasion of BCRA's restrictions on the raising and spending of non-Federal funds by national party committees and Federal candidates and officeholders. *See* Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49064, 65 (July 29, 2002) ("2002 Final Rule"). Indeed, in passing BCRA's Federal election activity provisions, Congress had in mind "the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties, which then use those funds for Federal election activity." *See* 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (statement of Sen. McCain).

The Supreme Court upheld BCRA's Federal election activity provisions in *McConnell* v. *FEC,* 124 S. Ct. 619, 670–77 (2003). The Court found that non-Federal funds given to State, district, and local party committees could have the same corrupting influence as non-Federal funds given to the national parties and therefore held that BCRA's Federal election activity restrictions were justified by an important government interest. *Id.* at 672–73. The Court held that BCRA's Federal election activity provisions were likely necessary to prevent "corrupting activity from shifting wholesale to state committees and thereby eviscerating [the Act]." *Id.* at 673.

In reaching its decision, the Court noted that BCRA regulated only "those contributions to state and local parties that can be used to benefit Federal candidates directly" and therefore posed the greatest threat of corruption. *Id.* at 673–74. As such, the Court found BCRA's regulation of voter registration activities, which "directly assist the party's candidates for federal office," and GOTV activities, from which Federal candidates "reap substantial rewards," to be permissible methods of countering both corruption and the appearance of corruption. *Id.* at 674; *see also id.* at 675 (finding that voter registration activities and GOTV activities "confer substantial benefits on federal candidates" and "the funding of such activities creates a significant risk of actual and apparent corruption," which BCRA aims to minimize).

B. Rulemakings

Although BCRA defines Federal election activity to include "voter registration activity" and "GOTV activity," it does not specifically define those underlying terms. *See* 2 U.S.C. 431(20)(A)(ii)–(iii). Accordingly, the Commission promulgated definitions of these terms.

1. 2002 Rulemaking

The Commission first promulgated definitions of "voter registration activity" and "GOTV activity" on July 29, 2002. *See* 2002 Final Rule, 67 FR at 49067. The 2002 Final Rule defined "voter registration activity" as "contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote." *Id.* at 49110. The Explanation and

[1] Public Law 107–155, 116 Stat. 81 (2002).

[2] "Federal funds" are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g).

[3] "Levin funds" are funds raised and disbursed by State, district, or local party committees pursuant to certain restrictions. *See* 2 U.S.C. 441i(b); *see* also 11 CFR 300.2(i).

[4] In addition to GOTV activity, Type II Federal election activity also includes "voter identification" and "generic campaign activity." *See* 2 U.S.C. 431(20)(A)(ii); 11 CFR 100.24 and 100.25. Types III and IV Federal election activity are outside the scope of this rulemaking and are not discussed. They pertain to public communications that refer to a clearly identified Federal candidate and promote, support, attack or oppose a candidate for Federal office (Type III) and services provided by an employee of a State, district, or local committee of a political party who spends more than 25 percent of his or her compensated time on activities in connection with a Federal election (Type IV). Types I and II Federal election activity may be funded with a combination of Federal and Levin funds; Types III and IV Federal election activity must be funded entirely with Federal funds.

[5] Commission regulations define "in connection with an election in which a candidate for Federal office appears on the ballot" at 11 CFR 100.24(a)(1).

Justification ("E&J") accompanying the rule noted that the definition was limited to "individualized contact for the specific purpose of assisting individuals with the process of registering to vote." *Id.* at 49067. The Commission expressly rejected an approach whereby mere encouragement to register to vote would have constituted voter registration activity. The Commission was concerned that taking such an approach would result in "thousands of political committees and grassroots organizations that merely encouraged voting as a civic duty, who have never been subject to Federal regulation for such conduct, [being] swept into the extensive reporting and filing requirements mandated under Federal law." *Id.*

The Commission similarly defined "GOTV activity" in 2002 as "contacting registered voters by telephone, in person, or by other individualized means to assist them in engaging in the act of voting." *Id.* at 49111. In adopting this construction, the Commission sought to distinguish GOTV activity from "ordinary or usual campaigning," to avoid "federaliz[ing] a vast percentage" of the campaign activity that a State, district, or local party committee may conduct on behalf of its candidates. *Id.* at 49067. The Commission's definition focused on actions directed toward registered voters that had the particular purpose of "assisting registered voters to take any and all steps to get to the polls and cast their ballots, or to vote by absentee ballot or other means provided by law." *Id.* The definition was not intended to cover activity aimed at "generally increasing public support for a candidate or decreasing public support for an opposing candidate." *Id.*

The Commission's 2002 definition of GOTV activity also expressly excluded "any communication by an association or similar group of candidates for State and local office or of individuals holding State or local office if such communication refers only to one or more [S]tate or local candidates," in order to keep "State and local candidates' grassroots and local political activity a question of State, not Federal, law." *Id.* The Commission declined to read BCRA as extending "to purely State and local activity by State and local candidates" and concluded that such "a vast federalization of State and local activity" required "greater direction from Congress." *Id.*

The Commission's 2002 definitions of voter registration activity and GOTV activity were challenged in *Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004) ("*Shays I*"). The district court held that the definition of "voter registration activity," which required actual assistance, was neither inconsistent with congressional intent nor an impermissible construction of BCRA. *See Shays I,* 337 F. Supp. 2d at 100 (applying *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984)). The court further held that the "exact parameters" of the regulatory definition were unclear and, therefore, it was unable to determine if the definition "unduly compromised" BCRA's purpose. *Id.* Nevertheless, the court found that the Commission's definition was promulgated without adequate notice and opportunity for comment, contrary to the Administrative Procedure Act, *see* 5 U.S.C. 553, and remanded the regulation to the Commission. *See Shays I,* 337 F. Supp. 2d at 100.

The court reached similar conclusions as to the definition of "GOTV activity," holding that the definition, which required actual assistance, was neither inconsistent with congressional intent nor an impermissible construction of BCRA. *Id.* at 103, 105 (applying *Chevron*). The court also concluded that there was "ambiguity as to what acts are encompassed by the regulation," which rendered the court unable to determine whether the definition of "GOTV activity" unduly compromised BCRA. *Id.* at 105. As it had with the definition of "voter registration activity," though, the court found that the Commission's definition was promulgated without adequate notice and opportunity for comment and remanded the regulation to the Commission. *See id.* at 106.

The court also found that the exemption from the GOTV activity definition for communications made by associations or groups of State or local candidates or officeholders ran contrary to Congress's clearly expressed intent. *See id.* at 104. The court found that BCRA provided no support for such an exemption, and it rejected all federalism concerns raised by the Commission in defense of the exemption, holding that "Congress was sensitive to federalism concerns in drafting BCRA" and that the Supreme Court in *McConnell* had rejected the general federalism challenge brought against BCRA's Federal election activity provisions. *Id.*

2. 2005 Rulemaking

The Commission commenced a rulemaking in 2005 to address the court's concerns, rather than appeal these aspects of *Shays I.* Following another notice and period for comment, the Commission promulgated definitions of "voter registration activity" and "GOTV activity" that were substantially similar to those promulgated in 2002. The final rules were accompanied by an E&J that sought to address many of the *Shays I* court's concerns. *See* Final Rules on Definition of Federal Election Activity, 71 FR 8926, 8928 (Feb. 22, 2006) ("2006 Final Rule").

The Commission's decision to leave unchanged the core aspects of the definitions of "voter registration activity" and "GOTV activity" was based on its continued concern that definitions which captured "mere encouragement[s]" would be "overly broad," were unnecessary "to effectively implement BCRA," and "could have an adverse impact on grassroots political activity." [6] Accordingly, the 2006 definitions were designed to encompass activities that actually registered persons to vote and resulted in voters going to the polls. *Id.* at 8928–29. Thus, the Commission sought to "regulate the funds used to influence Federal elections" and not "incidental speech." *Id.*

The Commission noted in its 2006 E&J that its regulations would not lead to the circumvention of the Act precisely because they captured "the use of non-Federal funds for disbursements that State, district, and local parties make for those activities that actually register individuals to vote." *Id.* Moreover, "many programs for widespread encouragement of voter registration to influence Federal elections would be captured as public communications under Type III [Federal election activity]." *Id.* The 2006 E&J also provided a nonexclusive list of examples of activity that would—and would not—constitute voter registration activity. *Id.*

C. Shays III

The revised definitions of voter registration activity and GOTV activity were challenged again in *Shays* v. *FEC,* 508 F. Supp. 2d. 10, 63–70 (D.D.C. 2007). Analyzing the definitions of "voter registration activity" and "GOTV activity," the district court noted that the Commission's 2006 E&J addressed only the most obvious instances of what was—and was not—covered activity but not the "vast gray area" of activities that State and local parties may conduct and that may benefit Federal candidates.

[6] The Commission did change other aspects of the GOTV activity definition in response to the *Shays I* court decision. The Commission removed from the definition of "GOTV activity" the exemption for communications by associations and groups of State or local candidates or officeholders. *See* 2006 Final Rule, 71 FR at 8931. The Commission also removed from the examples of GOTV activity the phrase "within 72-hours of an election," to clarify that the definition covered activity conducted more than 72 hours before an election. *See id.* at 8930–31.

Shays v. *FEC,* 508 F. Supp. 2d at 65, 69–70.

Regarding GOTV activities, in particular, the district court focused on Advisory Opinion 2006–19, issued to the Los Angeles County Democratic Party Central Committee, in which the Commission concluded that a local party committee's mass mailing and pre-recorded, electronically dialed telephone calls ("robocalls") to the party's registered voters would not constitute GOTV activity.[7] The district court stated that Advisory Opinion 2006–19 had announced a much narrower interpretation of the scope of GOTV activity than "might otherwise [have been] presumed on the face of the definition." *Id.* at 69.

The district court held that the Commission's failure to address these vast gray areas, and to explain whether activities falling within them would affect Federal elections, unduly compromised BCRA's purposes. *Id.* at 65–66, 69–70. Accordingly, the court remanded the definitions to the Commission. *Id.* at 70–71.

The Court of Appeals upheld the lower court's decision invalidating the Commission's definitions of "voter registration activity" and "GOTV activity," although on slightly different grounds. *See Shays* v. *FEC,* 528 F.3d 914, 931 (DC Cir. 2008). The Court of Appeals recognized that the Commission had discretion to promulgate definitions that left unaddressed large gray areas of activity and to fill them in later through enforcement actions and the advisory opinion process. *See Shays III,* 528 F.3d at 931.

Nevertheless, the Court of Appeals held that the Commission's definitions of "voter registration activity" and "GOTV activity" were deficient because they served to "create 'two distinct loopholes.' " *Id.* The flaws in both definitions were: (1) The "assist" requirements, which excluded efforts that "actively encourage people to vote or register to vote" and (2) the "individualized means" requirements, which excluded "mass communications targeted to many people," and had the effect of "dramatically narrowing which activities [were] covered" by the rules. *Id.* Accordingly, the Court of Appeals concluded that the definitions would "allow the use of soft money for many efforts that influence federal elections," which is directly counter to BCRA's purpose. *Id.*

The court rejected the Commission's justifications for the definitions—to exclude mere exhortations from coverage and to give clear guidance as to the scope of the rules—finding the Commission could craft definitions that exclude routine exhortations and that provided clear guidance to State, district, and local party committees in a way that is more consistent with BCRA. *Id.* at 932. Accordingly, the Court of Appeals remanded the regulations to the Commission.

In response to the court of appeal's decision, the Commission published a Notice of Proposed Rulemaking on October 20, 2009. *See* Notice of Proposed Rulemaking on the Definition of Federal Election Activity, 74 FR 53674 (Oct. 20, 2009) ("NPRM"). The NPRM proposed possible modifications to the definitions of "voter registration activity" and "GOTV activity," as well as a modification to the "exceptions" paragraph of the definition of "Federal election activity." The public comment period for the NPRM closed on November 20, 2009. The Commission received written comments from 14 commenters, including a comment from the Internal Revenue Service indicating that the proposed rules did not appear to present a conflict with the Internal Revenue Code or the regulations thereunder. The Commission held a public hearing on December 16, 2009, at which seven witnesses testified. After the hearing, the Commission accepted four supplemental comments expanding on issues raised during the hearing. All comments and a public transcript of the hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml#FEAShays3.* For purposes of this document, the terms "comment" and "commenter" apply to both written comments and oral testimony at the public hearing.

These final rules define "voter registration activity" and "GOTV activity" for purposes of the Commission's Federal election activity regulations. These new definitions cover activities that urge, encourage, or assist potential voters to register to vote or to vote, regardless of whether the message is delivered individually or to a group of people via mass communication. Brief, incidental exhortations to register to vote or to vote are, however, exempt from the new definitions. Activities meeting these definitions must be paid for with Federal funds or with a mix of Federal and Levin funds, as appropriate. In addition, these final rules clarify that GOTV activity and voter identification conducted solely in connection with a non-Federal election are not subject to the Commission's Federal election activity funding restrictions, and provide that certain *de minimis* activities are not subject to the Federal election activity funding restrictions.

II. Final Rules

A. 11 CFR 100.24(a)(2)—Definition of "Voter Registration Activity"

To comply with the Court of Appeals' decision in *Shays III,* the Commission is revising the definition of "voter registration activity" at 11 CFR 100.24(a)(2). The Commission's new definition covers activities that assist, encourage, or urge potential voters to register to vote. The definition continues to cover contacting potential voters by individualized means but, as revised, it now also covers contacts directed to potential voters by any means to urge or encourage them to register to vote. As explained further below, the new definition excludes brief, incidental exhortations to register to vote, consistent with the court's decision.

1. 11 CFR 100.24(a)(2)(i)—Covered Activities

New paragraph (a)(2)(i) of 11 CFR 100.24 lists the activities that constitute voter registration activity. The new definition identifies the following activities as voter registration activity:

- Encouraging or urging potential voters to register to vote by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks, and messaging such as SMS and MMS), or by any other means (11 CFR 100.24(a)(2)(i)(A));
- Preparing and distributing information about registration and voting (11 CFR 100.24(a)(2)(i)(B));
- Distributing voter registration forms or instructions to potential voters (11 CFR 100.24(a)(2)(i)(C));
- Answering questions about how to complete or file a voter registration form (11 CFR 100.24(a)(2)(i)(D));
- Assisting potential voters in completing voter registration forms (11 CFR 100.24(a)(2)(i)(D));
- Submitting or delivering completed voter registration forms (11 CFR 100.24(a)(2)(i)(E));
- Offering or arranging to transport, or actually transporting, potential voters to a board of elections or county clerk's office for them to fill out voter

[7] The proposed communications would have been made four or more days before the election, would have informed recipients of the date of the election, would have urged them to vote for local, but not Federal, candidates, and would not have included additional information such as the hours and location of the individual voter's polling place. The Commission concluded that the communications would provide neither actual assistance nor sufficiently individualized assistance to constitute GOTV activity and that, as a result, the communications could be funded exclusively with non-Federal funds.

registration forms (11 CFR 100.24(a)(2)(i)(F)); and

- Any other activity that assists potential voters to register to vote (11 CFR 100.24(a)(2)(i)(G)).

Accordingly, the revised definition of "voter registration activity" covers the following examples: (1) Sending a mass mailing of voter registration forms; and (2) submitting completed voter registration forms to the appropriate State or local office handling voter registration.

The Commission received multiple comments on its proposal to expand the definition of voter registration activity to include encouraging potential voters to register to vote. Almost all the commenters agreed that expanding the definition in this manner would be responsive to the *Shays III* court. Commenters offered a range of opinions, though, on whether this expansion was *required* by the court's decision or if there was a narrower approach that might satisfy the court.

Two commenters stated that the Commission could not do "anything short of including encourage[ment]" in the definition and "still satisfy the concerns of the circuit court." In contrast, others that commented on this issue argued that a definition of voter registration activity that included activities that only encourage people to register to vote (regardless of the means) was unnecessary. Some commenters asserted that such a definition would subject to regulation all of the activities of State and local party committees, contrary to the intent of Congress.

Instead, the majority of commenters advocated for a narrower definition that would not apply to activities that, in their opinion, are not appropriately characterized as voter registration activity. Commenters suggested definitions covering only activities that *actively* encourage voter registration (which would be informed by a time/space analysis), that were *primarily aimed* at increasing voter registration, or that *facilitate* voter registration. Another commenter proposed a definition that would cover only activities understood by a "reasonable person engaged in political campaign management" to be voter registration activity. Multiple commenters wanted the Commission to adopt a definition of voter registration activity that would exclude "persuasion communications," which commenters characterized as communications that are intended to secure a vote for a specific candidate but that are not effective at mobilizing potential voters to register to vote.

If any of these narrower approaches proved under-inclusive, one commenter suggested that the Commission could subsequently amend its regulations. This approach, according to the commenter, was preferable to adopting a broad definition at the outset covering all activities that encourage potential voters to register to vote.

The Commission also received comments addressing its proposal to expand the definition of voter registration activity to include communications made by "any other means" that urge or encourage potential voters to register to vote. Two commenters thought that the court's decision did not require the Commission to adopt a definition covering all mass communications, and that the definition could simply be amended to cover certain specific activities, including phone banks and direct mail. Another commenter argued that the Commission should exempt from the definition of voter registration activity all Internet communications, stating that such communications are made at "virtually no cost." By contrast, one commenter asserted that the definition's "any other means" standard was not "inclusive enough" and that the definition should list "the multiple methods of electronic communication used today."

As discussed above, the *Shays III* court identified "two distinct loopholes" in the Commission's prior definitions of voter registration activity. *See Shays III,* 528 F.3d at 931–32. The court determined that these "two distinct loopholes"—which required that voter registration activity "assist" voters in registering to vote and that contacts with potential voters be "individualized"—conflicted with BCRA's purpose. *Id.* at 932. Moreover, the *Shays III* court suggested that the Commission's regulations should reach both efforts that "*encourage* people to vote or to register to vote" as well as "mass communications" that are directed to a significant number of people. *Id.* at 931. The Commission concludes that the definition of voter registration activity adopted in this rulemaking best addresses the court's concerns.

For these reasons, the Commission has decided not to adopt any of the other proposals suggested by the commenters. Whatever the individual merits of these proposals, in the current rulemaking the Commission is charged with adopting a definition of voter registration activity that addresses the "two distinct loopholes" identified by the *Shays III* court. Furthermore, many of the alternative proposals suggested by the commenters will not provide clear guidance to State and local party committees and could prove difficult for the Commission to administer and enforce.

The Commission has reorganized the definition of voter registration activity in section 100.24 in light of comments received. Whereas the proposed rule would have set forth a general definition of "voter registration activity" with a non-exhaustive list of examples, the new rule defines "voter registration activity" by providing a comprehensive list of covered activities. Notwithstanding this change in form, the new definition covers the same universe of activities as the definition proposed in the NPRM.

This change is responsive to commenters who indicated that the structure of the proposed definition was "confusing" and unhelpful. The Commission has concluded that the new definition, which lists both specific and general activities, provides clear and effective guidance while capturing those activities that Congress and the courts identified as being "voter registration activity."

2. 11 CFR 100.24(a)(2)(ii)—Brief, Incidental Exhortations

New paragraph (a)(2)(ii) of 11 CFR 100.24 states that an activity is not "voter registration activity" solely because it includes a brief exhortation to register to vote, so long as the exhortation is incidental to a communication, activity, or event. This exception from the definition of "voter registration activity" ensures that activities that are *not* otherwise voter registration activity do not become voter registration activity simply because they include a brief, incidental reminder to register to vote.

To qualify for the exception, the exhortation to register to vote must be both brief *and* incidental. Exhortations to register to vote that go on for many minutes of a speech, for example, or that occupy a large amount of space in a mailer are not brief and will not qualify for the exception. Similarly, exhortations, however brief, must also be incidental to the communication, activity or event. For example, a one-line exhortation to "Register to vote!" appearing at the end of a campaign flier would be incidental to the larger communication, whereas a communication stating only "Register to Vote by October 1st!" and containing no other text would not be incidental and, thus, would not come within the exception from the definition of "voter registration activity."

The exception applies to brief, incidental exhortations regardless of the forum or medium in which they are

made. The exception covers an exhortation offered in a speech at a rally, for example, as well as one appearing in an e-mail.

Two examples of activities that would be covered under the exception appear at new paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of 11 CFR 100.24. The first example is a mailer praising the public service record of a mayoral candidate and/or discussing the candidate's campaign platform. The mailer concludes by reminding recipients: "Don't forget to register to vote for [the mayoral candidate] by October 1st." The second example involves a phone call for a State party committee fundraising event. The call provides recipients with information about the event, solicits donations, and concludes by reminding the listener: "Don't forget to register to vote."

The new exception at 11 CFR 100.24(a)(2)(ii) differs in certain respects from the one proposed in the NPRM. The proposed exception would have applied only to incidental exhortations made during speeches or events, whereas the exception in the final rule applies to brief, incidental exhortations made in any communication or during any activity or event. Moreover, the proposed exception did not explicitly require that the exhortation be brief, although a brevity requirement was implicit in the proposal. Finally, the proposed exception included four examples of exhortations that would have qualified for the exception. The new exception includes only two examples, but they are more detailed than in the NPRM and, thus, provide better guidance regarding the intended application of the exception.

Several of the comments received on the exhortation exception were simply an extension of the comments on the scope and organization of the proposed definition of "voter registration activity" itself. One commenter, for example, indicated that the exception did not sufficiently narrow the definition of "voter registration activity" and would not appropriately protect "persuasion communications." Another commenter urged the Commission not to adopt the exhortation exception and, instead, simply to define voter registration activity as covering only activities that facilitate voter registration.

Other comments focused on the scope of the proposed exception. Specifically, commenters addressed whether the exception should be limited, as it was in the NPRM, to exhortations made during speeches and events, or whether it should also cover exhortations made in other contexts. Two commenters supported adopting the proposed exception, pointing out that the court's opinion specifically referenced only "routine or spontaneous speech-ending exhortations." Several commenters, though, believed that there was no reason to limit the exception by the medium in which the communication was delivered or the forum in which it was made. One of these commenters stated that "[n]othing in the court's decisions [could] reasonably be read to mean that exhortations are to be excluded only if made in a speech or at a rally but not if made by other means of communications." Another commenter pointed out that limiting the exception in this way would render it functionally meaningless, because parties rarely rely on speakers at rallies to encourage people to register to vote.

Two commenters discussed the proposed requirement in the NPRM that, to qualify for the exception, an exhortation be incidental to a speech or event. One commenter suggested that the Commission determine whether an exhortation is, in fact, incidental by engaging in a time/space analysis. Another commenter urged that the exhortation exception be further limited to only spontaneous communications and not cover communications that are scripted.

The Commission has considered the comments and has decided to adopt a somewhat broader exception than initially proposed. While the *Shays III* court required the Commission to adopt a more expansive definition of "voter registration activity," the court acknowledged that the Commission could exclude from the definition "routine or spontaneous speech-ending exhortations" and "mere exhortations * * * made at the end of a political event or speech." *Shays III,* 528 F.3d at 932.

The Commission agrees with those commenters who indicated that the exception should not be limited by medium or forum. To limit the exemption to exhortations made only at speeches or rallies would elevate form over substance and is not necessary to give effect to the court's opinion. The court did not require the Commission to create artificial distinctions between an incidental exhortation during a speech or rally and an incidental exhortation made in a written communication or telephone call conveying the same message.

This exception will not inoculate speeches or events that otherwise would meet the new definition of "voter registration activity." For example, a speech given sixty days before an election that devotes several minutes to providing listeners with information on how to register to vote would not qualify under the exception at new 11 CFR 100.24(a)(2)(ii). Instead, the exception is intended to ensure that communications that would not otherwise be voter registration activity do not become voter registration activity merely because they include a brief, incidental exhortation encouraging listeners to register to vote.

B. 11 CFR 100.24(a)(3)—Definition of "GOTV Activity"

To comply with the Court of Appeals' decision in *Shays III,* the Commission is revising the definition of "GOTV activity" at 11 CFR 100.24(a)(3). The Commission's revised definition covers activities that assist, encourage, or urge potential voters to vote. The definition continues to cover contacting potential voters by individualized means but, as revised, it now also covers contacting potential voters by any means to urge or encourage them to vote. As explained further below, the new definition excludes brief, incidental exhortations to vote, consistent with the court's decision.

1. 11 CFR 100.24(a)(3)(i)—Covered Activities

Revised paragraph (a)(3)(i) of 11 CFR 100.24 lists the activities that are GOTV activity. The revised definition identifies the following activities as GOTV activity:

- Encouraging or urging potential voters to vote (11 CFR 100.24(a)(3)(i)(A));
- Informing potential voters about times when polling places are open (11 CFR 100.24(a)(3)(i)(B)(1)), the location of polling places (11 CFR 100.24(a)(3)(i)(B)(2)), or early voting or voting by absentee ballot (11 CFR 100.24(a)(3)(i)(B)(3);
- Offering or arranging to transport voters to the polls, as well as actually transporting voters to the polls, is also GOTV activity (11 CFR 100.24(a)(3)(i)(C)); and
- All activities that assist potential voters to vote are GOTV activity (11 CFR 100.24(a)(3)(i)(D)).

These activities fall within the definition regardless of the means by which information is conveyed.

Accordingly, the revised definition of "GOTV activity" would cover the following examples: (1) Driving a sound truck through a neighborhood that plays a message urging listeners to "Vote next Tuesday at the Main Street community center"; and (2) making telephone calls (including robocalls) reminding the recipient of the times during which the polls are open on election day.

The Commission received multiple comments on its proposal to expand the definition of GOTV activity to include encouraging potential voters to vote. Many of those comments addressed together the proposed expansions of the definitions of "voter registration activity" and "GOTV activity." Those comments were discussed and addressed in the preceding section and are only briefly mentioned here. Other comments, though, focused on the proposed expansion of the definition of "GOTV activity" and are discussed below.

Almost all the commenters agreed that revising the definition of "GOTV activity" to include encouraging and urging potential voters to vote would be responsive to the *Shays III* court. Commenters offered a range of opinions, though, on whether this expansion was *required* by the court's decision or if there was a narrower approach that might satisfy the court.

Two commenters asserted that the Commission could not do "anything short of including encourage[ment]" in the definition and "still satisfy the concerns of the circuit court." Others that commented on this issue, by contrast, believed that a definition of "GOTV activity" that included activities that only encouraged people to vote (regardless of the means) is unnecessary. Some commenters were concerned that such a definition would subject to regulation all of the activities of State and local party committees, contrary to the intent of Congress.

Several commenters were particularly concerned that the proposed definition of "GOTV activity" would cover all candidate advocacy conducted by State, district, and local party committees, including advocacy focused solely on State and local candidates that makes no mention of a Federal candidate. As with the definition of "voter registration activity," commenters proposed narrowing the definition of "GOTV activity" to cover only activities that *actively encourage* or *facilitate* voting or that are *primarily aimed* at increasing voter turnout. Another commenter proposed a definition that would cover only activities understood by a "reasonable person engaged in political campaign management" to be "GOTV activity."

Some commenters also offered more specific suggestions regarding the definition of "GOTV activity." One commenter proposed defining "GOTV activity" as "activities directed toward encouraging voters who are identified as likely to support specific candidates to cast votes in an election in which federal candidates are on the ballot." Several commenters stressed the need to adopt a definition of "GOTV activity" that would exclude "persuasion communications," which the commenters characterized as communications that are intended to secure a vote for a specific candidate but that are not effective at mobilizing potential voters to vote.

In the event that any of these narrower approaches proved under-inclusive, one commenter suggested that the Commission could subsequently amend its regulations. This approach, according to the commenter, was preferable to adopting a broad definition at the outset covering all activities that encourage potential voters to vote.

The Commission also received comments addressing its proposal to revise the definition of "GOTV activity" to include communications urging or encouraging potential voters to vote made by "any other means." Two commenters thought that the court's decision did not require the Commission to adopt a definition covering all mass communications, and that the definition could simply be amended to cover certain specific activities, including phone banks and direct mail.

Another commenter thought that the Commission should exempt from the definition of "GOTV activity" all Internet communications, because such communications are made at "virtually no cost." In contrast, a different commenter thought that the definition's "any other means" standard was not "inclusive enough" and that the definition should list "the multiple methods of electronic communication used today."

As discussed above, the *Shays III* court identified "two distinct loopholes" in the Commission's prior definitions of GOTV activity. *See Shays III,* 528 F.3d at 931–32. The court determined that these "loopholes"—which required that GOTV activity "assist" voters in voting and that contacts with potential voters be "individualized"—conflicted with BCRA's purpose. *Id.* at 932. Moreover, the *Shays III* court suggested that the Commission's regulations should reach both efforts that "*encourage* people to vote or to register to vote" as well as "mass communications" that are directed to a significant number of people. *Id.* at 931. The Commission concludes that the definition of "GOTV activity" adopted in this rulemaking best addresses the court's concerns.

For these reasons, the Commission has decided not to adopt any of the other proposals suggested by the commenters. Whatever the individual merits of these proposals, in the current rulemaking the Commission is charged with adopting a definition of GOTV activity that addresses the "two distinct loopholes" identified by the *Shays III* court. Furthermore, many of the alternative proposals suggested by the commenters would prove difficult for the Commission to administer and enforce. Introducing qualifiers into the definition of "GOTV activity"—like "targeting," "active encouragement," or "primarily aimed"—may theoretically narrow the definition, but would require the Commission to make searching (and potentially burdensome) inquiries into the mechanics, decision-making, and intentions of State, district, and local party committees and associations of State or local candidates in order to enforce the law. In addition, such a vague definition would not provide clear guidance to State, district, and local party committees and associations of State or local candidates.

The Commission has reorganized the definition of "GOTV activity" in section 100.24 in light of comments received. Whereas the proposed rule would have set forth a general definition of "GOTV activity" with a non-exhaustive list of examples, the new rule defines "GOTV activity" by providing a comprehensive list of covered activities. Notwithstanding this change in form, the new definition covers the same universe of activities as the definition proposed in the NPRM.

This organizational change is responsive to commenters who indicated that the structure of the proposed definition was "confusing" and unhelpful. The Commission has decided that the revised definition, which lists both specific and general activities, provides clear and effective guidance while capturing those activities that Congress and the courts identified as being GOTV activity.

2. 11 CFR 100.24(a)(3)(ii)—Brief, Incidental Exhortations

New paragraph (a)(3)(ii) of 11 CFR 100.24 states that an activity is not GOTV activity solely because it includes a brief exhortation to register to vote, so long as the exhortation is incidental to a communication, activity, or event. Like the exception to the definition of "voter registration activity," this exception to the definition of "GOTV activity" ensures that activities that are *not* otherwise GOTV activity do not become GOTV activity simply because they include a brief, incidental reminder to vote.

The exception operates identically to the exhortation exception to the definition of "voter registration activity." To qualify for the exception, the

exhortation to vote must be both brief *and* incidental. Exhortations to vote that consume many minutes of a speech, for example, or that occupy a large amount of space in a mailer are not brief and will not qualify for the exception. Similarly, exhortations, however brief, must also be incidental to a communication, activity, or event. For example, a one-word reminder to "Vote!" appearing at the end of a mailer would be incidental to the larger communication, whereas a message in a mailer that stated only "Vote on Election Day!" or "Vote for Smith next Tuesday!" and contained no other text would not be incidental and, thus, would not be exempted from the definition of GOTV activity.

The exception applies to brief, incidental exhortations regardless of the forum or medium in which they are made. The exception covers an exhortation made at the end of a speech at a rally, for example, as well as one appearing at the end of an e-mail.

Two examples of activities that would be covered under the exception appear at new paragraphs (a)(3)(ii)(A) and (a)(3)(ii)(B) of 11 CFR 100.24. The first example is a mailer praising the public service record of a mayoral candidate and/or discussing the candidate's campaign platform. The mailer concludes by reminding recipients: "Vote [for the mayoral candidate] on November 4th." The second example involves a phone call for a State party committee fundraising event. The call provides recipients with information about the event, solicits donations, and concludes by reminding the listener: "Don't forget to vote on November 4th."

The new exception at 11 CFR 100.24(a)(3)(ii) differs in certain respects from the one proposed in the NPRM. The proposed exception would have applied only to incidental exhortations made during speeches or events, whereas the exception in the final rule applies to brief, incidental exhortations made in any communication or during any activity or event. Moreover, the proposed exception did not explicitly require that the exhortation be brief, although a brevity requirement was implicit in the proposal. Finally, the proposed exception included four examples of exhortations that would have qualified for the exception. The new exception includes only two examples, but they are more detailed than in the NPRM and, thus, provide better guidance regarding the intended application of the exception.

Several of the comments received on the exhortation exception were simply an extension of the comments on the scope and organization of the proposed definition of GOTV activity itself. One commenter, for example, indicated that the exception did not sufficiently narrow the definition of "GOTV activity" and would not appropriately protect "persuasion communications" that are "devoted to convincing a voter to vote for a particular candidate or party." Another commenter urged the Commission not to adopt the exhortation exception and, instead, simply define GOTV activity as covering only activities that facilitate voting. A different commenter suggested that the line between exhortation and encouragement existed where the communication or activity specifically urged a potential voter to vote. In the opinion of this commenter, a sign saying "Vote for Smith" would be an exhortation to vote, while a sign saying "Go Vote for Smith" would encourage voting and thus constitute GOTV activity.

Other comments focused on the scope of the proposed exception. Specifically, commenters addressed whether the exception should be limited, as it was in the NPRM, to exhortations made during speeches and events, or whether it should also cover exhortations made in other contexts. Two commenters supported adopting the proposed exception, pointing out that the court's opinion specifically referenced only "routine or spontaneous speech-ending exhortations." Several commenters, though, believed that there was no reason to limit the exception by the medium in which the communication was delivered or the forum in which it was made. One of these commenters stated that "[n]othing in the court's decisions [could] reasonably be read to mean that exhortations are to be excluded only if made in a speech or at a rally but not if made by other means of communications."

Two commenters addressed the proposed requirement in the NPRM that, to qualify for the exception, an exhortation be incidental to a speech or event. One commenter suggested that the Commission determine whether an exhortation is, in fact, incidental by engaging in a time/space analysis. Another commenter suggested that the exhortation exception be further limited to only spontaneous communications and not cover communications that are scripted.

The Commission has considered the comments and has decided to adopt a somewhat more expansive exception than initially proposed. While the *Shays III* court required the Commission to adopt a more expansive definition of GOTV, the court acknowledged that the Commission could exclude from the definition "routine or spontaneous speech-ending exhortations" and "mere exhortations * * * made at the end of a political event or speech." *Shays III,* 528 F.3d at 932.

The Commission agrees with those commenters who indicated that the exception should not be limited by medium or forum. To limit the exception to exhortations made only at speeches or rallies would elevate form over substance and is not necessary to give effect to the court's opinion. The court did not require the Commission to create artificial distinctions between an incidental exhortation during a speech or rally and an incidental exhortation made in a written communication or telephone call conveying the same message.

This exemption will not inoculate speeches or events that otherwise would meet the definition of "GOTV activity." For example, a speech given within the covered Federal election activity period that devotes several minutes to providing listeners with information on how and where to vote would not qualify under the exception at new 11 CFR 100.24(a)(3)(ii). Instead, the exception is intended to ensure that communications that would not otherwise be GOTV activity do not become GOTV activity merely because they include a brief, incidental exhortation to vote.

C. 11 CFR 100.24(c)(5) and (c)(6)—Voter Identification and GOTV Activity Solely in Connection With a Non-Federal Election

The new provisions at 11 CFR 100.24(c)(5) and (c)(6) restructure the combined provision proposed in the NPRM by addressing voter identification and GOTV activity in two separate provisions. New paragraph (c)(5) of 11 CFR 100.24 provides that certain voter identification that is conducted solely in connection with a non-Federal election that is held on a date within the Type II Federal election activity time periods, but on which no Federal election is held, and which is not used in a subsequent election in which a Federal candidate is on the ballot, is not subject to BCRA's Federal election activity funding restrictions.

New paragraph (c)(6) of 11 CFR 100.24 provides that certain GOTV activity that is conducted solely in connection with a non-Federal election that is held on a date within the Type II Federal election activity time periods, but on which no Federal election is held, is not subject to BCRA's Federal election activity funding restrictions, provided that any *communications made as part of such activity refer*

exclusively to: (1) Non-Federal candidates participating in the non-Federal election, if the non-Federal candidates are not also Federal candidates, (2) ballot referenda or initiatives scheduled for the date of the non-Federal election, or (3) the date, polling hours, and locations of the non-Federal election.

The Commission received several comments on the provision as proposed in the NPRM. Five commenters supported the provision, saying that it struck the proper balance and characterized it as "sensible." One commenter believed it was proper to exclude such activities from the Federal election activity funding restrictions because they do not directly benefit Federal candidates, which was the focus of the *McConnell* court in analyzing BCRA.

Many of these commenters also indicated that the proximity of an exclusively non-Federal election to a subsequent Federal election should have no bearing on the application of the provision. One commenter said that the proximity of the two types of elections was irrelevant because they involve different variables; the issues that inform voter identification and motivate voters in non-Federal elections are very different from those that inform and motivate in a Federal election. Accordingly, according to these commenters, voter identification and GOTV activity conducted for a non-Federal election is of little use in a subsequent Federal election.

In contrast, two commenters objected to the provision on the basis that it would allow activity that affected Federal elections to be funded with non-Federal funds contrary to BCRA's intent. According to these commenters, all voter identification and GOTV activity confer benefits on Federal candidates and, as such, these activities must be regulated to avoid the risk of actual or apparent corruption.

BCRA requires State, district, and local political party committees and organizations to finance Federal election activity with Federal funds, or, in some instances, with an allocated mix of Federal funds and Levin funds. 2 U.S.C. 441i(b); 11 CFR 300.33. One of the principal sponsors of BCRA described its Federal election activity provisions as a "balanced approach which addresses the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties," while "not attempt[ing] to regulate State and local party spending where this danger is not present, and where State and local parties engage in purely non-Federal activities." 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (Statement of Sen. McCain).

BCRA does not require the Commission to regulate voter identification or GOTV activities by State, district, and local political party groups that are exclusively in connection with non-Federal elections. Many communities hold entirely non-Federal elections on dates that are separate from any election in which a Federal candidate appears on the ballot, but that nevertheless fall within the Type II Federal election activity time periods. *See, e.g. http://www.usmayors.org/elections/electioncitiesfall2010.pdf* (listing mayoral elections held in 2010) (last visited July 28, 2010). The Commission, therefore, is adopting exceptions in the final rule to distinguish better between voter identification and GOTV activities that are Federal election activity, and those activities that are not Federal election activity because they do not affect elections in which Federal candidates appear on the ballot.

D. 11 CFR 100.24(c)(7)—Activities Involving De Minimis Costs

New paragraph (c)(7) of 11 CFR 100.24 provides that *de minimis* costs associated with the following enumerated activities are not subject to the Federal election activity funding restrictions: (1) On the Web site of a party committee or association of State or local candidates, posting a hyperlink to a State or local election board's Web page containing information on voting or registering to vote; (2) on the Web site of a party committee or association of State or local candidates, enabling visitors to download a voter registration form or absentee ballot application; (3) on the Web site of a party committee or association of State or local candidates, providing information about voting dates and/or polling locations and hours of operation; and (4) placing voter registration forms or absentee ballot applications obtained from the board of elections at the office of a party committee or association of State or local candidates.

In the NPRM, the Commission asked generally whether the proposed definitions of "voter registration activity" and "GOTV activity" covered activity that Congress did not intend to regulate in BCRA and, if so, what those activities were.

In response, one commenter pointed out that under the expanded definitions of "voter registration activity" and "GOTV activity," "all the organizational activity of every county, every city, and every state committee is going to be brought into these regulations," since—on some level—organizing people to register to vote, and to vote, informs everything that party committees do. This commenter noted, for example, that State and local parties commonly post on their Web sites information on voter registration and voting but that the cost is "typically minimal and is folded into the general administrative costs of operating the committee." To the extent that this activity was covered as "voter registration activity" or "GOTV activity," all the operational costs would potentially need to be funded with Federal funds or a mix of Federal and Levin funds, as appropriate.

The Commission is mindful of the administrative complexities that State, district and local party committees, as well as associations of State and local candidates, would face in tracking the nominal, incidental costs of these activities. As recognized by the courts, agencies may promulgate *de minimis* exemptions to the statutes they administer on the basis that "Congress is always presumed to intend that pointless expenditures of effort be avoided." *Ass'n of Admin. Law Judges* v. *FLRA,* 397 F.3d 957, 961–62 (DC Cir. 2005). Although there are limits to this authority—*de minimis* exceptions are inappropriate for extraordinarily rigid statutes or when the regulatory costs of the exemption exceed its benefits—it is inherent in most statutory schemes. *Id.* at 962; *see Envtl. Def. Fund* v. *EPA,* 82 F.3d 451, 466 (DC Cir. 1996).

Accordingly, the Commission has decided to adopt new paragraph (c)(7) at 11 CFR 100.24 to make clear that certain activities are not subject to BCRA's Federal election activity funding restrictions. Such a *de minimis* exception is entirely appropriate in this context because many of the activities listed will involve no costs and, thus, already effectively fall outside the Federal election activity funding regulations. To the extent that the listed activities do involve *de minimis* costs, they are so small that—even aggregated over a long period of time—they would not result in any meaningful evasion of BCRA's soft money restrictions.

The Commission notes that this provision only covers *de minimis* costs associated with the enumerated activities; amounts that are not *de minimis,* which are incurred in connection with the enumerated activities, must still be paid for with Federal funds or a mix of Federal and Levin funds, as appropriate. In addition, the provision in paragraph (c)(7) does not cover *de minimis* costs associated with other activities. The costs associated with activities not enumerated, regardless of how small,

must also be paid for with Federal funds or a mix of Federal and Levin funds, as appropriate. Thus, the list of activities enumerated in the provision is exhaustive. Activities not listed are not covered, regardless of how closely related they are to the activities listed.

E. Additional Issues

1. Advisory Opinion 2006–19 (Los Angeles County Democratic Party Central Committee)

In *Shays III,* the Court of Appeals criticized Advisory Opinion 2006–19 (Los Angeles County Democratic Party Central Committee), in which the Commission concluded that letters and pre-recorded telephone calls encouraging certain Democrats to vote in an upcoming local election did not count as GOTV activity because the communications did not provide individualized assistance to voters. *See Shays III,* 528 F.3d at 932. The court held that this overly restrictive construction of the definition of "GOTV activity" was contrary to the statute. *See id.* The Commission is superseding Advisory Opinion 2006–19 because the conclusion of that advisory opinion, along with its reasoning, cannot be reconciled with the Commission's new definition of "GOTV activity."

2. Associations of State and Local Candidates and Officeholders

One commenter pointed out that the NPRM "refer[red] repeatedly to 'state, district or local party committees'" and referred "only incidentally to associations of state and local candidates and officeholders." The commenter noted that such associations are subject to the Federal election activity funding restrictions to the same extent as State, district, and local party committees.

The Commission agrees with the commenter that the new definitions of "voter registration activity" and "GOTV activity" apply equally to party committees and associations of State and local candidates, alike. Any disproportionate references to party committees in the NPRM—and in this E&J—do not reflect a determination by the Commission that the activities of associations of State and local candidates are less important or less likely to fall under the umbrella of Federal election activity established by Congress. Previous attempts to exempt the activities of associations of State and local candidates from the definition of "GOTV activity" were found to be contrary to BCRA, *see Shays I,* 337 F. Supp. 2d at 104, and the Commission is not revisiting that decision.

3. Communications Referencing Only State and Local Candidates

In the NPRM, the Commission proposed adding an exception to the definition of "GOTV activity" at 11 CFR 100.24(a)(3)(iii) for public communications that refer solely to one or more clearly identified candidates for State or local office and note the date of the election. The proposal was designed to ensure that the expansion of the GOTV activity definition required by the *Shays III* court would not, in effect, render meaningless the statutory definition of "Federal election activity," which specifically does not include amounts disbursed or expended for "a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii)." 2 U.S.C. 431(20)(B)(i); 11 CFR 100.24(c)(1).

Several commenters addressed the proposed "State and local communication" exception. Five commenters supported it. One stated that the exception would ensure that State and local parties are not deterred from supporting State and local candidates and that the benefits of the proposed exception "far outweigh the incidental effect [that the covered] activities may have on Federal elections." The same commenter thought that the exception should be expanded to cover State ballot initiatives, as well. Another commenter thought the exception properly excluded from the definition of "GOTV activity" those activities that are not "primarily aimed at facilitating the act of voting." A third commenter characterized the exception as a "common-sense implementation" of the statute that was particularly necessary in States in which local elections are frequently held.

In contrast, two other commenters urged the Commission to reject the proposed exception on the basis that it would "render meaningless" the definition of "GOTV activity" and would "swallow the rule." In particular, these commenters noted that the proposed exception left out a critical component of the statutory exception on which it was based: that the communications not otherwise meet the definition of "GOTV activity." As pointed out by the commenter:

> [T]he fact that a communication refers solely to a State or local candidate is not sufficient to satisfy the exemption, if the communication otherwise constitutes GOTV or voter registration activity. In other words, the key issue is not whether the communication refers solely to a non-federal candidate, but rather whether the communication is GOTV or voter registration activity. If it is GOTV or voter registration activity, it is not eligible for the exemption, even if it refers only to a state or local candidate.

The Commission is not adopting the "State and local communication" exception. The provisions at 2 U.S.C. 431(20)(B)(i) and 11 CFR 100.24(c)(1) remain and continue to exempt from the definition of Federal election activity public communications that refer solely to a clearly identified candidate for State or local office, which do not otherwise constitute voter registration activity, GOTV activity, generic campaign activity or voter identification within the applicable time periods.

Furthermore, the Commission notes that grassroots campaign materials, including buttons, bumper stickers, handbills, brochures, posters, and yard signs, which name or depict only State or local candidates, continue to be exempt from the definition of Federal election activity, provided that this grassroots materials exception shall not include materials that are distributed by mail. 2 U.S.C. 431(20)(B)(iv); 11 CFR 100.24(c)(4). As such, a yard sign exhorting readers to "Vote Smith for Mayor on September 15th!" or a handbill that encourages a reader to "Support your County Commissioner! Register by next Tuesday!" could be paid for entirely with non-Federal funds.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by this rule are State, district, and local party committees, which are not "small entities" under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of "small organization," which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are

thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered "small organizations," the number affected by this rule is not substantial.

List of Subjects in 11 CFR Part 100

Elections.

■ For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* is amended as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 1. The authority citation for 11 CFR part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

■ 2. Section 100.24 is amended by removing paragraph (a)(1)(iii), by revising paragraphs (a)(2) and (a)(3), and by adding paragraphs (c)(5), (c)(6) and (c)(7) to read as follows:

§ 100.24 Federal election activity (2 U.S.C. 431(20)).

(a) * * *

(2) *Voter registration activity.*

(i) Voter registration activity means:

(A) Encouraging or urging potential voters to register to vote, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks and messaging such as SMS and MMS), or by any other means;

(B) Preparing and distributing information about registration and voting;

(C) Distributing voter registration forms or instructions to potential voters;

(D) Answering questions about how to complete or file a voter registration form, or assisting potential voters in completing or filing such forms;

(E) Submitting or delivering a completed voter registration form on behalf of a potential voter;

(F) Offering or arranging to transport, or actually transporting potential voters to a board of elections or county clerk's office for them to fill out voter registration forms; or

(G) Any other activity that assists potential voters to register to vote.

(ii) Activity is not voter registration activity solely because it includes a brief exhortation to register to vote, so long as the exhortation is incidental to a communication, activity, or event. Examples of brief exhortations incidental to a communication, activity, or event include:

(A) A mailer praises the public service record of mayoral candidate X and/or discusses his campaign platform. The mailer concludes by reminding recipients, "Don't forget to register to vote for X by October 1st."

(B) A phone call for a State party fundraiser gives listeners information about the event, solicits donations, and concludes by reminding listeners, "Don't forget to register to vote."

(3) *Get-out-the-vote activity.*

(i) Get-out-the-vote activity means:

(A) Encouraging or urging potential voters to vote, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks and messaging such as SMS and MMS), or by any other means;

(B) Informing potential voters, whether by mail (including direct mail), e-mail, in person, by telephone (including pre-recorded telephone calls, phone banks and messaging such as SMS and MMS), or by any other means, about:

(*1*) Times when polling places are open;

(*2*) The location of particular polling places; or

(*3*) Early voting or voting by absentee ballot;

(C) Offering or arranging to transport, or actually transporting, potential voters to the polls; or

(D) Any other activity that assists potential voters to vote.

(ii) Activity is not get-out-the-vote activity solely because it includes a brief exhortation to vote, so long as the exhortation is incidental to a communication, activity, or event. Examples of brief exhortations incidental to a communication, activity, or event include:

(A) A mailer praises the public service record of mayoral candidate X and/or discusses his campaign platform. The mailer concludes by reminding recipients, "Vote for X on November 4th."

(B) A phone call for a State party fundraiser gives listeners information about the event, solicits donations, and concludes by reminding listeners, "Don't forget to vote on November 4th."

* * * * *

(c) * * *

(5) Voter identification activity that is conducted solely in connection with a non-Federal election held on a date on which no Federal election is held, and which is not used in a subsequent election in which a Federal candidate appears on the ballot.

(6) Get-out-the-vote activity that is conducted solely in connection with a non-Federal election held on a date on which no Federal election is held, provided that any communications made as part of such activity refer exclusively to:

(i) Non-Federal candidates participating in the non-Federal election, if the non-Federal candidates are not also Federal candidates;

(ii) Ballot referenda or initiatives scheduled for the date of the non-Federal election; or

(iii) The date, polling hours, and locations of the non-Federal election.

(7) *De minimis* costs associated with the following:

(i) On the Web site of a party committee or an association of State or local candidates, posting a hyperlink to a state or local election board's web page containing information on voting or registering to vote;

(ii) On the Web site of a party committee or an association of State or local candidates, enabling visitors to download a voter registration form or absentee ballot application;

(iii) On the Web site of a party committee or an association of State or local candidates, posting information about voting dates and/or polling locations and hours of operation; or

(iv) Placing voter registration forms or absentee ballot applications obtained from the board of elections at the office of a party committee or an association of State or local candidates.

On behalf of the Commission.

Dated: September 7, 2010.

Matthew S. Petersen,

Chairman, Federal Election Commission.

[FR Doc. 2010–22648 Filed 9–9–10; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–42]

Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9U, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes;

and reporting points incorporated by reference.

DATES: These regulations are effective September 15, 2010. The incorporation by reference of FAA Order 7400.9U is approved by the Director of the Federal Register as of September 15, 2010, through September 15, 2011.

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

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9T, Airspace Designations and Reporting Points, effective September 15, 2009, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 15, 2009, through September 15, 2010. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9T in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9U, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9U in section 71.1, as of September 15, 2010, through September 15, 2011. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9U.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9U, effective September 15, 2010, through September 15, 2011. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9U in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9U is effective September 15, 2010, through September 15, 2011. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9U may be obtained from Airspace and Rules Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA Web site at *http://www.faa.gov/air_traffic/publications.* Copies of FAA Order 7400.9U may be inspected in Docket No. 29334 on *http://www.regulations.gov.* A copy of FAA Order 7400.9U may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words "FAA Order 7400.9T" and adding, in their place, the words "FAA Order 7400.9U."

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words "FAA Order 7400.9T" wherever they appear and adding, in their place, the words "FAA Order 7400.9U."

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words "FAA Order 7400.9T" and adding, in their place, the words "FAA Order 7400.9U."

§ 71.33 [Amended]

■ 6. Paragraph (c) of § 71.33 is amended by removing the words "FAA Order 7400.9T" and adding, in their place, the words "FAA Order 7400.9U."

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words "FAA Order

7400.9T" wherever they appear and adding, in their place, the words "FAA Order 7400.9U."

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words "FAA Order 7400.9T" wherever they appear and adding, in their place, the words "FAA Order 7400.9U."

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words "FAA Order 7400.9T" wherever they appear and adding, in their place, the words "FAA Order 7400.9U."

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words "FAA Order 7400.9T" and adding, in their place, the words "FAA Order 7400.9U."

§ 71.901 [Amended]

■ 11. Paragraph (a) of § 71.901 is amended by removing the words "FAA Order 7400.9T" and adding, in their place, the words "FAA Order 7400.9U."

Issued in Washington, DC, on September 2, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–22564 Filed 9–9–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084-AA98

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Policy statement.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is giving notice that there will be no increase in the fees charged to entities accessing the National Do Not Call Registry (the "Registry") for fiscal year 2011.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. Copies of this document are also available on the Internet at the Commission's website: (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Ami Joy Rop, (202) 326-2648, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Rm H-244, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Do-Not-Call Registry Fee Extension Act of 2007 (Pub. L. 110-188, 122 Stat. 635) ("Act"), mandates a specific fee structure to use in determining the fees for accessing the Registry. According to the Act, for each year beginning after fiscal year 2009, the dollar amounts charged shall be increased by an amount equal to the amounts specified in the Act, whichever fee is applicable, multiplied by the percentage (if any) by which the average of the monthly consumer price index (for all urban consumers published by the Department of Labor) ("CPI") for the most recently ended 12-month period ending on June 30 exceeds the CPI for the 12-month period ending June 30, 2008. The Act also states that any increase shall be rounded to the nearest dollar and that there shall be no increase in the dollar amount if the change in the CPI is less than 1 percent. We measure this change in CPI from the time of the previous increase in fees. The adjustments to the applicable fees, if any, are to be published in the **FEDERAL REGISTER** no later than September 1 of each year.

Last year, for fiscal year 2010, we calculated an increase in the CPI of 1.4 percent, and adjusted the fees accordingly (74 Fed. Reg. 42771 (August 25, 2009)). The average value of the CPI for July 1, 2008 to June 30, 2009 was 214.625; the average value for July 1, 2009 to June 30, 2010 was 216.735, an increase of 0.97 percent. As this falls below the statute's 1 percent required change in the CPI, there shall be no increase in the fees for access. Therefore, the fees will remain at the current level of $55 per area code, with a maximum fee of $15,058. The fee for access to each area code during the second six months of an entity's annual subscription period remains at $27. Users will still be able to access the first five area codes free of charge, and organizations that are not required to comply with the Registry will still be able to access it if they choose to while remaining exempt from fees.

By direction of the Commission.

Richard C. Donohue

Acting Secretary.

[FR Doc. 2010–22197 Filed 9–9–10: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 542 and 543

RIN 3141–AA–37

Minimum Internal Control Standards for Class II Gaming

AGENCY: National Indian Gaming Commission.

ACTION: Delay of effective date of final rule; request for comments.

SUMMARY: The National Indian Gaming Commission ("NIGC") announces the extension of the effective date on the final rule for Minimum Internal Control Standards for Class II Gaming. The final rule was published in the **Federal Register** on October 10, 2008 (73 FR 60492). The Commission is changing the effective date for the amendments to §§ 542.7 and 542.16 (and their renumbering as §§ 543.7 and 543.16), as well as the date for operations to implement tribal internal controls found in § 543.3(c)(3) to October 13, 2011, in order to extend the transition time, allow the new Commission time to thoroughly review the rule, and to receive comment on whether the rule should be amended in whole or in part.

DATES: The effective date for the amendments to §§ 542.7 and 542.16 for the final rule published October 10, 2008, 73 FR 60492, and delayed on October 9, 2009, 74 FR 52138, is further delayed from October 13, 2010, until October 13, 2011. The effective date for the amendment to § 543.3(c)(3) in this rule is October 13, 2011. Submit comments on or before November 9, 2010.

ADDRESSES: Mail comments to "Comments on Class II MICS", National Indian Gaming Commission, 1441 L St., NW., Suite 9100, Washington, DC 20005, attn: Jennifer Ward. Comments may be transmitted by facsimile to 202–632–7066, but the original should also be submitted by mail. Comments may also be sent electronically to *2008_MICS_comments@nigc.gov* or posted at *http://www.regulations.gov* under this notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Ward, Attorney, Office of General Counsel, at (202) 632–7003; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Congress established the National Indian Gaming Commission under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701–21) ("IGRA") to regulate gaming on Indian lands. The NIGC issued a final rule that superseded specified sections

of established Minimum Internal Control Standards and replaced them with a new part titled Minimum Internal Control Standards Class II Gaming, that was published in the **Federal Register** on October 10, 2008 (73 FR 60492). The final rule provided an effective date for amendments to §§ 542.7 and 542.16 of October 13, 2009. An extension delayed the effective date of the amendments until October 13, 2010. 74 FR 52138, October 9, 2009. The NIGC is again extending the effective date of these amendments to October 13, 2011. The rule at § 543.3(c)(3) also set a deadline of within six months of the date the tribal gaming regulatory authorities' enactment of tribal internal controls for tribal operators to come into compliance with tribal internal controls. This deadline has likewise been extended to October 13, 2011.

As explained in the preamble to the final rule (73 FR 60492 (October 10, 2008)), the Commission intended these amendments to be the first part of a multi-phase process of establishing separate MICS for class II gaming and that the extended effective date would provide the necessary time to complete this process. On October 9, 2009, the Commission extended the effective date of the amendments until October 13, 2010, anticipating that all phases of the process would then be complete and that a final comprehensive set of class II MICS would take effect at that time. 74 FR 52138 (October 9, 2009). The NIGC is extending the effective date of these amendments to October 13, 2011, to allow time for the transition as contemplated by the final rule.

List of Subjects in 25 CFR Part 543

Administrative practice and procedure, Gambling, Indians—lands, Reporting and recordkeeping requirements.

■ For the reasons set forth above, under the authority at 25 U.S.C. 2701, 2702, 2706, *et seq.,* the effective date for the amendments to §§ 542.7 and 542.16 for the final rule published October 10, 2008, 73 FR 60492, is delayed from October 13, 2010, until October 13, 2011 and 25 CFR Part 543 is amended as set forth below:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

■ 1. The authority citation for Part 543 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Section 543.3 is amended by revising paragraph (c)(3) to read as follows:

§ 543.3 How do tribal governments comply with this part?

* * * * *

(c) * * *

(3) Establish a deadline, no later than October 13, 2011, by which a gaming operation must come into compliance with the tribal internal control standards. However, the tribal gaming regulatory authority may extend the deadline by six months if written notice citing justification is provided to the Commission no later than two weeks before the deadline.

* * * * *

Dated: September 7, 2010.

Tracie L. Stevens,
Chairwoman.

Steffani A. Cochran,
Vice-Chairperson.

Daniel Little,
Associate Commissioner.

[FR Doc. 2010–22661 Filed 9–9–10; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0782]

RIN 1625–AA00

Safety Zone; NASSCO Launching of USNS Washington Chambers, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the NASSCO Ship Launching for the USNS Washington Chambers. The safety zone is necessary to provide for the safety of vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) San Diego or his designated representative.

DATES: This rule is effective from 9:15 a.m. through 11:15 a.m. on September 11, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0782 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0782 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it was impracticable since the logistical details of the launching were not finalized nor presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Any delay in the regulation's effective date would be contrary to the public interest, as immediate action is necessary to provide for the safety of vessels and users of the waterway.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The issuance of final approval was so recent that the rule will be made effective less than 30 days after publication. Any delay in the effective date of this rule will expose vessels and persons of the waterway to dangers posed by ship launchings.

Basis and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Diego Bay to contribute to the safety of the USNS Washington Chambers and surrounding vessels as this ship launches from

NASSCO shipyards. There will be three tugboats to take control of the vessel after the launch. This temporary safety zone is necessary to provide for the safety of the vessels and users of the waterway.

Discussion of Rule

The USNS Washington Chambers will be launched from NASSCO shipyard into the San Diego Bay. The safety zone is required because the vessel's planned launch location is in the maritime navigation channel. The safety zone will be enforced on September 11, 2010. The limits of the temporary safety zone include all navigable waters encompassed by the following coordinates:

32°41.39′ N, 117°08.66′ W;
32°41.24′ N, 117°09.05′ W;
32°41.05′ N, 117°08.73′ W;
32°41.20′ N, 117°08.34′ W;
thence north along the shoreline to
32°41.39′ N, 117°08.66′ W.

The safety zone is necessary to provide for the safety of the vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the COTP San Diego or his designated representative. Vessels or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size, duration, and location of the safety zone. This rule will be enforced only 2 hours early in the day when vessel traffic is low. Furthermore, vessel traffic can pass safely around the zone.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 9:15 a.m. to 11:15 a.m. on September 11, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 2 hours early in the day when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via VHF Channel 16 before the safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.01.

■ 2. Add § 165.T11–347 to read as follows:

§ 165.T11–347 Safety Zone; NASSCO Launching of USNS Washington Chambers, San Diego Bay, San Diego, CA.

(a) *Location.* The safety zone will encompass the navigable waters encompassed by the following coordinates:

32°41.39′ N, 117°08.66′ W;
32°41.24′ N, 117°09.05′ W;
32°41.05′ N, 117°08.73′ W;
32°41.20′ N, 117°08.34′ W;
thence north along the shoreline to 32°41.39′ N, 117°08.66′ W.

(b) *Enforcement Period.* This section will be enforced from 9:15 a.m. until 11:15 a.m. on September 11, 2010. If the event concludes prior to the schedule termination time, the COTP will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) No person or vessel may enter or remain in a safety zone without the permission of the COTP or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: August 25, 2010.

T.H. Farris,

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

[FR Doc. 2010–22578 Filed 9–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0576]

RIN 1625–AA00

Safety Zone; Mississippi River, Mile 212.0 to 214.5

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for waters of the Upper Mississippi River, Mile 212.0 to 214.5, extending West of Portage Island to the right descending bank of the river. This safety zone is needed to protect persons and vessels from safety hazards associated with a high speed boat race and land based fireworks display occurring on the Upper Mississippi River. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective from 10 a.m. until 9 p.m. CDT on September 11, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0576 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0576 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant (LT) Rob McCaskey, Sector Upper Mississippi River Response Department at telephone 314–269–2541, e-mail *Rob.E.McCaskey@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The Coast Guard finds that it would be impracticable to publish a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process could be completed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be impracticable because immediate action is needed to protect vessels and mariners from the safety hazards associated with a high speed boat race and land based fireworks display.

Basis and Purpose

On September 11, 2010 the St. Charles County Municipal League is conducting a high speed boat race and land based fireworks display between mile 212.0 to 214.5 on the Upper Mississippi River. This event presents safety hazards to the navigation of vessels between mile 212.0 and mile 214.5, extending West of Portage Island to the right descending bank of the river. A safety zone around the course is necessary to protect spectators, vessels, and other property from the hazards associated with the high speed boat race and land based fireworks display. The Captain of the Port Upper Mississippi River will inform the public of all safety zone changes through broadcast notice to mariners.

Discussion of Rule

The Coast Guard is establishing a safety zone for waters of the Upper Mississippi River, Mile 212.0 to 214.5, extending West of Portage Island to the right descending bank of the river. Entry into this zone will be prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule will be effective from 10 a.m. until 9 p.m. CDT on September 11, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because of the very brief duration of the effective period of the zone. Furthermore, the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be in effect for a limited period of time; and (2) the local waterway users will be notified via public Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

An environmental analysis checklist and a categorical exclusion determination for this rule are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0576 to read as follows:

§ 165.T08–0576 Safety Zone; Upper Mississippi River, Mile 212.0 to 214.5.

(a) *Location.* The following area is a safety zone: waters of the Upper Mississippi River, Mile 212.0 to 214.5 extending West of Portage Island to the right descending bank of the river.

(b) *Effective date.* This rule is effective from 10 a.m. until 9 p.m. CDT on September 11, 2010.

(c) *Periods of Enforcement.* This rule will be enforced from 10 a.m. CDT until 9 p.m. CDT on September 11, 2010. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at 314–269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives includes United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: August 19, 2010.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2010–22580 Filed 9–9–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 60, and 61

[FRL–9198–2]

Change of Address for Region 5 State and Local Agencies; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is correcting the addresses for EPA Region 5 state and local agencies in EPA regulations. The jurisdiction of EPA Region 5 includes the states of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. Certain EPA air pollution control regulations requiring submittal of notifications, reports and other documents to the EPA Regional office, must also be submitted to the appropriate authorized state or local agency. This technical amendment updates and corrects the addresses for submitting such information to the EPA Region 5 state and local agency offices.

DATES: *Effective Date:* This action is effective September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Jeremiah Hall, Attainment Planning & Maintenance Section, Air Program Branch, Air and Radiation Division, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604. The telephone number is (312) 353–3503. Jeremiah Hall can also be reached via electronic mail at *hall.jeremiah@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is correcting the addresses for EPA Region 5 state and local agencies in EPA regulations found at 40 CFR parts 52, 60 and 61. Certain EPA air pollution control regulations requiring submittal of notifications, reports and other documents to the EPA regional office, must also be submitted to the appropriate authorized state and local

agency. This technical amendment updates and corrects the address for submitting such information to the EPA Region 5 state and local agency offices.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Parts 52, 60 and 61

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 26, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR parts 52, 60 and 61 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Illinois

■ 2. Section 52.738 is amended by revising paragraph (c) to read as follows:

§ 52.738 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 from sources located in the State of Illinois shall be submitted to the state agency, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62794.

Subpart P—Indiana

■ 3. Section 52.793 is amended by revising paragraph (c) to read as follows:

§ 52.793 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 of this part from sources located in the State of Indiana shall be submitted to the state agency, Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204, rather than to EPA's Region 5 office.

Subpart X—Michigan

■ 4. Section 52.1180 is amended by revising paragraph (c) to -+read as follows:

§ 52.1180 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 of this part from sources located in the State of Michigan shall be submitted to the state agency, Michigan Department of Natural Resources and Environment, Air Quality Division, P.O. Box 30028, Lansing, Michigan 48909, rather than to EPA's Region 5 office.

Subpart Y—Minnesota

■ 5. Section 52.1234 is amended by revising paragraph (c) to read as follows:

§ 52.1234 Significant deterioration of air quality.

* * * * *

(c) All applications and other information required pursuant to § 52.21 of this part from sources located in the State of Minnesota shall be submitted to the state agency, Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road North, St. Paul, Minnesota 55155, rather than to EPA's Region 5 office.

Subpart KK—Ohio

■ 6. Section 52.1884 is amended by revising paragraph (c) to read as follows:

§ 52.1884 Significant deterioration of air quality.

* * * * *

(c) All application and other information required pursuant to § 52.21 of this part from sources located or to be located in the state of Ohio shall be submitted to the state agency, Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43216, rather than to EPA's Region 5 office.

PART 60—[AMENDED]

■ 7. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 8. Section 60.4 is amended by revising paragraphs (b)(O), (b)(P), (b)(X), (b)(Y), (b)(KK), and (b)(YY) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(O) State of Illinois: Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62794.

(P) State of Indiana: Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204.

* * * * *

(X) State of Michigan: Michigan Department of Natural Resources and Environment, Air Quality Division, P.O. Box 30028, Lansing, Michigan 48909.

(Y) State of Minnesota: Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road North, St. Paul, Minnesota 55155.

* * * * *

(KK) State of Ohio:

(i) Medina, Summit and Portage Counties; Director, Akron Regional Air Quality Management District, 146 South High Street, Room 904, Akron, OH 44308.

(ii) Stark County; Director, Canton City Health Department, Air Pollution Control Division, 420 Market Avenue North, Canton, Ohio 44702–1544.

(iii) Butler, Clermont, Hamilton, and Warren Counties; Director, Hamilton County Department of Environmental Services, 250 William Howard Taft Road, Cincinnati, Ohio 45219–2660.

(iv) Cuyahoga County; Commissioner, Cleveland Department of Public Health, Division of Air Quality, 75 Erieview Plaza 2nd Floor, Cleveland, Ohio 44114.

(v) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties; Director, Regional Air Pollution Control Agency, 117 South Main Street, Dayton, Ohio 45422–1280.

(vi) Lucas County and the City of Rossford (in Wood County); Director, City of Toledo, Division of Environmental Services, 348 South Erie Street, Toledo, OH 43604.

(vii) Adams, Brown, Lawrence, and Scioto Counties; Portsmouth Local Air Agency, 605 Washington Street, Third Floor, Portsmouth, OH 45662.

(viii) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert Williams, Wood (Except City of Rossford), and Wyandot Counties; Ohio Environmental Protection Agency, Northwest District Office, Air Pollution Control, 347 North Dunbridge Road, Bowling Green, Ohio 43402.

(ix) Ashtabula, Caroll, Colombiana, Holmes, Lorain, and Wayne Counties; Ohio Environmental Protection Agency, Northeast District Office, Air Pollution Unit, 2110 East Aurora Road, Twinsburg, OH 44087.

(x) Athens, Belmont, Coshocton, Gallia, Guemsey, Harrison, Hocking, Jackson, Jefferson, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties; Ohio Environmental Protection Agency, Southeast District Office, Air Pollution Unit, 2195 Front Street, Logan, OH 43138.

(xi) Champaign, Clinton, Highland, Logan, and Shelby Counties; Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, 401 East Fifth Street, Dayton, Ohio 45402–2911.

(xii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties; Ohio Environmental Protection Agency, Central District Office, Air Pollution control, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

(xiii) Geauga and Lake Counties; Lake County General Health District, Air Pollution Control, 33 Mill Street, Painesville, OH 44077.

(xiv) Mahoning and Trumbull Counties; Mahoning-Trumbull Air Pollution Control Agency, 345 Oak Hill Avenue, Suite 200, Youngstown, OH 44502.

* * * * *

(YY) State of Wisconsin: Wisconsin Department of Natural Resouces, 101 South Webster St., P.O. Box 7921, Madison, Wisconsin 53707–7921.

* * * * *

PART 61—[AMENDED]

■ 9. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 10. Section 61.04 is amended by revising paragraphs (b)(O), (b)(P), (b)(X), (b)(Y), (b)(KK), and (b)(YY) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(O) State of Illinois: Illinois Environmental Protection Agency, 1021 North Grand Avenue East, Springfield, Illinois 62794.

(P) State of Indiana: Indiana Department of Environmental Management, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana 46204.

* * * * *

(X) State of Michigan: Michigan Department of Natural Resources and Environment Quality, Air Quality Division, P.O. 30028, Lansing, Michigan 48909.

(Y) State of Minnesota: Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road North, St. Paul, Minnesota 55155.

* * * * *

(KK) State of Ohio:

(i) Medina, Summit and Portage Counties; Director, Akron Regional Air Quality Management District, 146 South High Street, Room 904, Akron, OH 44308.

(ii) Stark County; Director, Canton City Health Department, Air Pollution Control Division, 420 Market Avenue North, Canton, Ohio 44702–1544.

(iii) Butler, Clermont, Hamilton, and Warren Counties; Director, Hamilton County Department of Environmental

Services, 250 William Howard Taft Road, Cincinnati, Ohio 45219–2660.

(iv) Cuyahoga County; Commissioner, Cleveland Department of Public Health, Division of Air Quality, 75 Erieview Plaza 2nd Floor, Cleveland, Ohio 44114.

(v) Clark, Darke, Greene, Miami, Montgomery, and Preble Counties; Director, Regional Air Pollution Control Agency, 117 South Main Street, Dayton, Ohio 45422–1280.

(vi) Lucas County and the City of Rossford (in Wood County); Director, City of Toledo, Division of Environmental Services, 348 South Erie Street, Toledo, OH 43604.

(vii) Adams, Brown, Lawrence, and Scioto Counties; Portsmouth Local Air Agency, 605 Washington Street, Third Floor, Portsmouth, OH 45662.

(viii) Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert Williams, Wood (Except City of Rossford), and Wyandot Counties; Ohio Environmental Protection Agency, Northwest District Office, Air Pollution Control, 347 North Dunbridge Road, Bowling Green, Ohio 43402.

(ix) Ashtabula, Caroll, Colombiana, Holmes, Lorain, and Wayne Counties; Ohio Environmental Protection Agency, Northeast District Office, Air Pollution Unit, 2110 East Aurora Road, Twinsburg, OH 44087.

(x) Athens, Belmont, Coshocton, Gallia, Guemsey, Harrison, Hocking, Jackson, Jefferson, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Tuscarawas, Vinton, and Washington Counties; Ohio Environmental Protection Agency, Southeast District Office, Air Pollution Unit, 2195 Front Street, Logan, OH 43138.

(xi) Champaign, Clinton, Highland, Logan, and Shelby Counties; Ohio Environmental Protection Agency, Southwest District Office, Air Pollution Unit, 401 East Fifth Street, Dayton, Ohio 45402–2911.

(xii) Delaware, Fairfield, Fayette, Franklin, Knox, Licking, Madison, Morrow, Pickaway, and Union Counties; Ohio Environmental Protection Agency, Central District Office, Air Pollution control, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

(xiii) Geauga and Lake Counties; Lake County General Health District, Air Pollution Control, 33 Mill Street, Painesville, OH 44077.

(xiv) Mahoning and Trumbull Counties; Mahoning-Trumbull Air Pollution Control Agency, 345 Oak Hill Avenue, Suite 200, Youngstown, OH 44502.

* * * * *

(YY) State of Wisconsin: Wisconsin Department of Natural Resources, 101 South Webster St., P.O. Box 7921, Madison, Wisconsin 53707–7921. 101 South Webster St., P.O. Box 7921, Madison, Wisconsin 53707–7921.

* * * * *

[FR Doc. 2010–22330 Filed 9–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–9192–8]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (“EPA”).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (“OCS”) Air Regulations proposed in the **Federal Register** on December 21, 2009. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (“COA”), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (“the Act”). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (“South Coast AQMD” or “District”) is the designated COA. The intended effect of approving the OCS requirements for the South Coast AQMD is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This rule is effective on October 12, 2010.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 12, 2010.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document, the terms “we,” “us,” or “our” refer to U.S. EPA.

Organization of this document: The following outline is provided to aid in locating information in this preamble.

I. Background
II. Public Comment
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Background

On December 21, 2009 (74 FR 67845), EPA proposed to incorporate various South Coast AQMD air pollution control requirements into the OCS Air Regulations at 40 CFR part 55. We are incorporating these requirements in response to the submittal of these rules by the District. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e).

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of State or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements

of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on the proposed action.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action except for minor technical corrections to the list of rules in the part 55 regulatory text to accurately reflect the action we proposed. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this action:

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

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, nor does it impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* 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. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request ("ICR") No. 1601.07 was published in the **Federal Register** on February 17, 2009 (74 FR 7432). The approval expires January 31, 2012. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 21, 2010.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Title 40 of the Code of Federal Regulations, Part 55, is amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for Part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(G) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Parts I, II and III), September 2009.

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■ 3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(7) under the heading "California" to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(b) * * *

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources (Parts I, II and III):*

Rule 102 Definition of Terms (Adopted 12/3/04)
Rule 103 Definition of Geographical Areas (Adopted 01/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 01/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 04/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 08/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/07/95)
Rule 201 Permit to Construct (Adopted 12/03/04)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 12/03/04)
Rule 202 Temporary Permit to Operate (Adopted 12/03/04)
Rule 203 Permit to Operate (Adopted 12/03/04)
Rule 204 Permit Conditions (Adopted 03/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 01/05/90)
Rule 206 Posting of Permit to Operate (Adopted 01/05/90)
Rule 207 Altering or Falsifying of Permit (Adopted 01/09/76)
Rule 208 Permit and Burn Authorization for Open Burning (Adopted 12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 01/05/90)
Rule 210 Applications (Adopted 01/05/90)
Rule 212 Standards for Approving Permits (Adopted 12/07/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 01/05/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 01/05/90)
Rule 218 Continuous Emission Monitoring (Adopted 05/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 05/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 05/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 6/1/07)
Rule 220 Exemption—Net Increase in Emissions (Adopted 08/07/81)
Rule 221 Plans (Adopted 01/04/85)
Rule 301 Permitting and Associated Fees (Adopted 5/2/08) except (e)(7)and Table IV
Rule 303 Hearing Board Fees (Adopted 5/2/08)
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/2/08)
Rule 304.1 Analyses Fees (Adopted 5/2/08)
Rule 305 Fees for Acid Deposition (Rescinded 6/9/06)
Rule 306 Plan Fees (Adopted 5/2/08)
Rule 309 Fees for Regulation XVI (Adopted 5/2/08)
Rule 313 Authority to Adjust Fees and Due Dates (Adopted 5/2/08)
Rule 401 Visible Emissions (Adopted 11/09/01)
Rule 403 Fugitive Dust (Adopted 06/03/05)
Rule 404 Particulate Matter—Concentration (Adopted 02/07/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 02/07/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 04/02/82)
Rule 408 Circumvention (Adopted 05/07/76)
Rule 409 Combustion Contaminants (Adopted 08/07/81)
Rule 429 Start-Up and Shutdown Exemption Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (b) only (Adopted 07/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 06/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 09/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 05/7/76)
Rule 441 Research Operations (Adopted 05/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 05/06/05)
Rule 465 Refinery Vacuum-Producing Devices or Systems (Adopted 08/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/08/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 05/07/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/04/81)
Rule 475 Electric Power Generating Equipment (Adopted 08/07/78)
Rule 476 Steam Generating Equipment (Adopted 10/08/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/07/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 08/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 08/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 06/13/97)
Rule 702 Definitions (Adopted 07/11/80)
Rule 708 Plans (Rescinded 09/08/95)
Regulation IX Standard of Performance For New Stationary Sources (Adopted 4/4/08)
Regulation X National Emission Standards for Hazardous Air Pollutants (Adopted 4/4/08)
Rule 1105.1 Reduction of PM_{10} And Ammonia Emissions From Fluid Catalytic Cracking Units (Adopted 11/07/03)
Rule 1106 Marine Coating Operations (Adopted 01/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 1/6/06)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 08/05/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Repealed 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Rescinded 06/03/05)
Rule 1110.2 Emissions from Gaseous-and Liquid Fueled Engines (Adopted 2/1/08)
Rule 1113 Architectural Coatings (Adopted 7/13/07)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 09/03/04)
Rule 1122 Solvent Degreasers (Adopted 10/01/04)
Rule 1123 Refinery Process Turnarounds (Adopted 12/07/90)
Rule 1129 Aerosol Coatings (Rescinded 03/08/96)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 5/5/06)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 08/08/97)
Rule 1136 Wood Products Coatings (Adopted 06/14/96)
Rule 1137 PM10 Emission Reductions from Woodworking Operations (Adopted 02/01/02)
Rule 1140 Abrasive Blasting (Adopted 08/02/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 07/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 9/5/08)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 9/5/08)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 5/5/06)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/05/82)
Rule 1149 Storage Tank Cleaning And Degassing (Adopted 5/2/08)
Rule 1162 Polyester Resin Operations (Adopted 7/8/05)
Rule 1168 Adhesive and Sealant Applications (Adopted 01/07/05)
Rule 1171 Solvent Cleaning Operations (Adopted 2/1/08)

Rule 1173 Control of Volatile Organic Compounds Leaks and Releases From Components At Petroleum Facilities and Chemical Plants (Adopted 6/1/07)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 09/13/96)
Rule 1178 Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 4/7/06)
Rule 1301 General (Adopted 12/07/95)
Rule 1302 Definitions (Adopted 12/06/02)
Rule 1303 Requirements (Adopted 12/06/02)
Rule 1304 Exemptions (Adopted 06/14/96)
Rule 1306 Emission Calculations (Adopted 12/06/02)
Rule 1309.1 Priority Reserve (Replaced 8/3/07)
Rule 1313 Permits to Operate (Adopted 12/07/95)
Rule 1315 Federal New Source Review Tracking System (Readopted) (Adopted 8/3/07)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/5/07)
Rule 1470 Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines (Adopted 6/1/07)
Rule 1472 Requirements for Facilities with Multiple Stationary Emergency Standby Diesel-Fueled Internal Combustion Engines (Adopted 3/7/08)
Rule 1605 Credits for the Voluntary Repair of On-Road Motor Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 07/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 03/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 07/10/98)
Rule 1701 General (Adopted 08/13/99)
Rule 1702 Definitions (Adopted 08/13/99)
Rule 1703 PSD Analysis (Adopted 10/07/88)
Rule 1704 Exemptions (Adopted 08/13/99)
Rule 1706 Emission Calculations (Adopted 08/13/99)
Rule 1713 Source Obligation (Adopted 10/07/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 09/09/94)
Regulation XX Regional Clean Air Incentives Market (Reclaim)
Rule 2000 General (Adopted 05/06/05)
Rule 2001 Applicability (Adopted 05/06/05)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) (Adopted 01/07/05)
Rule 2004 Requirements (Adopted 4/6/07) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 05/06/05) except (i)
Rule 2006 Permits (Adopted 05/11/01)
Rule 2007 Trading Requirements (Adopted 4/6/07)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2009 Compliance Plan for Power Producing Facilities (Adopted 01/07/05)
Rule 2010 Administrative Remedies and Sanctions (Adopted 4/6/07)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 05/06/05)
Appendix A Volume IV—(Protocol for Oxides of Sulfur) (Adopted 05/06/05)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 05/06/05)
Appendix A Volume V—(Protocol for Oxides of Nitrogen) (Adopted 05/06/05)
Rule 2015 Backstop Provisions (Adopted 06/04/04) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 05/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 07/11/97)
Rule 2449 Controls of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles (Adopted 5/2/08)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 03/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 03/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/08/93)
Rule 3008 Potential To Emit Limitations (Adopted 03/16/01)
XXXI Acid Rain Permit Program (Adopted 02/10/95)

* * * * *

[FR Doc. 2010–22471 Filed 9–9–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Internal Agency Docket No. FEMA–8147; Docket ID FEMA–2010–0003]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth

column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
Washington, District of Columbia	110001	October 31, 1975, Emerg; November 15, 1985, Reg; September 27, 2010, Susp.	Sept. 27, 2010	Sept. 27, 2010.
Virginia:				
Abingdon, Town of, Washington County	510169	June 16, 1975, Emerg; March 16, 1988, Reg; September 29, 2010, Susp.	Sept. 29, 2010	Sept. 29, 2010.
Bedford, City of, Independent City	510015	March 12, 1974, Emerg; June 1, 1978, Reg; September 29, 2010, Susp.	......do	Do.
Chatham, Town of, Pittsylvania County	510114	June 10, 1975, Emerg; February 1, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Damascus, Town of, Washington County.	510170	December 26, 1974, Emerg; March 16, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Danville, City of, Independent City	510044	October 17, 1974, Emerg; March 16, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Dickenson County, Unincorporated Areas.	510253	August 8, 1974, Emerg; February 6, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Haysi, Town of, Dickenson County	510046	June 21, 1974, Emerg; January 17, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Honaker, Town of, Russell County	510321	February 21, 1975, Emerg; April 5, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Hurt, Town of, Pittsylvania County	510219	June 20, 1975, Emerg; April 2, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Lebanon, Town of, Russell County	510222	January 24, 1975, Emerg; January 16, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Pittsylvania County, Unincorporated Areas.	510113	January 21, 1975, Emerg; November 4, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Washington County, Unincorporated Areas.	510168	June 23, 1975, Emerg; March 16, 1988, Reg; September 29, 2010, Susp.	......do	Do.
West Virginia:				
Beverly, Town of, Randolph County	540267	September 25, 1975, Emerg; December 3, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Buckhannon, City of, Upshur County	540199	July 8, 1975, Emerg; September 4, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Harman, Town of, Randolph County	540178	December 29, 1976, Emerg; August 24, 1984, Reg; September 29, 2010, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Mill Creek, Town of, Randolph County	540266	April 1, 1975, Emerg; August 24, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Montrose, Town of, Randolph County ..	540265	September 25, 1975, Emerg; September 24, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Randolph County, Unincorporated Areas.	540175	August 7, 1975, Emerg; September 27, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Upshur County, Unincorporated Areas	540198	February 10, 1976, Emerg; July 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Womelsdorf (Coalton), Town of, Randolph County.	540176	September 5, 1975, Emerg; September 10, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Region IV				
Alabama:				
Franklin County, Unincorporated Areas	010322	N/A, Emerg; January 18, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Hodges, Town of, Franklin County	010426	October 30, 2006, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.
Phil Campbell, Town of, Franklin County.	010333	June 26, 2006, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.
Red Bay, City of, Franklin County	010334	N/A, Emerg; March 1, 2006, Reg; September 29, 2010, Susp.	......do	Do.
Russellville, City of, Franklin County	010216	April 4, 1974, Emerg; August 1, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Florida:				
DeFuniak Springs, City of, Walton County.	120318	June 6, 1975, Emerg; December 21, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Freeport, City of, Walton County	120319	N/A, Emerg; December 14, 1992, Reg; September 29, 2010, Susp.	......do	Do.
Paxton, Town of, Walton County	120423	N/A, Emerg; December 16, 2004, Reg; September 29, 2010, Susp.	......do	Do.
Walton County, Unincorporated Areas ..	120317	October 16, 1970, Emerg; November 16, 1977, Reg; September 29, 2010, Susp.	......do	Do.
Georgia:				
Chatsworth, City of, Murray County	130141	July 10, 1975, Emerg; July 2, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Hancock County, Unincorporated Areas	130563	April 17, 1998, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.
McDuffie County, Unincorporated Areas	130357	May 26, 1998, Emerg; November 8, 2004, Reg; September 29, 2010, Susp.	......do	Do.
Murray County, Unincorporated Areas ..	130366	May 20, 1987, Emerg; August 15, 1990, Reg; September 29, 2010, Susp.	......do	Do.
Nelson, City of, Cherokee and Pickens Counties.	130296	January 12, 1977, Emerg; September 29, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Pickens County, Unincorporated Areas	130149	December 15, 1986, Emerg; July 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Tift County, Unincorporated Areas	130404	October 1, 1979, Emerg; June 1, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Tifton, City of, Tift County	130171	December 27, 1973, Emerg; May 1, 1978, Reg; September 29, 2010, Susp.	......do	Do.
Ty Ty, City of, Tift County	130172	January 15, 1974, Emerg; September 4, 1985, Reg; September 29, 2010, Susp.	......do	Do.
Kentucky:				
Calloway County, Unincorporated Areas	210313	October 20, 2005, Emerg; November 1, 2007, Reg; September 29, 2010, Susp.	......do	Do.
Murray, City of, Calloway County	210033	April 22, 1975, Emerg; April 1, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Mississippi:				
Amite County, Unincorporated Areas	280268	April 11, 1980, Emerg; August 1, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Ellisville, City of, Jones County	280091	March 6, 1974, Emerg; September 30, 1977, Reg; September 29, 2010, Susp.	......do	Do.
Fayette, City of, Jefferson County	280285	September 26, 2008, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.
Gloster, Town of, Amite County	280004	February 13, 1975, Emerg; June 17, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Jefferson County, Unincorporated Areas.	280214	May 9, 1974, Emerg; July 3, 1990, Reg; September 29, 2010, Susp.	......do	Do.
Jones County, Unincorporated Areas ...	280222	March 20, 1975, Emerg; February 16, 1990, Reg; September 29, 2010, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Laurel, City of, Jones County	280092	December 30, 1971, Emerg; September 15, 1977, Reg; September 29, 2010, Susp.	......do	Do.
Liberty, Town of, Amite County	280005	November 29, 1974, Emerg; September 29, 1986, Reg; September 29, 2010, Susp.	......do	Do.
South Carolina:				
Arcadia Lakes, Town of, Richland County.	450171	May 27, 1975, Emerg; November 19, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Bamberg, City of, Bamberg County	450259	June 7, 1996, Emerg; November 20, 1996, Reg; September 29, 2010, Susp.	......do	Do.
Bamberg County, Unincorporated Areas	450203	N/A, Emerg; February 20, 1992, Reg; September 29, 2010, Susp.	......do	Do.
Barnwell, City of, Barnwell County	450023	January 31, 1975, Emerg; March 2, 1989, Reg; September 29, 2010, Susp.	......do	Do.
Barnwell County, Unincorporated Areas	450204	N/A, Emerg; December 19, 2000, Reg; September 29, 2010, Susp.	......do	Do.
Blackville, Town of, Barnwell County	450024	July 25, 1975, Emerg; May 15, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Brunson, Town of, Hampton County	450096	February 20, 1976, Emerg; August 5, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Columbia, City of, Lexington and Richland Counties.	450172	January 16, 1974, Emerg; September 2, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Denmark, Town of, Bamberg County	450021	June 9, 1975, Emerg; June 25, 1976, Reg; September 29, 2010, Susp.	......do	Do.
Eastover, Town of, Richland County	450173	June 26, 1975, Emerg; September 30, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Estill, Town of, Hampton County	450097	June 20, 1975, Emerg; July 17, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Forest Acres, City of, Richland County	450174	July 19, 1974, Emerg; November 5, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Furman, Town of, Hampton County	450098	July 15, 1975, Emerg; June 3, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Hampton, Town of, Hampton County	450100	May 14, 1975, Emerg; May 17, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Hampton County, Unincorporated Areas	450095	February 13, 1976, Emerg; January 15, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Irmo, Town of, Lexington and Richland Counties.	450133	June 27, 1975, Emerg; May 1, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Richland County, Unincorporated Areas	450170	September 20, 1974, Emerg; November 4, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Scotia, Town of, Hampton County	450101	February 19, 1976, Emerg; July 17, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Varnville, Town of, Hampton County	450102	May 27, 1975, Emerg; July 3, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Tennessee:				
Carthage, City of, Smith County	470176	May 2, 1974, Emerg; September 30, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Celina, City of, Clay County	470032	February 27, 1975, Emerg; April 30, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Clay County, Unincorporated Areas	470382	March 17, 1995, Emerg; June 1, 2006, Reg; September 29, 2010, Susp.	......do	Do.
Gordonsville, Town of, Smith County	470395	February 10, 1988, Emerg; February 10, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Hartsville, Town of, Trousdale County	470093	July 2, 1974, Emerg; August 16, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Linden, Town of, Perry County	470145	September 30, 1975, Emerg; August 5, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Lynchburg-Moore County, Metropolitan Government of.	470138	May 14, 1974, Emerg; September 29, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Perry County, Unincorporated Areas	470144	August 10, 1999, Emerg; June 1, 2005, Reg; September 29, 2010, Susp.	......do	Do.
Smith County, Unincorporated Areas	470283	February 5, 1975, Emerg; April 15, 1981, Reg; September 29, 2010, Susp.	......do	Do.
South Carthage, Town of, Smith County	470183	August 11, 1975, Emerg; November 5, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Trousdale County, Unincorporated Areas.	470192	December 12, 1975, Emerg; August 16, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Region V				
Illinois:				
Ashland, Village of, Cass County	171025	August 12, 1991, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Beardstown, City of, Cass County	170022	May 9, 1975, Emerg; May 2, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Chandlerville, Village of, Cass County	170023	July 2, 1975, Emerg; September 18, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Virginia, City of, Cass County	170024	August 15, 1975, Emerg; September 1, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Indiana:				
Adams County, Unincorporated Areas	180424	August 25, 1975, Emerg; August 3, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Berne, City of, Adams County	180485	October 9, 1981, Emerg; October 9, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Decatur, City of, Adams County	180001	April 3, 1975, Emerg; July 2, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Geneva, Town of, Adams County	180002	May 30, 1975, Emerg; November 1, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Ohio:				
Defiance County, Unincorporated Areas	390143	September 12, 1978, Emerg; August 2, 1990, Reg; September 29, 2010, Susp.	......do	Do.
Defiance, City of, Defiance County	390144	June 9, 1975, Emerg; March 4, 1985, Reg; September 29, 2010, Susp.	......do	Do.
Georgetown, Village of, Brown County	390035	July 2, 1975, Emerg; July 6, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Hicksville, Village of, Defiance County	390145	July 7, 1975, Emerg; August 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Mount Orab, Village of, Brown County	390621	January 16, 2001, Emerg; November 21, 2001, Reg; September 29, 2010, Susp.	......do	Do.
Ney, Village of, Defiance County	390850	September 9, 1991, Emerg; June 1, 1992, Reg; September 29, 2010, Susp.	......do	Do.
Region VI				
Oklahoma:				
Comanche, City of, Stephens County	405376	March 5, 1971, Emerg; December 23, 1971, Reg; September 29, 2010, Susp.	......do	Do.
Coyle, Town of, Logan County	400097	June 7, 1985, Emerg; July 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Crescent, City of, Logan County	400098	July 7, 1975, Emerg; March 16, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Duncan, City of, Stephens County	400202	January 16, 1974, Emerg; August 1, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Gore, Town of, Sequoyah County	400195	July 25, 1975, Emerg; September 1, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Guthrie, City of, Logan County	400099	June 27, 1975, Emerg; December 2, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Logan County, Unincorporated Areas	400096	October 26, 1984, Emerg; December 5, 1989, Reg; September 29, 2010, Susp.	......do	Do.
Marble City, Town of, Sequoyah County	400304	September 22, 1976, Emerg; August 19, 1985, Reg; September 29, 2010, Susp.	......do	Do.
Marlow, City of, Stephens County	400203	April 2, 1976, Emerg; September 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Marshall, Town of, Logan County	400306	August 13, 1976, Emerg; August 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Moffett, Town of, Sequoyah County	400196	September 2, 1976, Emerg; April 15, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Muldrow, Town of, Sequoyah County	400197	July 31, 1975, Emerg; April 15, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Roland, Town of, Sequoyah County	400198	November 17, 1975, Emerg; January 20, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Sallisaw, City of, Sequoyah County	400199	January 30, 1974, Emerg; January 2, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Sequoyah County, Unincorporated Areas.	400503	July 20, 1984, Emerg; January 2, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Texas:				
Angelina County, Unincorporated Areas	480007	March 29, 1996, Emerg; July 1, 1998, Reg; September 29, 2010, Susp.	......do	Do.
Diboll, City of, Angelina County	480008	April 10, 1975, Emerg; February 6, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Easton, Village of, Gregg and Rusk Counties.	481145	December 7, 1988, Emerg; December 1, 1989, Reg; September 29, 2010, Susp.	......do	Do.
Grayson County, Unincorporated Areas	480829	November 12, 1981, Emerg; May 18, 1992, Reg; September 29, 2010, Susp.	......do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Grey Forest, City of, Bexar County	480039	November 14, 1975, Emerg; July 16, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Gunter, Town of, Grayson County	480832	June 7, 1985, Emerg; January 18, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Huntington, City of, Angelina County	481077	August 23, 2001, Emerg; August 1, 2008, Reg; September 29, 2010, Susp.	......do	Do.
Kilgore, City of, Gregg and Rusk Counties.	480263	July 29, 1975, Emerg; July 2, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Lufkin, City of, Angelina County	480009	June 20, 1973, Emerg; June 1, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Mount Enterprise, City of, Rusk County	481124	March 6, 2009, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.
Rusk County, Unincorporated Areas	480993	July 22, 1985, Emerg; September 27, 1991, Reg; September 29, 2010, Susp.	......do	Do.
Sherman, City of, Grayson County	485509	May 22, 1970, Emerg; June 4, 1971, Reg; September 29, 2010, Susp.	......do	Do.
Tatum, City of, Panola and Rusk Counties.	480995	March 31, 1982, Emerg; April 17, 1985, Reg; September 29, 2010, Susp.	......do	Do.
Zavalla, City of, Angelina County	485527	October 8, 2002, Emerg; September 29, 2010, Reg; September 29, 2010, Susp.	......do	Do.
Region VII				
Missouri:				
Foley, City of, Lincoln County	290210	March 21, 1974, Emerg; March 1, 1978, Reg; September 29, 2010, Susp.	......do	Do.
Laclede County, Unincorporated Areas	290811	N/A, Emerg; February 24, 1993, Reg; September 29, 2010, Susp.	......do	Do.
Lebanon, City of, Laclede County	290197	August 30, 1974, Emerg; June 1, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Lincoln County, Unincorporated Areas	290869	June 9, 1980, Emerg; March 15, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Old Monroe, City of, Lincoln County	290211	June 13, 1974, Emerg; August 15, 1978, Reg; September 29, 2010, Susp.	......do	Do.
Silex, Village of, Lincoln County	290212	November 1, 1976, Emerg; September 16, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Troy, City of, Lincoln County	290641	April 17, 1980, Emerg; May 5, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Winfield, City of, Lincoln County	290213	April 18, 1974, Emerg; November 17, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Region VIII				
South Dakota:				
Brown County, Unincorporated Areas	460006	April 9, 1973, Emerg; September 30, 1988, Reg; September 29, 2010, Susp.	......do	Do.
Columbia, City of, Brown County	460008	N/A, Emerg; April 7, 1994, Reg; September 29, 2010, Susp.	......do	Do.
Davison County, Unincorporated Areas	460020	May 14, 1986, Emerg; April 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Mitchell, City of, Davison County	460021	December 23, 1974, Emerg; February 1, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Mount Vernon, City of, Davison County	460022	July 16, 1975, Emerg; June 11, 1976, Reg; September 29, 2010, Susp.	......do	Do.
Warner, City of, Brown County	460298	February 26, 1997, Emerg; June 8, 1998, Reg; September 29, 2010, Susp.	......do	Do.
Utah:				
Box Elder County, Unincorporated Areas.	490005	December 17, 1974, Emerg; September 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Brigham City, City of, Box Elder County	490006	November 1, 1974, Emerg; August 17, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Corinne, City of, Box Elder County	490197	September 28, 1977, Emerg; July 15, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Honeyville, City of, Box Elder County	490008	March 1, 1976, Emerg; July 29, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Mantua, Town of, Box Elder County	490009	August 20, 1975, Emerg; July 8, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Perry City, City of, Box Elder County	490010	August 18, 1975, Emerg; May 20, 1980, Reg; September 29, 2010, Susp.	......do	Do.
Willard, City of, Box Elder County	490011	January 16, 1976, Emerg; July 1, 1987, Reg; September 29, 2010, Susp.	......do	Do.
Region X				
Alaska:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Sitka, City and Borough of.	020006	November 8, 1974, Emerg; June 1, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Oregon:				
Albany, City of, Benton and Linn Counties.	410137	July 2, 1974, Emerg; April 3, 1985, Reg; September 29, 2010, Susp.	......do	Do.
Brownsville, City of, Linn County	410138	August 19, 1974, Emerg; August 17, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Harrisburg, City of, Linn County	410140	December 31, 1974, Emerg; February 3, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Lebanon, City of, Linn County	410141	June 10, 1975, Emerg; July 2, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Linn County, Unincorporated Areas	410136	April 9, 1974, Emerg; September 29, 1986, Reg; September 29, 2010, Susp.	......do	Do.
Lyons, City of, Linn County	410142	February 28, 1975, Emerg; December 15, 1981, Reg; September 29, 2010, Susp.	......do	Do.
Mill City, City of, Linn County	410143	May 20, 1975, Emerg; March 1, 1979, Reg; September 29, 2010, Susp.	......do	Do.
Millersburg, City of, Linn County	410284	July 21, 1982, Emerg; July 21, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Scio, City of, Linn County	410144	August 15, 1974, Emerg; August 1, 1984, Reg; September 29, 2010, Susp.	......do	Do.
Sweet Home, City of, Linn County	410146	April 17, 1975, Emerg; March 1, 1982, Reg; September 29, 2010, Susp.	......do	Do.
Tangent, City of, Linn County	410147	September 5, 1975, Emerg; May 17, 1982, Reg; September 29, 2010, Susp.	......do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: September 1, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–22586 Filed 9–9–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0403–04]

RIN 0648–AY29

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment to Fishing Year 2010 Georges Bank Yellowtail Flounder Total Allowable Catch

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

ACTION: Temporary final rule; adjustment to specifications.

SUMMARY: Final catch data for the 2009 fishing year (FY) (May 1, 2009–April 30, 2010) indicate that the total catch of Georges Bank (GB) yellowtail flounder was 1,770 mt, exceeding the 1,617 mt FY 2009 Total Allowable Catch (TAC) by 153 mt. The regulations require that any overage of the GB yellowtail flounder TAC specified for the common pool, individual sectors, or the scallop fishery in one FY be subtracted from the respective TACs in the following FY. Therefore, NMFS hereby announces deductions to the FY 2010 GB yellowtail flounder TAC, including how the deduction will be divided between the annual catch limit (ACL) for common pool vessels (common pool sub-ACL), and the ACL for sector vessels (sector sub-ACL).

DATES: Effective September 7, 2010 through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

SUPPLEMENTARY INFORMATION: The TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area were published in the **Federal Register** on April 9, 2010 (75 FR 18356) as part of the Framework Adjustment 44 (FW 44) final rule. That action established the FY 2010 U.S. TACs of GB cod, haddock, and yellowtail flounder at 338 mt, 11,988 mt, and 1,200 mt, respectively, and specified that, should an analysis of the catch by U.S. vessels indicate that an overage occurred during FY 2009, the pertinent TAC would be adjusted downward in order to be consistent with the FMP and the U.S./Canada Resource Sharing Understanding (Understanding). The regulations at § 648.85(a)(2)(ii) require that "any overages of the GB cod and GB haddock TACs specified for either the common pool or individual sectors, or any overages of the GB yellowtail flounder TAC specified for the common pool, individual sectors, or the scallop fishery * * * that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year." The final annual catch analysis cannot be completed until about 1 month into the following FY because of the need to include any late reports from vessels and dealers. Therefore, any required TAC adjustment must be made during the FY following the FY in which the overage occurred.

Based upon vessel reports, dealer reports, and other information available as of June 8, 2010, the total estimated catch of GB yellowtail flounder in the U.S./Canada Management Area during FY 2009 was 1,770 mt. This exceeds the overall FY 2009 GB yellowtail flounder TAC of 1,617 mt by 153 mt. Therefore, an overage of 153 mt of GB yellowtail flounder must be subtracted from the overall FY 2010 U.S./Canada GB yellowtail flounder TAC through this action. This results in an adjusted overall TAC of 1,047 mt for FY 2010 for GB yellowtail flounder. The Eastern GB cod and haddock TACs were not exceeded in FY 2009. Therefore, these two TACs are not adjusted.

The current regulatory provision requires that the reduction in the GB yellowtail flounder TAC be applied to the common pool, individual sectors, and scallop TACs, based on any overages in the previous year's TACs for each of these three components of the fishery. In FY 2009, however, with the exception of a bycatch TAC allocation to the scallop fishery, there was only an overall TAC allocated to the groundfish fishery, with no specific allocation to the common pool or individual sectors. Therefore, although there is a requirement to reduce this year's GB yellowtail flounder TAC by last year's overall overage, there is no specific regulatory provision describing how to allocate the reduction among these three components in this FY. (This is relevant to this FY only.) This action implements the required reduction and, pursuant to the agency's general regulatory authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855), creates an ad hoc method to prorate this reduction between the common pool and individual sectors based on the percentages of TAC allocated to the common pool and individual sectors for FY 2010. The FW 44 final rule set the FY 2010 GB yellowtail flounder ACL subcomponent for the scallop fishery to account for 100 percent of the anticipated GB yellowtail flounder bycatch in that fishery. Therefore, there is no rational basis to reduce scallop bycatch allocation this year. Implementing this method for allocating the reduction in TAC between the common pool and individual sectors is necessary to ensure consistency with the intent of Amendment 16 and FW 44.

To understand how the reduction is to be prorated it is necessary to describe how the allocation of TACs among the various components of the fishery is done. For transboundary managed stocks, the Acceptable Biological Catch (ABC) is equivalent to the U.S. portion of the TAC negotiated under the Understanding. The total ACL (or TAC) is set lower than the ABC to account for management uncertainty. For yellowtail flounder, the total ACL (or TAC) is subdivided into sub-ACLs (or TACs) for the groundfish fishery (sectors and common pool) and other ACL subcomponents, including an allocation to account for bycatch in the scallop fishery, and bycatch in other fisheries. The sector sub-ACL is further divided into Annual Catch Entitlement (ACE) values (or TACs) for each of the 17 NE multispecies sectors. The 17 sector ACEs that constitute the sector sub-ACL for FY 2010 were initially published on April 9, 2010 (75 FR 18113), in the sector final rule. These common pool and sector allocations were subsequently modified by a rule published on May 26, 2010 (75 FR 29459), to adjust for final sector membership rosters. The percentage allocations of TACs to these sub-ACLs and ACEs form the basis for prorating the reduction dictated by the 2009 FY's overage.

Table 1 contains the new values for the ABC, ACL, sub-ACLs, and ACL subcomponents for GB yellowtail flounder implemented by this action. Table 2 contains details of the adjustments to each of the 17 sector's ACEs for GB yellowtail flounder as a result of this action.

TABLE 1—GB YELLOWTAIL FLOUNDER ABC, ACL, SUB-ACL, AND ACL SUBCOMPONENTS FOR FY 2010 (MT)

	Previous value	New value
ABC	1,200	1,047
Total ACL	1,170	1,021
Scallop Fishery ACL Subcomponent	146	146
Other ACL Sub-components	60	52
Groundfish Total ACL	964	823
Sector Sub-ACL*	941	803
Common Pool Sub-ACL	23	20

*All sub-ACL values for sectors assume that each sector MRI has a valid permit for FY 2010.

TABLE 2—GB YELLOWTAIL FLOUNDER ACE FOR EACH SECTOR FOR FY 2010 (MT)*

Sector name	Previous ACE (mt)	New ACE (mt)
FGS	0	0
NCCS	8	7
NEFS 2	16	14
NEFS 3	0	0
NEFS 4	21	18
NEFS 5	92	79
NEFS 6	13	11
NEFS 7	156	133
NEFS 8	154	131
NEFS 9	183	156
NEFS 10	0	0
NEFS 11	0	0
NEFS 12	0	0
NEFS 13	149	127
PCCGS	0	0
SHS	79	68
TSS	70	60

*All ACE values for sectors outlined in Table 1 assume that each sector MRI has a valid permit for FY 2010.

George Bank Cod Fixed Gear Sector (FGS), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sectors (NEFS), Port Clyde Community Groundfish Sector (PCCGS), Sustainable Harvest Sector (SHS), and Tri-State Sector (TSS).

FW 44 specified an incidental catch TAC for the Regular B Days-at Sea (DAS) Program, equivalent to 2 percent of the GB yellowtail flounder common pool sub-ACL. As a result of the adjustment to the common pool sub-ACL, this incidental catch TAC is reduced from 0.47 mt to 0.40 mt.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be unnecessary, impractical, and contrary to the public interest. Any delay in this action to allow for prior public comment could result in overharvest of the new GB yellowtail flounder allocation by a sector or the common pool. Such an overage would result in closure of the Eastern U.S./Canada Area, and zero possession of GB yellowtail flounder for the affected group and, therefore, loss of opportunities to fish for other stocks. Further, the regulations at § 648.85(a)(2)(ii), which were subject to prior public comment, require that any overage of the TAC for GB yellowtail flounder be deducted from the TAC in the following FY. Accordingly, the action being taken by this temporary rule is non-discretionary. Since this is a non-discretionary action, based on numerous records solely in the possession of NMFS, public comment would not serve to inform the agency calculation of the overage and its deduction from the appropriate TAC.

The rate of harvest of GB yellowtail flounder by groundfish vessels and scallop vessels fishing in the Scallop Access Areas in the U.S./Canada Management Area, as reported from Vessel Monitoring Systems, is updated weekly on the Internet at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advance notice of a potential action as a result of a GB yellowtail flounder TAC being exceeded during FY 2009. Further, the potential that one or more of the FY 2009 TACs for the U.S./Canada stocks could be exceeded, and therefore reduce the FY 2010 TAC, was considered and

open to public comment during the proposed rule stage of FW44.

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

Dated: September 3, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–22634 Filed 9–7–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XY88

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2010 total allowable catch (TAC) of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 7, 2010, through 1200 hrs, A.l.t., October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2010 TAC of pollock in Statistical Area 620 of the GOA is 4,878 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by NNN mt to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 620. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 620 is NNN mt (4,878 mt minus NNN mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2010 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of NNN mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

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 delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 6, 2010.

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 above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 7, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–22637 Filed 9–7–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XY87

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2010 total allowable catch (TAC) of northern rockfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 7, 2010, through 1200 hrs, A.l.t., December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 27, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XY87, 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 (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010), NMFS closed the directed fishery for northern rockfish under 679.2(d)(1)(iii).

As of September 2, 2010, NMFS has determined that approximately 4,930 metric tons of northern rockfish remain unharvested in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the 2010 TAC of northern rockfish in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of northern rockfish in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

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) and 679.25(c)(1)(ii) 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 delay the opening of northern rockfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 2, 2010.

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 above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for northern rockfish in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 27, 2010.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 7, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–22640 Filed 9–7–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 75, No. 175

Friday, September 10, 2010

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0076]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL–031 Information Sharing Environment Suspicious Activity Reporting Initiative System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the "Department of Homeland Security/ALL–031 Information Sharing Environment Suspicious Activity Reporting Initiative System of Records" and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0076, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Ronald Athmann (202–447–4332), Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, "DHS/ALL–031 Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records."

This system of records will allow DHS components that produce, receive, and store suspicious activity reports (SARs) pursuant to their existing authorities, responsibilities, platforms, and programs to compile and share report data that also meet the ISE–SAR Functional Standard with authorized participants in the Nationwide SAR Initiative (NSI) including, federal departments and agencies, state, local and tribal law enforcement agencies, and the private sector. The NSI is one of a number of government-wide efforts designed to implement guidelines first issued by the President on December 16, 2005, for establishing the ISE pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended. The NSI establishes a nationwide capability to gather, document, process, analyze and share information about suspicious activity, incidents, or behavior reasonably indicative of terrorist activities (hereafter collectively referred to as suspicious activity or activities) to enable rapid identification and mitigation of potential terrorist threats.

There is a long history of documenting of suspicious activity, particularly in the law enforcement community; these reports are sometimes referred to as suspicious activity reports, tips and leads, or other similar terms. Federal, state, local and tribal agencies, and private sector currently collect and document suspicious activities in support of their responsibilities to investigate and prevent potential crimes, protect citizens, and apprehend and prosecute criminals. Since some of these documented activities may bear a nexus to terrorism, the Program Manager for the Information Sharing Environment (PM–ISE) has developed a standardized process for identifying, documenting, and sharing terrorism-related SAR data (hereinafter referred to an "ISE–SAR"), which meet the definition and criteria set forth in the ISE Functional Standard Suspicious Activity Reporting, (Version 1.5, May 2009) to the maximum extent possible consistent with the protection of individual privacy, civil rights, and civil liberties. The Functional Standard defines an ISE–SAR as official documentation of observed behavior determined to have a potential nexus to terrorism (*i.e.,* to be reasonably indicative of criminal activity associated with terrorism).

Several operational components within DHS regularly observe or otherwise encounter suspicious activities while executing their authorized missions and performing operational duties. Components document those observations or encounters in SARs. Across the Department the operational setting or context for activities reported in SARs are as varied as the Department's mission responsibilities. Engagement with the NSI will alter neither those underlying mission functions nor upset the current methodologies employed by DHS components collecting information on suspicious activities and issuing SARs. Rather, the NSI will facilitate the more effective sharing and discovery—both internally and between DHS and external NSI participants—by incorporating a standardized technological and functional approach for recording and storing ISE–SARs throughout DHS. Once training in the NSI program and the application of

these technical and functional standards, DHS personnel will review component SARs and submit the data only from those that meet the ISE–SAR Functional Standard into the NSI Shared Space.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an 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. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ALL–031 ISE SAR Program System of Records. Some information in the DHS/ALL–031 ISE SAR Program System of Records relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/ALL–031 ISE SAR Initiative System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph "52":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

52. The DHS/ALL–031 ISE SAR Initiative System of Records consists of electronic records and will be used by DHS and its components. The DHS/ALL–031 ISE SAR Initiative System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL–031 ISE SAR Initiative System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS, its components, as well as other federal, state, local, tribal, or foreign agencies or private sector organization and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), and (e)(12); (f); (g)(1); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (c)(4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed

information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (e)(12) (Computer Matching) if the agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

(k) From subsection (h) (Legal Guardians) the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

Dated: September 7, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–22639 Filed 9–9–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Doc. No. AMS–PY–08–0032]

Amendment to Egg Research and Promotion Order and Regulations To Increase the Rate of Assessment and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and notice of referendum.

SUMMARY: This proposed rule would amend the Egg Research and Promotion Order (Order) to increase the assessment rate on egg producers paying assessments to the American Egg Board (AEB) from 10 cents to 15 cents per 30-dozen case of commercial eggs, provided the increase is approved by egg producers voting in a referendum. This proposal would also make a conforming amendment to the regulations. Notice also is hereby given that the Agricultural Marketing Service (AMS) will conduct a referendum to determine whether egg producers favor the increase in the assessment rate.

DATES: For the purpose of determining voter eligibility, the representative production period is the period January 1, 2009, through December 31, 2009. The referendum will be held during the period October 29 through November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 3932–S, Washington, DC 20250–0256; *telephone:* (202) 720–4476; *fax:* (202) 720–2930; or *e-mail: Angie.Snyder@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect.

The Egg Research and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Section 14 of the Act allows those subject to the Order to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law. In any petition, the person may request a modification of the Order or an exemption from the Order. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Initial Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS has considered the economic impact of this action on the small producers that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

According to AEB, approximately 245 producers are subject to the provisions of the Order, including paying assessments. Under the current Order, producers in the 48 contiguous United States and the District of Columbia who own more than 75,000 laying hens each currently pay a mandatory assessment of 10 cents per 30-dozen case of eggs. Handlers are responsible for collecting and remitting assessments to AEB. There are approximately 160 egg handlers who collect assessments. Assessments under the program are used by AEB to finance promotion, research, and consumer information programs designed to increase consumer demand for eggs in domestic and international markets. At the current rate of 10 cents per 30-dozen case, assessments generate about $20 million in annual revenues. The Order is administered by AEB under supervision of the U.S. Department of Agriculture.

In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as those having annual receipts of no more than $7 million. Under this definition, the vast majority of the egg producers that would be affected by this rule would not be considered small

entities. Producers owning 75,000 or fewer laying hens are eligible to be exempt from this program.

Given that a laying hen produces approximately 22 dozen eggs per year, production from 75,000 laying hens would result in 1.65 million dozen eggs. With a farm-gate price of $0.837 per dozen, total annual receipts would be $1.83 million, which is well above the definition used to describe a small farm. The wholesale price of eggs would have to be approximately $0.45 per dozen before a producer with 75,000 hens could be classified as a small farm under the SBA definition.

The present 10-cent assessment is equivalent to approximately 0.28 percent of the wholesale price of a 30-dozen case of large eggs. An assessment rate of 15 cents per 30-dozen case would be equivalent to approximately 0.42 percent of the wholesale price of a 30-dozen case of large eggs. This wholesale price is based on the price per dozen Grade A large egg price reported in the "Weekly Combined Regional Shell Eggs" report (WA_PY001) published by USDA's Poultry Market News and Analysis Branch.

According to AEB, additional revenue is required in order to sustain and expand its programs. This proposed increase is consistent with sections 8 and 9 of the Act (7 U.S.C. 2701–2718) that permit AEB to recommend an increase in the assessment rate up to 20 cents per case and request that a referendum be held if such an increase is supported by a scientific study, marketing analysis, or other similar competent evidence.

AEB conducted a marketing analysis the results of which support a 5-cent increase in the assessment rate (to a total of 15 cents) to effectively strengthen AEB's programs. The marketing analysis addressed the need for a funding increase due to the following factors: (1) Inflation, including the overall increases in all costs associated with doing business since the last increase in AEB's assessment rate in 1995; (2) AEB's advertising program, including the increased cost of advertising expenditures as well as new media outlets; (3) AEB's nutrition program, including additional research needed to examine both the nutritional benefits of eggs and the relationship between eggs and increased serum cholesterol levels and heart disease risk; and (4) AEB's food safety program, specifically expanding research to cover food safety as the public becomes more concerned about food safety issues.

With the proposed increased assessment, the financial commitment of the U.S. egg industry for generic research and promotion activity could increase by 50 percent, from approximately $20 million to an estimated $30 million annually.

AEB considered several alternatives, including keeping the current 10 cents per 30-dozen case, an increase to 20 cents per 30-dozen case, and an increase to 15 cents per 30-dozen case. AEB ultimately concluded that not increasing the rate would not allow AEB even to sustain its programs effectively, and that an increase to 15 cents was sufficient to maintain and expand its promotion, research, and consumer information programs consistent with the purposes of the Act.

This rule does not impose additional recordkeeping requirements on egg producers or collecting handlers. There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with OMB regulation 5 CFR part 1320 which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order and Rules and Regulations have been approved previously under OMB control number 0581–0093. This rule does not result in a change to those information collection and recordkeeping requirements.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of these proposed amendments to the Order and Rules and Regulations on small entities. We previously invited comments concerning potential effects of these amendments on small businesses (74 FR 48568). Comments on the Regulatory Flexibility Analysis are discussed below under Proposed Changes.

Background

The Egg Research and Consumer Information Act (7 U.S.C. 2701–2718) (hereinafter referred to as the "Act") established a national egg research and promotion program—administered by AEB—that is financed through industry assessments and subject to oversight by AMS. This program of promotion, research, and consumer information is designed to strengthen the position of eggs in the marketplace and to establish, maintain, and expand markets for eggs.

This program is financed by assessments on egg producers owning more than 75,000 laying hens. The Order specifies that handlers are responsible for collecting and remitting the producer assessments to AEB, reporting their handling of eggs, and maintaining records necessary to verify their reports.

This rule proposes to increase the assessment rate on egg producers from 10 cents to 15 cents per case of commercial eggs. Only producers in the contiguous United States and the District of Columbia are subject to the program, and producers owning 75,000 or fewer laying hens are eligible to obtain an exemption from paying assessments.

In order to sustain and expand the promotion, research, and consumer information programs at present levels, AEB believes that additional revenue is required. The proposed increase is estimated to generate $10 million in new revenue, depending upon production levels. Currently, AEB collects approximately $20 million per year. A 5-cent increase in the assessment rate is expected to increase the total to about $30 million per year.

Section 8 of the Act provides for an assessment rate up to 20 cents per case. Section 1250.347 currently provides for an assessment at a rate not to exceed 10 cents per 30-dozen case of eggs, or equivalent thereof. Any increase from the current 10-cent rate established in the Order must be approved by egg producers voting in a referendum. Section 9 of the Act provides that if AEB determines, based on a scientific study, marketing analysis, or other similar competent evidence, that an increase in the assessment rate is necessary to effectuate the declared policy of the Act, AEB may recommend the increase to the Secretary and request that a referendum be held to vote on the assessment increase.

Marketing Analysis and AEB Recommendation

Consequently, AEB conducted a marketing analysis the results of which support a 5-cent increase in the assessment rate to a total of 15 cents to effectively strengthen AEB's programs.

Because of inflation, AEB estimates that an estimated $14.7 million would be required to duplicate the same media program in 2008 as was conducted for $7.9 million in 1995, when the assessment rate was last increased.

Despite the success of the advertising program, AEB's media budget has not kept pace with media inflation. Over the last 10 years, the budget has remained relatively flat, averaging roughly $7.9 million annually. Meanwhile, the cost of media has steadily increased at the rate of 5 percent each year. If AEB's advertising budget matched inflation, it would be more than 50 percent larger today than it is, and it would reach $22 million in 2017. By not keeping up with inflation, each year AEB has been

reaching fewer consumers and less often.

Ten years ago, AEB expanded its research to include studies on the nutritional benefits of eggs, including satiety and weight control; bioavailability of egg nutrients; egg protein and muscle retention in the elderly; egg lutein and eye health; egg choline and brain development, dietary choline requirements, and the relationship between choline and reduction of heart-disease risk; and eggs and school performance.

The expansion of the research programs over the past decade has been an essential component of AEB's mission. To continue to fund the best and most relevant research projects, AEB needs to increase its level of research funding to account for the rising cost of studies today compared to 10 years ago, the increased number of research topics, and publicizing research findings.

In addition to research into egg nutrients, AEB has also funded research and other programs related to food safety as the public's food security concerns have increased. AEB has funded research on Salmonella, avian influenza, transportation systems, cooking methods, and statistical analyses. Not only do these studies deal with current food safety issues, but they also help the egg industry prepare for and address potential risks.

At the March 27, 2008, board meeting, AEB members voted unanimously to recommend that the assessment rate be increased from 10 cents to 15 cents per 30-dozen case of commercial eggs.

Proposed Changes

This rule would amend the Order as well as the implementing Rules and Regulations. Section 1250.347 of the Order states that the assessment rate is not to exceed 10 cents per 30-dozen case of eggs, provided that no more than such assessment shall be made on any case of eggs. Section 1250.514 provides for an assessment rate of 10 cents per case of commercial eggs handled for the account of each producer, with each case being subject to assessment only once. Accordingly, section 1250.347 of the Order and section 1250.514 of the Rules and Regulations would be revised to reflect an assessment rate of 15 cents per case. In order to better reflect the provisions of the Act, section 1250.347 of the Order would be amended to reflect both the maximum assessment rate authorized under the Act as well as the assessment rate itself.

A proposed rule to increase the assessment rate in the Order from 10 cents to 15 cents per case was published in the **Federal Register** on September 25, 2009 (74 FR 48568). Comments were solicited from interested parties through November 24, 2009. Four comments were received: Two from egg producer companies opposing the increase, one from a State egg association, and one from a member of the public.

One commenter, a large egg producer company, stated that AEB should be required to show the effectiveness of current programs before seeking to expand those programs. AEB employs a number of mechanisms to gauge the effectiveness of its programs, its producer members monitor those programs, and this information is communicated to the entire industry.

The commenter also stated that only one sentence in the proposal was dedicated to the marketing analysis conducted by AEB. Further, the commenter stated that a new notice should be published to include additional details of how the analysis was conducted. We disagree. AMS provided a reasonable and appropriate discussion of the key points of the marketing analysis. The marketing analysis was conducted by AEB under the supervision of AEB's Executive Committee and is available from AEB. Further, AMS does not believe that a revised proposed rule is necessary or warranted. Additionally, any changes made as a result of amending the Order provision will not become effective unless favored by the egg industry in a referendum.

The commenter further stated that the proposed rule failed to provide justification for what programs AEB conducts with its current budget. We disagree. AMS cited a number of AEB's current programs that are included in the summary of the marketing analysis. AEB informs the industry of its activities through a variety of producer communications, industry meetings, and other methods.

The commenter also challenged the figures used in the Initial Regulatory Flexibility Analysis. AMS reviewed this issue and used a farm-gate price per dozen in the analysis contained herein.

Additionally, the commenter stated that the rule did not contain an analysis of how the proposed increase affects the long-term profit margins of producers. The Initial Regulatory Flexibility Act analysis discussed and compared the equivalency of the current 10-cent assessment and the proposed 15-cent assessment on wholesale prices.

The commenter also stated that the proposal gave no mention of how AEB currently budgets and spends assessment funds and that this must be addressed in a proposed rule so that the public can make an informed decision. We disagree. The discussion of the marketing analysis and AEB's recommendation in the proposed rule addresses this concern. Further, AEB regularly communicates with all egg producers about how funds are budgeted and expended.

The same commenter stated that the proposed rule's mention of food safety as partial justification for the assessment increase was misleading because AEB no longer maintained a food safety function. We disagree. While certain food safety work, primarily with the Safe Quality Foods program, is not conducted by AEB, there are still food safety programs under AEB. These programs include food safety research, risk assessment research, consumer education, and work with foodservice institutions and culinary schools, among others.

Finally, the commenter expressed opposition to a referendum and an increase in the assessment rate. We disagree. A referendum will be conducted in accordance with the provisions of the Act.

A second commenter, an egg producer company, requested that the assessment increase be denied because food safety was moved to another industry organization and because of the financial burden on the industry. We disagree. As previously discussed, food safety programs currently are conducted by AEB. Further, the proposed rule took into account the impact of the assessment increase on the industry and discussed the need for additional revenue to sustain and expand its programs to the benefit of the industry.

A third commenter, a member of the public, posed a number of questions that concerned the effectiveness of the program in relation to egg consumption, egg prices, program costs and benefits, and research studies produced. In addition, the commenter suggested an option for the increased assessment, stating that it should be appropriated back to the States or an option to select which committee can use the funds. This rule would increase the assessment rate from 10 cents to 15 cents per 30-dozen case of commercial eggs. As previously discussed, AEB regularly communicates with all egg producers about how funds are budgeted and expended. Consistent with the Act, AEB conducted a marketing analysis the results of which support a 5-cent increase in the assessment rate to effectively strengthen AEB's programs. With regard to the commenter's suggested options, the AEB budget process would determine where such funds would be expended.

A final comment was received from a State egg association. While the commenter declined to comment on whether the assessment should be increased, the commenter wrote in favor of AEB's programs. The commenter also suggested increasing support funding at the State level for promotion activities. As previously discussed, this would be up to producer members of the AEB to determine.

In addition, the commenter suggested changes concerning board membership that are outside the scope of the proposed rule.

The Act provides that AEB may recommend an increased assessment rate to the Secretary. In accordance with the provisions of the Act, AEB has done so, and the assessment increase provided for herein will be subject to a referendum vote.

The proposed rule published on September 25, 2009, stated that producers owning 75,000 or fewer laying hens were exempt and ineligible to vote, as producers owning 75,000 or fewer laying hens are eligible to receive an exemption. However, § 1250.530 of the regulations provide that, to obtain an exemption, producers must file an exemption statement with their collecting handler(s) and provide a copy to AEB. Producers who would qualify for an exemption but who are not certified for exemption and who pay assessments are not exempt and therefore eligible to vote in the referendum. The referendum order so states.

Referendum Order

It is hereby directed that a referendum be conducted among eligible egg producers to determine whether such producers favor the assessment increase.

The procedure applicable to the referendum shall be the procedure for the conduct of referenda in connection with the Egg Research and Promotion Order (7 CFR 1250.200) as published in this issue of the **Federal Register.** The referendum period shall be from October 29 through November 19, 2010.

For the purpose of determining voter eligibility, the representative period is the period January 1 through December 31, 2009. Producers engaged in commercial egg production are eligible to vote in the referendum if they (a) owned more than 75,000 laying hens during that period, or (b) owned 75,000 or fewer laying hens, are not certified as exempt producers, and paid assessments.

For the increase to be approved, it must be approved or favored by at least two-thirds of the producers voting in the referendum, or a majority of such producers if they represent at least two-thirds of the commercial eggs produced by those voting.

The agents of the Secretary to conduct such referendum are hereby designated to be Angela C. Snyder and Sara D. Lutton, Research and Promotion; Standards, Promotion & Technology Branch; Poultry Programs, AMS, USDA; 1400 Independence Avenue, SW., Room 3932–S Stop 0256; Washington, DC 20250–20549; telephone (202) 720–4476; fax (202) 720–2930, or e-mail at *Angie.Snyder@ams.usda.gov.* The agent may appoint subagents to assist in performing duties related to the referendum.

Ballots, instructions, eligibility requirements, and other information pertinent to the referendum will be mailed to all known eligible egg producers.

If any eligible voter does not receive a ballot by the beginning date of the referendum period, such individual may obtain a ballot from the address provided in the information contact section of this rule. Single copies of the complete text of the proposed amendments to the Egg Research and Promotion Order and Rules and Regulations may also be obtained from this address.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1250 is proposed to be amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of 7 CFR part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

2. Section 1250.347 is revised to read as follows:

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at a rate of 15 cents per 30-dozen case of eggs, or the equivalent thereof, for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs. The assessment rate shall not exceed 20 cents per case (or the equivalent of a case) of commercial eggs.

3. In section 1250.514, the first sentence is revised to read as follows:

§ 1250.514 Levy of assessments.

An assessment rate of 15 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. * * *

Dated: September 3, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–22643 Filed 9–9–10; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–9138, 34–62841, 39–2470, IA–3078, IC–29408; File No. S7–20–10]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

DATES: Comments should be submitted by December 15, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–20–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–20–10. This file number should be included on the subject line if e-mail is used. To help us 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/other.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202–551–5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600–611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded * * * to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a).

The RFA sets forth specific considerations that must be addressed in the review of each rule:

• The continued need for the rule;
• The nature of complaints or comments received concerning the rule from the public;
• The complexity of the rule;
• The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
• The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list. The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.

The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 1999. When the Commission implemented the Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The rules are grouped according to which Division or Office of the Commission recommended their adoption.

Rules and Forms Division of Corporation Finance

Title: Regulation of Takeovers and Security Holder Communications.

Citation: 17 CFR 229.1000–1016, 17 CFR 230.162, 17 CFR 230.165, 17 CFR 230.166, 17 CFR 230.425, 17 CFR 240.13e–4, 17 CFR 240.13e–100, 17 CFR 240.14d–11, 17 CFR 240.14e–5, 17 CFR 240.14e–8.

Authority: 15 U.S.C. 77a *et seq.,* 15 U.S.C. 78a *et seq.*

Description: These rules and regulations apply to takeover transactions (including tender offers, mergers, acquisitions and similar extraordinary transactions). They also permit increased communications with security holders and the markets, balance the treatment of cash and stock tender offers, simplify and centralize disclosure requirements, and eliminate regulatory inconsistencies in mergers and tender offers.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7760, approved by the Commission on October 22, 1999, which adopted Regulation M–A and the related rules and revisions. Comments to the proposing release were considered at that time. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

* * * * *

Title: Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings.

Citation: 17 CFR 230.800–802, 17 CFR 260.4d–10.

Authority: 15 U.S.C. 77a *et seq.,* 15 U.S.C. 78a *et seq.*

Description: These rules provide tender offer and Securities Act registration exemptions for cross-border tender and exchange offers, business combinations and rights offerings relating to the securities of foreign companies.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–7759, approved by the Commission on October 22, 1999, which adopted Securities Act Rules 800 through 802 and Trust Indenture Act Rule 4d–10. Comments to the proposing release were considered at that time. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

* * * * *

Title: International Disclosure Standards.

Citation: 17 CFR 210.3–01, 17 CFR 210.3–20, 239.36.

Authority: 15 U.S.C. 77a *et seq.,* 15 U.S.C. 78a *et seq.*

Description: These rules revise disclosure requirements to conform to the international disclosure standards endorsed by the International Organization of Securities Commissions in September 1998.

Prior Commission Determination Under 5 U.S.C. 601: Pursuant to the Regulatory Flexibility Act (15 U.S.C. 605(b)), the Chairman of the Commission certified at the proposal stage on February 2, 1999 that the revisions to rules and forms would not have a significant economic impact on a substantial number of small entities. The Commission received no comments specifically addressing the certification.

* * * * *

Title: Audit Committee Disclosure.

Citation: 17 CFR 210.10–01.

Authority: 15 U.S.C. 77a *et seq.,* 15 U.S.C. 78a *et seq.*

Description: This rule requires that companies' independent auditors review the companies' financial information included in the companies' quarterly reports prior to the filing of these reports.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory

Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–42266, approved by the Commission on December 22, 1999, which adopted Rule 10–01 of Regulation S–X under the Securities Act of 1933 and the Securities Exchange Act of 1934. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

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Rules and Forms Administered by the Division of Investment Management

Title: Rule 17j–1.

Citation: 17 CFR 270.17j–1.

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–17(j), 80a–37(a).

Description: Rule 17j–1 under the Investment Company Act of 1940 ("Act") prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a registered investment company ("fund") or with the fund's investment adviser or principal underwriter in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires 17j–1 organizations to adopt codes of ethics reasonably designed to prevent fraud and requires fund personnel to report their personal securities transactions to their 17j–1 organization.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC–23958, which was approved by the Commission on Aug. 20, 1999. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Rule 154.

Citation: 17 CFR 230.154.

Authority: 15 U.S.C. 77a *et seq.*

Description: Rule 154 under the Securities Act of 1933 permits an issuer or broker-dealer that has an obligation to deliver a prospectus to multiple persons at a single address to satisfy that obligation by delivering a single prospectus, subject to certain conditions.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC–24123, which was approved by the Commission on November 4, 1999. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

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Rules and Forms Administered by the Division of Trading and Markets

Title: Rule 10b–18.

Citation: 17 CFR 240.10b–18.

Authority: 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c) and 78w(a).

Description: Rule 10b–18 under the Securities Exchange Act of 1934 Rule 10b–18 provides a "safe harbor" from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 thereunder, when an issuer or affiliated purchaser of the issuer bids for or buys shares of its common stock in compliance with the Rule's conditions.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–41905, which was approved by the Commission on Sept. 23, 1999. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

* * * * *

Title: Rules 15b3–1, 15Ba2–2, and 15Ca2–1.

Citation: 17 CFR 240.15b3–1, 240.15Ba2–2, and 240.15Ca2–1.

Authority: 15 U.S.C. 78o(a), 78o(b), 78o–4(a)(2), 78o–5(a)(2), and 78w(a).

Description: Rule 15b3–1 under the Securities Exchange Act of 1934 governs amendments to applications for registration as a broker or a dealer. Rule 15Ba2–2 under the Securities Exchange Act of 1934 governs applications for registration of non-bank municipal securities dealers whose business is exclusively intrastate. Rule 15Ca2–1 under the Securities Exchange Act of 1934 governs applications for registrations as a government securities broker or government securities dealer.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–41594, which was approved by the Commission on July 2, 1999. Comments to the proposing release and any comments to the Initial Regulatory Flexibility Analysis were considered at that time.

By the Commission.

Dated: September 3, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–22574 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[GN Docket No. 09–191; WC Docket No. 07–52; DA 10–1667]

Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission's Wireline Competition and Wireless Telecommunications Bureaus (collectively, the Bureaus) seek comment on two issues in the open Internet proceeding that merit further development. The first issue is the relationship between open Internet protections and services that are provided over the same last-mile facilities as broadband Internet access service (commonly called "managed" or "specialized" services). The second is the application of open Internet rules to mobile wireless Internet access services, which have unique characteristics related to technology, associated application and device markets, and consumer usage. The intended effect is to develop a more detailed record in the Open Internet proceeding.

DATES: Comments are due on or before October 12, 2010 and reply comments are due on or before November 4, 2010.

ADDRESSES: You may submit comments, identified by GN Docket No. 09–191 and WC Docket No. 07–52, by any of the following methods:

- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail ecfs@fcc.gov,* and include the following words in the body of the message: "get form." A sample form and directions will be sent in response. Include the docket numbers in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail): 9300 East Hampton Drive, Capitol Heights, MD 20743.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Competition Policy Division, Wireline Competition Bureau, at 202–418–1580 or *william.kehoe@fcc.gov,* or John Spencer, Broadband Division, Wireless Telecommunications Bureau, at 202–418–2487 or *john.spencer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Bureaus' *Public Notice* in GN Docket No. 09–191 and WC Docket No. 07–52, DA 10–1667, released on September 1, 2010. The Notice of Proposed Rulemaking initiating this proceeding, *Preserving the Open Internet; Broadband Industry Practices,* GN Docket No. 09–191, WC Docket No. 07–52, Notice of Proposed Rulemaking, 74 FR 62638, November 30, 2009 (*Open Internet NPRM*) addressed two issues in less detail than many other issues, and the Commission's analysis would benefit from further development of these issues in the record. The Bureaus therefore found it appropriate to further inquire into these areas. The complete text of this document is available on the Commission's Internet site at *www.fcc.gov* and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text of the *Public Notice* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, e-mail at *fcc@bcpiweb.com,* or via its Web site at *http://www.bcpiweb.com.*

Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. When filing comments, please reference GN Docket No. 09–191 and WC Docket No. 07–52.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking numbers. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours at this location are 8 a.m. to 7 p.m.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 202–488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in GN Docket No. 09–191 and WC Docket No. 07–52 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone 202–488–5300, facsimile 202–488–5563, TTY 202–488–5562, e-mail *fcc@bcpiweb.com.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of Public Notice

1. In order to promote innovation, investment, competition, and free expression, and to protect and empower consumers, in late 2009 the Commission issued the *Open Internet NPRM.* That *NPRM* sought public comment on rules that would codify the four principles adopted in *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.,* CC Docket Nos. 02–33, 01–337, 95–20, 98–10, GN Docket No. 00–185, CS Docket No. 02–52, Policy Statement, 20 FCC Rcd 14986 (2005) (*Internet Policy Statement*) and strengthen them by prohibiting broadband Internet access providers from treating lawful traffic in a discriminatory manner, and by requiring providers to be transparent regarding their network management practices. The discussion generated by the Commission's Open Internet proceeding appears to have narrowed disagreement on many of the key elements of the framework proposed in the *NPRM:* First, that broadband providers should not prevent users from sending and receiving the lawful content of their choice, using the lawful applications and services of their choice, and connecting the nonharmful devices of their choice to the network, at least on fixed or wireline broadband platforms. Second, that broadband providers should be transparent regarding their network management practices. Third, that with respect to the handling of lawful traffic, some form of anti-discrimination protection is appropriate, at least on fixed or wireline broadband platforms. Fourth, that broadband providers must be able to reasonably manage their networks, including through appropriate and tailored mechanisms that reduce the effects of congestion or address traffic that is unwanted by users or harmful to

the network. Fifth, that in light of rapid technological and market change, enforcing high-level rules of the road through case-by-case adjudication, informed by engineering expertise, is a better policy approach than promulgating detailed, prescriptive rules that may have consequences that are difficult to foresee.

2. There are two complex issues, however, that merit further inquiry. The first is the relationship between open Internet protections and services that are provided over the same last-mile facilities as broadband Internet access service (commonly called "managed" or "specialized" services). The second is the application of open Internet rules to mobile wireless Internet access services, which have unique characteristics related to technology, associated application and device markets, and consumer usage. The *NPRM* raised both of these issues but addressed them in less detail than many other issues, and the Commission's analysis would benefit from further development of these issues in the record. The Bureaus therefore find it appropriate to further inquire into these areas.

A. Specialized Services

3. In the *NPRM,* the Commission recognized that broadband providers may provide other services over the same last-mile facilities used to provide broadband Internet access service. These services may drive additional private investment in networks and provide consumers new and valued services. However, there appear to be three general areas of concern about how to maintain the investment-promoting benefits of specialized services while protecting the Internet's openness: The *NPRM* used the term "managed or specialized services" to describe the services that we here call "specialized services." We avoid the term "managed services" to prevent confusion with services that have long been provided by communications service providers to enterprise customers, which may include managing computing and communications facilities on behalf of such customers.

(1) *Bypassing Open Internet Protections:* Open Internet protections may be weakened if broadband providers offer specialized services that are substantially similar to, but do not technically meet the definition of, broadband Internet access service, and if consumer protections do not apply to such services. A similar concern may arise if specialized services are integrated into broadband Internet access service; for example, if a broadband provider offers broadband Internet access service bundled with a "specialized service" that provides prioritized access to a particular Web site.

(2) *Supplanting the Open Internet:* Broadband providers may constrict or fail to continue expanding the network capacity allocated to broadband Internet access service in order to provide more capacity for specialized services. If this occurs, and particularly if one or more specialized services serve as substitutes for the delivery of content, applications, and services over broadband Internet access service, the open Internet may wither as an open platform for competition, innovation, and free expression.

(3) *Anti-competitive Conduct:* Broadband providers may have the ability and incentive to engage in anti-competitive conduct with respect to specialized services, particularly if they are vertically integrated providers of content, applications, or services; or if they enter into business arrangements with third-party content, application, or service providers concerning specialized service offerings. Such discriminatory conduct could harm competition among, and private investment in, content, application, and service providers.

These concerns, particularly the second and third, may be exacerbated by worries that due to limited choice among broadband Internet access service providers, consumers may not be able to effectively exercise their preferences for broadband Internet access service (or content, applications, or services available through broadband Internet access service) over specialized services.

4. There appear to be at least six general policy approaches to addressing these concerns while promoting private investment and encouraging the development and deployment of new services that benefit consumers. These approaches could be employed alone or in combination:

(A) *Definitional Clarity:* Define broadband Internet access service clearly and perhaps broadly, and apply open Internet rules to all forms of broadband Internet access service. Specialized services would be those services with a different scope or purpose than broadband Internet access service (*i.e.,* which do not meet the definition of broadband Internet access service), and would not be subject to the rules applicable to broadband Internet access service. But such services could be addressed through one or more of the below policy approaches, or, alternatively, the Commission could address the policy implications of such services if and when such services are further developed in the market.

(B) *Truth in Advertising:* Prohibit broadband providers from marketing specialized services as broadband Internet access service or as a substitute for such service, and require providers to offer broadband Internet access service as a stand-alone service, separate from specialized services, in addition to any bundled offerings.

(C) *Disclosure:* Require providers to disclose information sufficient to enable consumers, third parties, and the Commission to evaluate and report on specialized services, including their effects on the capacity of and the markets for broadband Internet access service and Internet-based content, applications, and services. The Commission or Congress could then take action if necessary.

(D) *Non-exclusivity in Specialized Services:* Require that any commercial arrangements with a vertically-integrated affiliate or a third party for the offering of specialized services be offered on the same terms to other third parties.

(E) *Limit Specialized Service Offerings:* Allow broadband providers to offer only a limited set of new specialized services, with functionality that cannot be provided via broadband Internet access service, such as a telemedicine application that requires enhanced quality of service.

(F) *Guaranteed Capacity for Broadband Internet Access Service:* Require broadband providers to continue providing or expanding network capacity allocated to broadband Internet access service, regardless of any specialized services they choose to offer. Relatedly, prohibit specialized services from inhibiting the performance of broadband Internet access services at any given time, including during periods of peak usage.

5. The Bureaus seek comment on each of these concerns and suggested policy responses, as well as any other concerns or policies regarding specialized services that the Commission should consider. Which policies will best protect the open Internet and maintain incentives for private investment and deployment of innovative services that benefit consumers? In addition, the Bureaus seek comment on whether specialized services provided over mobile wireless platforms raise unique issues.

B. Application of Open Internet Principles to Mobile Wireless Platforms

6. The *NPRM* seeks comment on "how, to what extent, and when"

openness principles should apply to mobile wireless platforms, with a particular emphasis on furthering innovation, private investment, competition, and freedom of expression. In light of developments since the issuance of the *NPRM,* it is now appropriate to update the record on certain questions related to the application of openness principles to wireless. Mobile broadband providers such as AT&T Mobility and Leap Wireless (Cricket) have recently introduced pricing plans that charge different prices based on the amount of data a customer uses. The emergence of these new business models may reduce mobile broadband providers' incentives to employ more restrictive network management practices that could run afoul of open Internet principles. Additionally, Verizon and Google issued a proposal for open Internet legislation that would exclude wireless, except for proposed transparency requirements.

1. Transparency

7. The Bureaus seek comment on what disclosure requirements are appropriate to ensure that consumers and content, application, service, and device providers can make informed choices regarding use of mobile broadband networks. What information should be disclosed about device and application requirements and certification processes? Are there any existing models that could provide guidance for shaping such rules? For instance, the Commission adopted transparency requirements for licensees in the 700 MHz Upper C Block.

2. Devices

8. The Bureaus seek further comment on the ability of new technologies and business models to facilitate non-harmful attachment of third-party devices to mobile wireless networks. Can adherence to industry standards for mobile wireless networks ensure non-harmful technical interoperability between mobile broadband devices and networks? Will deployment of next-generation technologies (*e.g.,* LTE) further facilitate interoperability? To the extent that compliance with technical standards needs to be validated through laboratory testing, could such testing be conducted through independent authorized test centers? Were the Commission to require mobile providers to allow any non-harmful device to connect to their network, subject to reasonable network management, how would mobile broadband provider conduct have to change, if at all, in light of existing device certification programs?

9. As noted above, some mobile providers have introduced usage-based data pricing. To what extent do these business models mitigate concerns about congestion of scarce network capacity by third-party devices?

3. Applications

10. The Bureaus seek comment on how best to maximize consumer choice, innovation, and freedom of expression in the mobile application space, while ensuring continued private investment and competition in mobile wireless broadband services. To what extent should mobile wireless providers be permitted to prevent or restrict the distribution or use of types of applications that may intensively use network capacity, or that cause other network management challenges? Is the use of reasonable network management sufficient, by itself or in combination with usage-based pricing, to address such concerns? Should mobile wireless providers have less discretion with respect to applications that compete with services the provider offers? How should the ability of developers to load software applications onto devices for development or prototyping purposes be protected?

11. The Bureaus also seek comment on the extent to which certain application distribution models—such as a mobile broadband Internet access service provider acting as both a network operator and an app store provider/curator—may affect consumer choice. If providers were to be prohibited from denying or restricting access to applications in their capacity as network providers, should they nevertheless have discretion regarding what apps are included in app stores that they operate? Are there safe-harbor criteria that, if met by a provider, would ameliorate potential concerns? For example, if a provider's customer had a choice of several app store providers that offered applications that could be downloaded onto the customer's mobile device, would that adequately mitigate concerns about potentially anti-competitive or anti-consumer effects of a provider excluding applications from its own app store?

12. Finally, the Bureaus seek comment on how differences between web-based and native applications should inform the Commission's analysis. Should a mobile provider have more discretion to restrict consumers' downloading and/or use of native applications than they should with respect to web-based applications?

Regulatory Flexibility Analysis

The *NPRM* in this proceeding included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact of the Commission's proposal on small entities. The matters discussed in the Bureaus' *Public Notice* do not modify in any way the IRFA the Commission previously issued. However, the Commission received comments concerning the IRFA with regard to matters discussed in this Public Notice. Parties that filed comments on the IRFA, and anyone else, are invited to file comments on the IRFA in light of this additional notice.

Procedural Matters

Ex Parte Presentations. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the rules.

Federal Communications Commission.

Kirk Burgee,

Chief of Staff, Wireline Competition Bureau.

[FR Doc. 2010–22629 Filed 9–9–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 75, No. 175
Friday, September 10, 2010

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

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; National Institute of Standards and Technology (NIST), Manufacturing Extension Partnership (MEP), Expanded Services Client Impact Survey

AGENCY: National Institute of Standards and Technology (NIST).

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Christopher Carbone on (301) 975–2952, or via e-mail at *ccarbone@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by the National Institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) is a national network of locally based manufacturing extension centers working with small manufacturers to assist them improve their productivity, improve profitability and enhance their economic competitiveness. The information collected will provide the MEP with information regarding MEP Center performance regarding the delivery of technology, and business solutions to U.S.-based manufacturers. The information will assist in determining the performance of the MEP Centers at both local and national levels, provide information critical to monitoring and reporting on MEP programmatic performance, and assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274-section 2).

This information will include MEP Customer inputs regarding their sales, costs, investments, employment, and exports. Customers will take the survey online, once per year under this collection. The data collected in this survey is confidential.

II. Method of Collection

Information will be collected electronically.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations (manufacturers completing projects with MEP).

Estimated Number of Respondents: 1,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 375.

Estimated Total Annual Cost to Public: $0.

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: September 3, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22560 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Gear Identification Requirements

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Lindsey Feldman, 978–275–2179 or *Lindsey.Feldman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Secretary of Commerce (Secretary) has the responsibility for the

conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource.

Regulations at 50 CFR 648.84(a), (b), and (d), § 648.123(b)(3), § 648.144(b)(1), § 648.264(a)(5), and § 697.21(a) and (b) require that Federal fishing permit holders using specified fishing gear mark that gear with specified information for the purposes of identification (*e.g.,* U.S. Coast Guard official vessel number, Federal permit number, or other methods identified in the regulations). The regulations also specify how the gear is to be marked for the purposes of visibility (*e.g.,* buoys, radar reflectors, or other methods identified in the regulations). The number of gear in the case of longline, pots, and traps is not the number of hooks, pots, or traps, but rather the number of attached end lines associated with each string of hooks, pots, or traps. A single Federal permit holder may be responsible for marking several strings of a given type of gear, or may use multiple different gear types that require marking for identification and visibility. The display of the identifying characters on fishing gear aids in fishery law enforcement, and the marking of gear for visibility increases safety at sea.

II. Method of Collection

No information is submitted to the NMFS as a result of this collection. The vessel official number or other means of identification specified in the regulations must be affixed to the buoy or other marker specified in the regulations.

III. Data

OMB Control Number: 0648–0351.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals and households, business or other for-profit organizations.
Estimated Number of Respondents: 6,845.
Estimated Time per Response: 1 minute per string of gear.
Estimated Total Annual Burden Hours: 23,480.
Estimated Total Annual Cost to Public: $69,920 in 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: September 7, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22613 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Request for Duty-Free Entry of Scientific Instrument or Apparatus

AGENCY: International Trade Administration.

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Callie Conroy, Senior Import Policy Analyst, phone number 202–482–0754, fax number 202–501–7952, or via the Internet at *callie.conroy@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Departments of Commerce (DOC) and Homeland Security (DHS) are required to determine whether nonprofit institutions established for scientific or educational purposes are entitled to duty-free entry for scientific instruments the institutions import under the Florence Agreement. Form ITA–338P enables: (1) DHS to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) DOC to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States. Without the collection of the information, DHS and DOC would not have the necessary information to carry out the responsibilities of determining eligibility for duty-free entry assigned by law.

II. Method of Collection

A copy of Form ITA–338P is provided on and downloadable from a Web site at *http://ia.ita.doc.gov/sips/appform.html* or the potential applicant may request a copy from the Department. The applicant completes the form and then forwards it via mail to DHS.

Upon acceptance by DHS as a valid application, the application is transmitted to Commerce for further processing.

III. Data

OMB Control Number: 0625–0037.
Form Number(s): ITA–338P.
Type of Review: Regular submission.
Affected Public: State or local government; Federal government; not-for-profit institutions.
Estimated Number of Respondents: 65.
Estimated Time per Response: 2 hours.
Estimated Total Annual Burden Hours: 130.
Estimated Total Annual Cost to Public: $2,138.

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: September 7, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22614 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Commercial Service Annual Customer Satisfaction Survey

AGENCY: International Trade Administration.

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 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 Susan Crawford, 202–482–2050, *susan.crawford@trade.gov,* 202–482–2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Commercial Service (CS) is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. Additionally, the CS plays a leading role in achieving the President's National Export Initiative and doubling exports within five years. To achieve its mission, the CS provides U.S. businesses with a range of export assistance services and resources including export counseling from one of our domestic Export Assistance Centers, educational webinars and seminars, an export-focused Web site (*http://www.export.gov*), a trade-related help line (1–800–USA–TRAD(E)), international industry research, international business partner match-making services and basic due diligence services on potential international partners.

The CS relies on client feedback to guide the development of services to meet client's needs and to improve the effectiveness of its export assistance services. The CS uses an Annual Customer Satisfaction Survey to measure client's overall satisfaction with the full array of services and experiences they have had with the CS on an annual basis. The survey specifically addresses: Client service principles, export assistance services and business practices.

The Annual Customer Satisfaction Survey results enable the CS to prioritize the allocation of time, budget and resources to improve the export assistance services provided to U.S. companies. Without this information, the CS is unable to systematically determine the actual and relative levels of performance for attributes, identify the drivers or determinants of overall satisfaction, and provide clear, actionable insights for managerial intervention.

II. Method of Collection

The survey is deployed to a randomly selected sample of CS clients via an e-mail message containing a link to a web-enabled questionnaire. Two reminder messages are sent as needed to encourage customers to complete the questionnaire.

III. Data

OMB Control Number: 0625–0262.

Form Number(s): Not applicable.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations. *Estimated Number of Respondents:* 2,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 625.

Estimated Total Annual Cost to Public: $0.

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: September 7, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22615 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; National Institute of Standards and Technology (NIST), Manufacturing Extension Partnership (MEP) Expanded Services Center Information and Reporting System

AGENCY: National Institute of Standards and Technology (NIST).

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Christopher Carbone on (301) 975–2952, or via e-mail at *ccarbone@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by the National Institute of Standards and Technology (NIST), the Manufacturing Extension Partnership (MEP) is a national network of locally-based manufacturing extension centers working with small manufacturers to assist them improve their productivity, improve profitability and enhance their economic competitiveness. The information collected will provide the MEP with information regarding MEP Center performance regarding the delivery of technology, and business solutions to U.S.-based manufacturers. The collected information will assist in determining the performance of the MEP Centers at both local and national levels; provide information critical to monitoring and reporting on MEP programmatic performance; and assist management in policy decisions. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR parts 290, 291, 292, and H.R. 1274—section 2).

The information will include center inputs and activities including services delivered, clients served, center staff, quarterly expenses and revenues, partners and affiliates, strategic plan, operating plans, and client success stories. No confidentiality for information submitted is promised or provided.

II. Method of Collection

Information will be collected electronically, on a quarterly basis.

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Mep-funded Recipients (centers).
Estimated Number of Respondents: 60.
Estimated Time per Response: 20 hours.
Estimated Total Annual Burden Hours: 4,800.
Estimated Total Annual Cost to Public: $50,000.

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: September 3, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22561 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Sea Scallops Amendment 10 Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Peter Christopher, 978–281–9288 or *Peter.Christopher@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and renewal of a currently approved information collection.

National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic sea scallop (scallop) fishery of the Exclusive Economic Zone (EEZ) off the East Coast under the Atlantic Sea Scallop Fishery Management Plan (FMP). The regulations implementing the FMP are at 50 CFR Part 648. This collection includes the following reporting requirements for scallop vessel owners, operators, and fishery participants: vessel monitoring system (VMS) trip declarations for all scallop vessels, including powerdown declarations; notification of access area trip termination for limited access scallop vessels; submission of access area compensation trip identification; submission of broken trip adjustment and access area trip exchange forms; VMS purchase and installation for individuals that purchase a Federally permitted-scallop vessel; submission of ownership cap forms for individual fishing quota (IFQ) scallop vessels; submission of vessel replacement, upgrade and permit history applications for IFQ, Northern Gulf of Maine (NGOM), and Incidental Catch (IC) scallop vessels; submission of VMS pre-landing notification form by IFQ vessels; enrollment into the State waters exemption program; submission of requests for IFQ transfers; payment of cost recovery bills for IFQ vessels; sector proposals for IFQ vessels and industry participants; sector operations plans for approved sector proposals.

II. Method of Collection

Participants will submit electronic VMS transmissions and paper applications by mail, facsimile, or e-mail.

III. Data

OMB Control Number: 0648–0491.
Form Number: None.
Type of Review: Renewal submission.
Affected Public: Business or other for-profits organizations.
Estimated Number of Respondents: 1,296.
Estimated Time per Response: VMS trip declaration, trip termination, compensation trip identification, powerdown provision, 2 minutes; broken trip adjustment and access area trip exchange, 10 minutes; VMS purchase and installation, 2 hours; IFQ ownership cap forms, 5 minutes; vessel replacement, upgrade and permit history applications, 3 hours; VMS pre-

landing notification form, 5 minutes; VMS State waters exemption program, 2 minutes; quota transfers, 10 minutes; cost recovery, 2 hours; sector proposals, 150 hours; sector operations plans, 100 hours; IFQ, Northern Gulf of Maine, and incidental catch vessel VMS requirements, 2 minutes.

Estimated Total Annual Burden Hours: 11,322.

Estimated Total Annual Cost to Public: $1,488,557.

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: September 3, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22575 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Social Impacts of the Implementation of a Catch Shares Program in the Mid-Atlantic

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 November 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Lisa L. Colburn, (401) 782–3253 or *Lisa.L.Colburn@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for new information collection.

Social Impact Assessment (SIA) is required in fisheries under both the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The required information is used to evaluate the impacts of the proposed activity on fishermen still involved in fishing since catch shares were implemented. In promulgating and issuing regulations, National Marine Fisheries Service (NMFS) must determine the relative impacts of different management measures.

Catch shares are being highly encouraged as a core strategy to improve the status of fish stock and habitat, and also the social and economic status of communities and individual fishermen (NOAA Draft Catch Share Policy). The use of catch share programs will have an impact on those individuals participating in the affected fisheries. Possible impacts include loss of employment opportunities and shoreside infrastructure, and disruption to social networks.

Amendment 16 to the Multispecies (groundfish) Fishery Management Plan, implemented on May 1, 2010, is the largest catch share program in number of permit holders that has ever been implemented in the U.S., and includes 17 group quota or 'sector' allocations. More catch share plans are in discussion for the Northeast within the next several years. NMFS is required to assess the impact of these plans as well as their impacts relative to other management measures in place in the Northeast. The rapid implementation of the groundfish catch share program made capturing a full pre-implementation baseline virtually impossible. A University of Rhode Island survey of fishermen and former fishermen in New England in 2009/2010 partially captured this baseline for fisheries in general, as well as some immediate post-implementation impacts for groundfishermen in that region. This research aims to study the immediate post-implementation effects on fishermen in the groundfish fishery and those that have already exited the fishery in the Mid-Atlantic, as well as provide a baseline for other fisheries prior to any implementation of additional catch share programs.

The data collected will provide a baseline description of the affected industry to compare with future assessments of fishermen and cover (1) Participation in sectors and the management process, (2) job satisfaction, and (3) self-reported general well-being. This information will lead to a greater understanding of the social impacts this management measure may have on the individuals in the fishery.

To achieve these goals it is critical to collect the necessary data immediately after the implementation of the program. This study is a post-implementation data collection effort to achieve the stated objectives.

II. Method of Collection

The surveys will be conducted by in-person interviews.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 125.

Estimated Total Annual Cost to Public: $0 in 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: September 7, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–22591 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Smart Grid Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Smart Grid Advisory Committee (SGAC or Committee), will hold a meeting on Wednesday, September 29, 2010 from 8:30 a.m. to 5 p.m. The primary purpose of this meeting is to provide an orientation for Committee members and provide an update on NIST's Smart Grid program. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at *http://www.nist.gov/smartgrid*.

DATES: The SGAC will hold a meeting on Wednesday, September 29, 2010, from 8:30 a.m. until 5 p.m. The meeting will be open to the public.

ADDRESSES: The meeting will be held in the Lecture Room C, in the Administration Building at NIST in Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. George W. Arnold, National Coordinator for Smart Grid Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8100, Gaithersburg, MD 20899–8100; telephone 301–975–2232, fax 301–975–4091; or via e-mail at *nistsgfac@nist.gov*.

SUPPLEMENTARY INFORMATION:

The Committee was established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.).

Objectives and Duties

1. The Committee shall advise the Director of the National Institute of Standards and Technology (NIST) on carrying out duties authorized by section 1305 of the Energy Independence and Security Act of 2007 (Pub. L. 110–140).

2. The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide input to NIST on the Smart Grid Standards, Priority, and Gaps. The Committee shall provide input on the overall direction, status and health of the Smart Grid implementation by the Smart Grid industry, including identification of issues and needs. Input to NIST will be used to help guide the Smart Grid Interoperability Panel activities and also assist NIST in directing research and standards activities.

5. Upon request of the Director of NIST, the Committee will prepare reports on issues affecting Smart Grid activities.

Background information on the Committee is available at *http://www.nist.gov/smartgrid*.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Smart Grid Advisory Committee (SGAC) will hold a meeting on Wednesday, September 29, 2010, from 8:30 a.m. until 5 p.m. The meeting will be held in the Lecture Room C, in the Administration Building at NIST in Gaithersburg, Maryland. The primary purpose of this meeting is to provide an orientation for Committee members and provide an update on NIST's Smart Grid program. The agenda may change to accommodate Committee business. The final agenda will be posted on the Smart Grid Web site at *http://www.nist.gov/smartgrid*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On September 29, 2010, approximately one-half hour will be reserved at the end of the meeting 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 on the agenda, and those who were unable to attend in person are invited to submit written statements to the Office of the National Coordinator for Smart Grid Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8100, Gaithersburg, MD 20899–8100; fax 301–975–4091; or via e-mail at *nistsgfac@nist.gov*.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Monday, September 20, 2010, in order to attend. Please submit your name, time of arrival, e-mail address, and phone number to Cuong Nguyen. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Nguyen's e-mail address is *cuong.nguyen@nist.gov* and his phone number is (301) 975–2254.

Dated: September 2, 2010.

Harry S. Hertz,

Director, Baldrige National Quality Program.

[FR Doc. 2010–22660 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY86

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee, in September, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, September 27, 2010 at 9:30 a.m.

ADDRESSES: This meeting will be held at the Hotel Viking, One Bellevue Avenue, Newport, RI 02840; telephone: (401) 847–3300; fax: (401) 848–4864.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will continue development

of alternatives to minimize the impacts of fishing on EFH; begin development of alternatives to identify and protect deep-sea coral zones; review EFH designation updates recommended by the Plan Development Team; review SSC comments from 8/25/10 on applications of the Swept Area Seabed Impact model and review Advisory Panel feedback from 8/12 meeting. Other topics may be discussed at the Chair(s discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 Act, provided the public has been notified of the Council'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 Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 3, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–22543 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY41

Marine Mammals; File No. 15014

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Sea World, LLC, 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 [Brad Andrews, Responsible Party] has been issued a permit to import one pilot whale (*Globicephala macrorhynchus*) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

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

SUPPLEMENTARY INFORMATION: On December 2, 2009, notice was published in the **Federal Register** (74 FR 63119) that a request for a public display permit to import one male pilot whale, from the Kamogawa SeaWorld, Chiba, Japan to Sea World of California, had been submitted by the above-named organization. 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.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

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

Dated: September 1, 2010.

P. Michael Payne,

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

[FR Doc. 2010–22518 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews

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

SUMMARY: The Department is conducting two new shipper reviews ("NSRs") covering the period of review ("POR") of December 1, 2008, through November 30, 2009. Because the sales made by Suzhou Shanding Honey Product Co., Ltd. ("Suzhou") and Wuhu Fenglian Co., Ltd. ("Fenglian") are not *bona fide,* we have preliminarily determined to rescind these NSRs.

DATES: *Effective Date:* September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–7906 or (202) 482–5260, respectively.

SUPPLEMENTARY INFORMATION:

General Background

On December 12, 2009, and December 14, 2009, respectively, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(c), the Department received NSR requests from Suzhou and Fenglian. On February 4, 2010, the Department published in the **Federal Register** its initiation of these NSRs.[1]

On February 4, 2010, the Department issued antidumping duty new shipper questionnaires to Fenglian and Suzhou. Between March 2010 and July 2010, the Department received timely filed original and supplemental questionnaire responses from Suzhou and Fenglian, respectively.

On February 12, 2010, the Department exercised its discretion to toll the deadlines for all Import Administration cases by seven calendar days due to the February 5, through February 12, 2010, Federal Government closure. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limits

On July 7, 2010, the Department extended the time limits for these preliminary results by 90 days to November 2, 2010.[2]

Expansion of the POR

When the sale of the subject merchandise occurs within the POR specified by the Department's regulations but the entry occurs after the POR, the specified POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations.[3] Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the

[1] *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews,* 75 FR 5764 (February 4, 2010).

[2] *See Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results for New Shipper Review,* 75 FR 38980 (July 7, 2010).

[3] *See* 19 CFR 351.214(f)(2)(ii).

POR, and that under "appropriate" circumstances the Department has the flexibility to extend the POR.[4] In this instance, both Suzhou and Fenglian's sales of subject merchandise were made during the POR specified by the Department's regulations but the shipment entered within thirty days after the end of that POR. The Department finds that extending the POR to capture these entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department is expanding the POR for the new shipper review of Suzhou and Fenglian by thirty days.[5]

Surrogate Country and Surrogate Values

On May 27, 2010, Suzhou and Fenglian (collectively "respondents") submitted market economy ("ME") surrogate value ("SV") information. On June 7, 2010, Petitioners[6] submitted rebuttal surrogate value comments. No other party submitted surrogate country or SV data.

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Preliminary Intent To Rescind

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Suzhou and Fenglian for this NSR. In evaluating whether or not a sale in a NSR is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis.[7] Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of the subject merchandise."[8] An additional factor may be the business practices of U.S. customers.[9] In *TTPC,* the court affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,"[10] and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale."[11] Finally, in *New Donghua,* the CIT affirmed the Department's practice of evaluating the circumstances surrounding a NSR sale so that a respondent does not unfairly benefit from an atypical sale, and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[12] Where a review is based on a single sale, exclusion of that sale as non-*bona fide* necessarily must end the review.[13]

Suzhou

In analyzing Suzhou's single POR sale to the United States, the Department preliminarily determines that this sale is not *bona fide,* as it is not typical of Suzhou's usual commercial practices nor is it commercially reasonable. The Department reached this conclusion based on the totality of the circumstances, including the atypical nature of Suzhou's POR pricing, and the unusual business practices of Suzhou's U.S. customer. Because much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to find Suzhou's single POR sale not *bona fide* is set forth in the Memorandum to the File from Katie Marksberry, International Trade Specialist, through Catherine Bertrand, Program Manager, regarding "Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Bona Fide Analysis of the Sale Under Review for Suzhou Shanding Honey Product Co., Ltd.," dated September 2, 2010.

Fenglian

In analyzing Fenglian's single POR sale to the United States, the Department preliminarily determines that this sale is not *bona fide,* as it is not typical of Fenglian's usual commercial practices nor is it commercially reasonable. The Department reached this conclusion based on the totality of the circumstances, including the atypical nature of Fenglian's POR pricing, and other proprietary circumstances concerning the nature of Fenglian's sale. Because much of our analysis regarding the evidence of the *bona fides* of the transaction involves business proprietary information, a full discussion of the bases for our decision to find Fenglian's single POR sale not *bona fide* is set forth in the Memorandum to the File from Josh Startup, International Trade Specialist, through Catherine Bertrand, Program Manager, regarding "Antidumping Duty New Shipper Review of Honey from the People's Republic of China: Bona Fide Analysis of the Sale Under Review for Wuhu Fenglian Co., Ltd.," dated September 2, 2010.

Therefore, the Department is preliminarily rescinding the NSR for Suzhou and Fenglian, as we have preliminarily determined that each company's single sale during the POR is not *bona fide* and, consequently, not subject to review.

Comments

In accordance with 19 CFR 351.301(c)(1), for the final results of these NSRs, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or

[4] *See* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27319–27320 (May 19, 1997).

[5] *See* Memorandum to The File, from Blaine Wiltse, International Trade Compliance Analyst, Office 9, regarding "Placing CBP Data on the Record of New Shipper Reviews of Honey from the People's Republic of China," dated January 8, 2010 ("CBP Entry Package Memo").

[6] The Petitioners are the members of the American Honey Producers Association and the Sioux Honey Association (hereinafter referred to as "Petitioners").

[7] *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States,* 366 F. Supp. 2d 1246, 1250 (CIT 2005) ("*TTPC*").

[8] *See Hebei New Donghua Amino Acid Co., Ltd. v. United States,* 374 F. Supp. 2d 1333, 1342 (CIT 2005) ("*New Donghua*") (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

[9] *See New Donghua,* 374 F. Supp. 2d at 1343–44.

[10] *See TTPC,* 366 F. Supp. 2d at 1250.

[11] *See id.* at 1263.

[12] *See New Donghua,* 374 F. Supp. 2d at 1338.

[13] *See TTPC,* 366 F. Supp. 2d at 1249.

corrects information recently placed on the record.[14]

Interested parties may submit case briefs and/or written comments no later than 45 days after the date of publication of these preliminary results of this NSR. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of this NSR, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this NSR for all shipments of subject merchandise from Suzhou or Fenglian entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Suzhou or Fenglian, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* $2.63 per kilogram); (2) for subject merchandise exported by Suzhou or Fenglian but not manufactured by Suzhou or Fenglian, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* $2.63 per kilogram); and (3) for subject merchandise manufactured by Suzhou or Fenglian, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. 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.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: September 2, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–22650 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1704]

Reorganization of Foreign-Trade Zone 170 Under Alternative Site Framework; Jeffersonville, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Ports of Indiana, grantee of Foreign-Trade Zone 170, submitted an application to the Board (FTZ Docket 12–2010, filed 2/22/2010) for authority to reorganize under the ASF with a service area that includes Jackson, Washington, Harrison, Floyd, Clark and Scott Counties, Indiana, within and adjacent to the Louisville Customs and Border Protection port of entry, and FTZ 170's existing sites would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 11514, 3/11/10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 170 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2 and 3 if not activated by August 31, 2015.

Signed at Washington, DC, September 3, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–22668 Filed 9–9–10; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: 10/11/2010.

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 or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

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. If approved, 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 products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products 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 products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products:

NSN: 8470–00–NSH–0030—Improved Oxygen Harness
NSN: 8470–00–NSH–0031—Center Mounted Weapon Harness
NPA: Employment Source, Inc., Fayetteville, NC
Contracting Activity: Dept of the Army, XR W2DF RDECOM ACQ CTR, NATICK, MA
COVERAGE: C–List for 100% of the requirements of the U.S. Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA.

Cold Weather Midweight Drawers (GEN III)

NSN: 8415–01–538–8727—Drawers Size Small Regular
NSN: 8415–01–538–8730—Drawers Size Medium Regular
NSN: 8415–01–538–8745—Drawers Size Large Regular
NSN: 8415–01–538–8747—Drawers Size Large Long
NSN: 8415–01–538–8750—Drawers Size X Large Regular
NSN: 8415–01–538–8751—Drawers Size X Large Long
NSN: 8415–01–545–7672—Drawers Size X Small Short
NSN: 8415–01–545–7676—Drawers Size X Small Regular
NSN: 8415–01–545–7717—Drawers Size Small Short
NSN: 8415–01–545–7768—Drawers Size Small Long
NSN: 8415–01–545–7810—Drawers Size Medium Long
NSN: 8415–01–545–7960—Drawers Size X Large X Long
NSN: 8415–01–545–7965—Drawers Size XX Large Regular
NSN: 8415–01–545–7966—Drawers Size XX Large Long
NSN: 8415–01–545–7968—Drawers Size XX Large X Long
NPAs: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI
Peckham Vocational Industries, Inc., Lansing, MI Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA

Coverage: C–List for an additional 25% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA. Note that 75% of this requirement is already on the PL; this addition will bring the total to 100% of the requirement.

Services:

Service Type/Locations: Custodial Service, USARC Mare Island, 1481 Railroad Ave., Vallejo, CA. USARC Hunter Hall, 2600 Castro Rd., San Pablo, CA.
NPA: Solano Diversified Services, Vallejo, CA.
Contracting Activity: Dept of the Army, XR W6BB ACA Presidio of Monterey, Presidio of Monterey, CA.
Service Type/Location: Janitorial Service, Anchorage FAA Tower/TRACON, 5200 West International Airport Road, Anchorage, AK.
NPA: MQC Enterprises, Inc., Anchorage, AK.
Contracting Activity: Dept of Transportation, Federal Aviation Administration, Northwest/Mountain REG, LOG. DIV (ANM–55), Renton, WA.
Service Type/Location: Custodial Service, Isle Royale National Park, Houghton, MI.
NPA: Goodwill Industries of Northern Wisconsin and Upper Michigan, Marinette, WI Contracting Activity: National Park Service, Midwest Region, Major Acquisition Buying Office, Sagamore Hills, OH.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–22621 Filed 9–9–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Performance of Registration Functions by National Futures Association With Respect to Retail Foreign Exchange Dealers and Associated Persons

AGENCY: Commodity Futures Trading Commission

ACTION: Notice and order

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is authorizing the National Futures Association ("NFA"), effective September 10, 2010, to process and grant applications for initial registration, renewed registration and withdrawals of retail foreign exchange dealers ("RFEDs") and their associated persons ("APs") and to issue temporary licenses to eligible APs; to conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any RFED or AP of an RFED, or an applicant for registration in either category; and to maintain records regarding RFEDs and their APs, and to serve as the official custodian of those Commission records.

DATES: *Effective Date:* September 10, 2010.

FOR FURTHER INFORMATION CONTACT: For information contact: William Penner, Deputy Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW, Washington, DC 20581. Telephone number: 202–418–5450; facsimile number: 202–418–5547; and electronic mail: *wpenner@cftc.gov.* Christopher Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number (202) 418–5450; facsimile number: 202–418–5547; and electronic mail: *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority and Background

In a separate document published elsewhere in today's **Federal Register**, the Commission is issuing final rules regarding the regulation of off-exchange retail foreign exchange transactions and intermediaries. The final rules follow the publication of proposed rules on January 20, 2010,[1] and represent a comprehensive regulatory scheme to implement the requirements of the CFTC Reauthorization Act of 2008 ("CRA") with regard to off-exchange retail forex transactions.[2] The

[1] *See* Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries; Proposed Rule, 75 FR 3282 (Jan. 20, 2010).

[2] Food, Conservation, and Energy Act of 2008, Pub. L. 110–246, 122 Stat. 1651, 2189–2201 (2008).

Commodity Exchange Act ("Act"),[3] as amended by the CRA, provides that the Commission's jurisdiction extends to off-exchange contracts of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange), and to certain off-exchange leveraged or margined contracts in foreign currency that are offered to or entered into with retail customers. Moreover, the CRA provides the Commission with the authority to register persons serving as intermediaries or counterparties to these transactions.

Specifically, the CRA gives the Commission the authority to require the registration of intermediaries who solicit retail customers to participate in off-exchange forex contracts, who pool customer money for the purpose of trading off-exchange currency contracts or who manage customer money for this purpose. In the final rules published today, the Commission has determined that these entities should be registered in the existing categories of introducing broker ("IB"), commodity pool operator ("CPO"), or commodity trading advisor ("CTA"), as appropriate.

The CRA also authorizes the Commission to register entities that serve as counterparties to such transactions, either within the existing category of futures commission merchant ("FCM") or as an RFED, a new category of registrant. RFEDs are counterparties not engaged primarily or substantially in the offer and sale of exchange-traded futures (as opposed to FCMs, which are).[4] The CRA provides that RFEDs, their APs, and each of the other categories of registrants discussed above, must be members of a registered futures association such as the National Futures Association ("NFA") and must register with the Commission subject to such terms as the Commission may prescribe.[5]

The CFTC has previously authorized NFA to perform the full range of registration functions with regard to FCMs, IBs, CTAs, CPOs and their respective APs, including granting applications for initial registration and renewed registration; enabling withdrawals and issuing temporary licenses to eligible APs; and conducting proceedings to deny, condition, suspend, restrict or revoke the registration of existing registrants or applicants for registration in each category.[6] By today's order the Commission authorizes NFA to perform these functions with regard to RFEDs and their APs.

As proposed and adopted, Commission Regulations 5.3(a)(4) and (6) require all those who meet the definition of an RFED, and any such associated persons of RFEDs to register with the Commission in accordance with part 3 of the Commission's Regulations. (17 CFR 3.1, *et seq.*) Commission Regulation 3.2 provides that the registration functions of the Commission are to be performed by the National Futures Association. Upon consideration, the Commission has determined to authorize NFA, effective September 10, 2010, to perform registration functions with regard to RFEDs and their APs as set forth in part 3 of the Commission's Regulations. Moreover, Section 17(*o*)(2) of the Act provides that the Commission may authorize a registered futures association, such as NFA, to perform Commission registration functions, to deny, condition, suspend, restrict or revoke any registration, subject to Commission review.[7] The Commission is therefore also authorizing NFA to take such actions with regard to RFED and AP applicants as well as existing registrants in each of these categories.

The Commission further notes that it has, by prior orders, authorized NFA to maintain various Commission registration records, and has certified NFA as the official custodian of such records for the Commission.[8] The Commission has determined, in accordance with its authority under section 8a(10) of the Act, to authorize NFA to maintain and serve as official custodian of the Commission's registration records with respect to RFEDs and their APs.

In maintaining the Commission's registration records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future Orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are necessary to ensure the security and integrity of these records as may be acceptable to the Commission; to facilitate prompt access to these records by the Commission and its staff; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or rules, and to keep logs as required by the Commission concerning disclosures of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Sections 2(c)(2)(B), 2(c)(2)(C), and 8a(10) of the Act, to authorize NFA, effective September 10, 2010 to perform the following registration functions:

(1) To process and grant applications for initial registration, renewed registration and withdrawals from registration of retail foreign exchange dealers ("RFEDs") and their associated persons ("APs") and to issue temporary licenses to eligible APs;

(2) To conduct proceedings to deny, condition, suspend, restrict or revoke the registration of any RFED or AP of an RFED, or any applicant for registration in either category; and

(3) To maintain records regarding RFEDs and their APs, and to serve as the official custodian of those Commission records.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations promulgated thereunder. NFA shall follow the same procedures with respect to recordkeeping, disclosure and tracking of fitness investigations and adverse action proceedings concerning RFEDs and their APs as it must follow in cases involving FCMs, IBs, CPOs, CTAs, and their respective APs.

These determinations are based upon the Congressional intent expressed in sections 2(c)(2)(B), 2(c)(2)(C), 8a(10) and 17(*o*) of the Act. This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration, or to render "no-action" or interpretive letters with respect to applicable registration requirements.

Nothing in this Order, or in sections 2(c)(2)(B), 2(c)(2)(C), 8a(10) and 17(*o*) of the Act, shall affect the Commission's authority to review the performance by NFA of Commission registration functions.[9]

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[3] 7 U.S.C. 1, *et seq.*

[4] Previously, firms serving as counterparties to retail forex typically registered as FCMs, even though they may not have engaged in exchange-traded futures business. Under the CRA, either FCMs or RFEDs can offer to serve as counterparties to retail forex transactions, but the entity must register as an FCM if primarily and substantially engaged in on-exchange trading, or an RFED if not. *See,* 7 U.S.C. 2(c)(2)(B)(i)(II)(cc) and (gg) and 7 U.S.C. 2(c)(2)(C)(i).

[5] *Id.*

[6] *See* 48 FR 15940 (Apr. 13, 1983); 48 FR 35158 (Aug. 3, 1983); 48 FR 51809 (Nov. 14, 1983); 49 FR 8226 (Mar. 5, 1984); 49 FR 39593 (Oct. 9, 1984); and 50 FR 34885 (Aug. 28, 1985).

[7] 7 U.S.C. 21(*o*)(2).

[8] *See* 49 FR 39593 (Oct. 9, 1984) and 66 FR 43227 (Aug. 17, 2001).

[9] *See also* section 17(*o*)(3) of the Act, 7 U.S.C. 21(*o*)(3).

Issued in Washington, DC, on August 26, 2010.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–21726 Filed 9–9–10; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, September 15, 2010, 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: *Decisional Matter:* Final Interpretative Rule: Interpretation of Children's Product.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 7, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–22780 Filed 9–8–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of a Programmatic Environmental Impact Statement (PEIS) for the Growth, Realignment, and Stationing of Army Aviation Assets

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Army announces its intent to prepare a PEIS for the proposed growth, realignment, and stationing of new and existing Army aviation assets. The proposed action includes the consolidation and reorganization of existing aviation units, and the establishment of one or more Combat Aviation Brigades (CABs). The proposed action will increase the availability of rotary wing assets to meet current and future national security requirements and will allow the Army better to organize existing aviation assets to promote more effective training and force management. The PEIS will evaluate the environmental impacts associated with the proposed action, which includes the construction and renovation of garrison facilities and additional training needed to support the establishment and realignment of aviation units.

The Army is considering the following alternatives in the PEIS: (1) Realign and consolidate existing aviation elements of up to a full CAB at Fort Carson (CO) or Joint Base Lewis-McChord (WA); (2) implement those actions discussed in Alternative 1; in addition, establish a new CAB and station it at Fort Carson or Joint Base Lewis-McChord; and, (3) No-Action Alternative that would retain the Army aviation force structure at its current levels, configurations, and locations. No more than one additional CAB would be assigned to either of the stationing locations being considered. As part of Alternatives 1 and 2, aviation units would conduct training on existing training land at either the Yakima Training Center (YTC) (WA) or the Pinon Canyon Maneuver Site (PCMS) (CO) in order to maintain training proficiency and support integrated training with ground units. Land acquisition is not being considered as part of this action.

Fort Carson and Joint Base Lewis-McChord are the only stationing alternatives that meet all of the Army's stationing requirements for new CAB stationing. These locations provide an existing runway and airfield, provide adequate maneuver and airspace for CAB operations, and are equipped with existing training ranges that can support CAB training. Each location is currently the home station of three or more ground maneuver Brigade Combat Teams (BCTs), which allows the Army to maximize integrated air/ground training. Joint Base Lewis-McChord and Fort Carson are the only major installations that have three or more BCTs but no CAB dedicated to provide aviation support for training. Additionally, Joint Base Lewis-McChord has many of the existing garrison facilities to accommodate CAB units while Fort Carson has space available to construct additional CAB facilities.

ADDRESSES: Written comments may be sent to: Public Affairs Office, U.S. Army Environmental Command, Attention: IMPA–AE, 5179 Hoadley Road, Aberdeen Proving Ground, MD 21010–5401; fax (410) 436–1693; or e-mail at *APGR-USAECNEPA@conus.army.mil.*

FOR FURTHER INFORMATION CONTACT: Public Affairs Office at (410) 436–2556.

SUPPLEMENTARY INFORMATION: A CAB consists of approximately 120 helicopters, 600 wheeled vehicles, and 2,700 Soldiers. The CAB is organized into five battalions and a headquarters unit. CAB units include combat, reconnaissance, and logistics support aircraft.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. *et seq.*) and Federal Regulations (40 CFR part 1500 *et seq.* and 32 CFR part 651) require the Army to consider the environmental impact of its actions and alternatives and to solicit the views of the public in order to make a final decision on how to proceed.

The PEIS will assess, consider, and compare the direct, indirect, and cumulative environmental effects of proposed CAB growth and realignment for each alternative. The primary environmental issues to be analyzed include (but are not limited to) impacts to air quality, soil, airspace, cultural resources, natural resources, noise. In addition, the Army will consider those issues identified by the public and other organizations as part of the process.

Predicted environmental impacts associated with the implementation of the proposed action at Fort Carson and Joint Base Lewis-McChord will be analyzed to include increases in aviation activity, potential for wildlife disturbance, as well as additional impacts to soils, biological resources, surface water, and vegetation. Additional vehicle traffic and growth in school population associated with an increase in Soldier populations will also be analyzed. At YTC, there is increased potential for vegetation and habitat degradation associated with aviation training. At PCMS, cumulative impacts to soils are predicted to be manageable with current dust control mitigation techniques.

Members of the public, including native communities and federally recognized Native American Tribes, and federal, state, and local agencies are invited to submit written comments on environmental issues, concerns and opportunities to be analyzed in the PEIS. Written comments will be accepted for 30 days following publication of the Notice of Intent in the **Federal Register**.

Dated: September 2, 2010.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. 2010–22658 Filed 9–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Grow the Army Actions at Fort Lewis and the Yakima Training Center (YTC), WA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of an FEIS for Fort Lewis and YTC that analyzes the environmental impacts of implementing the decisions in the 2007 Army Growth and Force Structure Realignment Programmatic EIS (also referred to as the Grow The Army PEIS or GTA PEIS) and other ongoing Army realignment and stationing initiatives, such as the potential for Combat Aviation Brigade (CAB) stationing that may potentially effect Fort Lewis and YTC. The Proposed Action could station up to 5,700 Soldiers and their Families at Fort Lewis. The Proposed Action includes the stationing of 1,900 Soldiers directed under the GTA PEIS, the potential additional stationing of up to 1,000 combat service support (CSS) Soldiers, and the potential stationing of a medium Combat Aviation Brigade (CAB) of approximately 2,800 Soldiers for a total of up to 5,700 Soldiers. After reviewing the alternatives analyzed in the FEIS, the Army has identified Alternative 4 as its preferred alternative, which includes all components of the GTA, CSS, and CAB alternatives (up to a total of 5,700 Soldiers and 8,260 family members).

DATES: The waiting period for the FEIS will end on September 27, 2010.

ADDRESSES: Questions or comments regarding the FEIS should be forwarded to: Directorate of Public Works, Attention: IMWE–LEW–PWE (Mr. Paul T. Steucke, Jr.), Building 2012, Liggett Avenue, Box 339500 MS 17, Joint Base Lewis-McChord, WA 98433–9500.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Van Hoesen, Joint Base Lewis-McChord National Environmental Policy Act (NEPA) Coordinator, at (253) 966–1780 during normal business hours.

SUPPLEMENTARY INFORMATION: On February 1, 2010, Fort Lewis, Yakima Training Center, and McChord Air Force Base were designated a joint base and renamed "Joint Base Lewis-McChord"; however, the terms "Fort Lewis," and "Yakima Training Center (YTC)" are retained in the FEIS and will be used until the EIS process is complete.

The FEIS analyzes the direct, indirect, and cumulative impacts of the site specific actions for the alternatives to implement the Proposed Action. These actions include troop stationing, maneuver and live-fire training, demolition of outdated facilities, and construction of new facilities and firing ranges.

Four alternatives for the Proposed Action are analyzed. Under all alternatives, the Soldiers would train at Fort Lewis and YTC.

(1) The No Action alternative assumes that the Army GTA decisions would not be implemented. Analysis of the No Action alternative serves as a baseline for comparison of the other alternatives. Under this alternative, planned construction that is not part of the GTA decisions includes troop barracks, recreational facilities, traffic flow improvements and other infrastructure upgrades at Fort Lewis.

(2) The GTA alternative implements the Army GTA decisions affecting Fort Lewis and YTC. Maneuver and live-fire training of an additional 1,900 Soldiers will occur at Fort Lewis and YTC. This alternative also includes the training of three Stryker Brigade Combat Teams (SBCTs) simultaneously at Fort Lewis and YTC. Planned new construction includes brigade barracks complexes, the upgrade of substandard SBCT facilities to meet Army standards, and additional firing ranges at Fort Lewis and YTC.

(3) The CSS alternative represents the potential stationing at Fort Lewis of up to 1,000 CSS Soldiers in addition to Alternative 2. Maneuver and live-fire training of up to 2,900 new Soldiers would occur at Fort Lewis and YTC. Specific construction projects cannot be identified until the types and numbers of CSS units are known, but new construction would include barracks, motor pools, classrooms, and administrative facilities.

(4) The CAB alternative represents the potential stationing at Fort Lewis of a CAB in addition to Alternative 3. Maneuver and live-fire training of up to 5,700 new Soldiers would occur at Fort Lewis and YTC. This maneuver would include the air and ground assets of the CAB. New construction facilities to support the CAB would be similar to those required for Alternative 3.

The Army will soon initiate a programmatic environmental analysis that may result in the stationing of a CAB or additional CAB units at Fort Lewis. No final decisions have been made at the Headquarters, Department of the Army level on a CAB at this time.

Copies of the FEIS are available at local libraries surrounding Fort Lewis and YTC. The FEIS can also be viewed at: *http://www.lewis.army.mil/publicworks/sites/envir/EIA_2.htm.*

Dated: September 1, 2010.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 2010–22677 Filed 9–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for Conversion of the 3rd Armored Cavalry Regiment (3rd ACR) to a Stryker Brigade Combat Team (SBCT) at Fort Hood, TX

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces a ROD for conversion of the 3rd ACR to an SBCT at Fort Hood and discusses the environmental impacts of this decision. After conversion, the 3rd ACR will provide the Army with a force structure that has the flexibility to respond better to threats in an unpredictable global security environment. The Army's strategic estimate remains that its force requirements will best be met by a robust multiweight force, composed of a mix of Infantry BCTs and Heavy Armor BCTs augmented with the protection and versatility of an additional SBCT. The 3rd ACR at Fort Hood is being selected because the unit will have maximum time to convert and train with new equipment prior to redeploying. In addition, Fort Hood is an installation capable of providing fully modernized training infrastructure, as well as many of the existing garrison support facilities required for an SBCT, and has adequate maneuver space to accommodate SBCT training. The 3rd ACR will begin converting in 2012 and will be complete in Fiscal Year 2014. With this conversion, the Army will have nine SBCTs (eight Active Component and one Reserve Component).

ADDRESSES: A request for a copy of the ROD can be sent to the Public Affairs Office, U.S. Army Environmental Command, Building E4460, Attention: IMAE–PA, 5179 Hoadley Road, Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel David Patterson, Office of the Chief of Public Affairs, Media Relations Division, at (703) 697–7592.

SUPPLEMENTARY INFORMATION: In 2007, the Department of the Army prepared a Programmatic Environmental Impact Statement (PEIS) as part of the Grow the Army initiative that evaluated the potential environmental and socioeconomic effects associated with a range of stationing alternatives for Army growth and realignment. The Final PEIS provided the Army senior leadership with an assessment of environmental and socioeconomic impacts that would be associated with the stationing of the different types of Army BCTs and combat support units to include SBCTs.

This ROD determines that National Environmental Policy Act supplemental documentation is not required because there are no substantial changes or new circumstances in the proposed action causing any significant new environmental concerns. The adjustments to stationing decisions result in small proportional gains to the Soldier populations of Fort Hood and are not anticipated to cause any new environmental impacts that are not already addressed in the 2007 EIS.

A copy of the updated ROD and Final PEIS are available at *http://aec.army.mil/usaec/nepa/topics00.html.*

Dated: August 26, 2010.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. 2010–22681 Filed 9–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, September 20, 2010 by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Date and Time: Wednesday, September 29, 2010, beginning at 4 p.m. and ending at approximately 5:30 p.m. (EST).

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Opportunity Act of 2008 to include several important areas: Access, Title IV modernization, early information and needs assessment and review and analysis of regulations. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference for annual election of officers and to approve its Fiscal Year 2011 work plan.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following addresses: *tracy.deanna.jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Friday, September 24, 2010.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA.*

Dated: September 2, 2010.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2010–22545 Filed 9–9–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Federal Advisory Committee Act; Technical Guidelines Development Committee Charter Renewal

AGENCY: Election Assistance Commission.

ACTION: Notice of Charter Renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the purpose of this notice is to announce that the Election Assistance Commission (EAC) has renewed the charter for the Technical Guidelines Development Committee (TGDC) for a two-year period through September 2, 2012. The TGDC is a federal advisory committee under the Federal Advisory Committee Act.

DATES: Renewed through September 2, 2012.

ADDRESSES: Election Assistance Commission, 1201 New York Avenue, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Donetta Davidson, Designated Federal Officer, Technical Guidelines Development Committee, at (202) 566–3100. E-mail: *havainfo@eac.gov.*

SUPPLEMENTARY INFORMATION: The TGDC is a Federal advisory committee created by statute whose mission is to assist the EAC Executive Director in the development of voluntary voting system guidelines. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the

renewal of the TGDC. The renewal charter will be posted on EAC's Web site as of the date this notice is published.

Donetta Davidson,

Chair, Election Assistance Commission.

[FR Doc. 2010–22536 Filed 9–9–10; 8:45 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting and Hearing Agenda.

DATE AND TIME: Tuesday, September 21, 2010, 9 a.m.–4 p.m. EDT.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., Suite 150, Washington, DC 20005. 202–566–3100

MEETING AGENDA: The Commission will hold a public meeting to hold a discussion on and consider the following matters: (1) The EAC Quality Monitoring: Creating a Successful Partnership, and (2) Voluntary Voting Systems Guidelines 1.1 Policy Issues Update. Commissioners will consider other administrative matters.

HEARING AGENDA: The Commission will conduct a public hearing to receive testimony on proposed draft National Voter Registration Act (NVRA) regulations. Members of the public who wish to speak at the hearing, regarding proposed NVRA regulations may send a request to participate to the EAC via e-mail to *testimony@eac.gov* by 5 p.m. EDT September 20, 2010. Members of the public may also sign up at the public meeting as long as they do so before the public meeting adjourns and the public hearing begins. Due to time constraints, the EAC can select no more than ten participants amongst the volunteers who request to participate. The selected volunteers will be allotted three-minutes each to share their viewpoint. Participants will be selected on a first-come, first-served basis. However, to maximize diversity of input, only one participant per organization or entity will be chosen if necessary. Participants may also submit written testimony to be published at *http://www.eac.gov*. All requests must include a description of what will be said, contact information which will be used to notify the requestor with status of request (phone number on which a message may be left or e-mail), and include the subject/attention line (or on the envelope if by mail): Testimony on proposed NVRA regulations. Please note that these testimonies will be made available to the public at *http//www.eac.gov*.

Written testimony from members of the public, regarding proposed NVRA regulations will also be accepted. This testimony will be included as part of the written record of the hearing, and available on our website. Written testimony must be submitted before the end of the public hearing, and received by 4:30 p.m. EDT on September 21, 2010. Written testimony should be submitted via e-mail at *testimony@eac.gov,* via mail addressed to the U.S. Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005, or by fax at 202–566–1392. All correspondence that contains written testimony must have in the subject/attention line (or on the envelope if by mail): Written testimony on proposed NVRA regulations.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act.*

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Donetta Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–22692 Filed 9–8–10; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN09–9–000]

Seminole Energy Services, LLC; Seminole Gas Company, LLC; Seminole High Plains, LLC; Lakeshore Energy Services, LLC; Vanguard Energy Services, LLC

Notice of Amended Designation of Commission Staff as Non-Decisional

September 2, 2010.

On January 15, 2009, the Commission issued an order in the above-captioned docket designating, with certain listed exceptions, the staff of the Office of Enforcement's Division of Investigations (DOI) as non-decisional staff in deliberations by the Commission in this docket.

By this order, the Commission amends the January 15, 2009 notice to add Larry Gasteiger, Deputy Director, Office of Enforcement to the non-decisional staff in this docket. The Commission also adds Norman Bay, Director, Office of Enforcement, Larry Parkinson, Director, DOI, and Geof Hobday of DOI to the January 15, 2009 list of staff excepted from the DOI non-decisional staff designation.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22513 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN09–10–000]

National Fuel Marketing Company, LLC; NFM Midstream, LLC; NFM Texas Pipeline, LLC; NFM Texas Gathering, LLC; Notice of Amended Designation of Commission Staff as Non-Decisional

September 2, 2010.

On January 15, 2009, the Commission issued an order in the above-captioned docket designating, with certain listed exceptions, the staff of the Office of Enforcement's Division of Investigations (DOI) as non-decisional staff in deliberations by the Commission in this docket.

By this order, the Commission amends the January 15, 2009 notice to add Larry Gasteiger, Deputy Director, Office of Enforcement to the non-decisional staff in this docket. The Commission also adds Norman Bay, Director, Office of Enforcement, Larry Parkinson, Director, DOI, and Geof Hobday of DOI to the January 15, 2009 list of staff excepted from the DOI non-decisional staff designation.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22514 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12605–004]

Rentricity, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions

September 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Conduit Exemption.

b. *Project No.:* 12605–004.

c. *Date Filed:* May 7, 2010.

d. *Applicant:* Rentricity, Inc.

e. *Name of Project:* Stamford Energy Recovery Project.

f. *Location:* At a pressure regulator vault on an Aquarian Water Company Supply Conduit in the Town of Stamford, Fairfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Frank Zammataro, President, Rentricity, Inc., P.O. Box 1021 Planetarium Station, New York, NY 10024. Phone (732) 319–4501.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing motions to intervene and protests, comments, recommendations, and preliminary terms and conditions, is 30 days from the issuance date of this notice. All documents (original and seven copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12605–004) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the applicant specified in a particular application.

k. *Description of Request:* The proposed surrender would consist of removing connections to the existing water supply pipeline with electronically controlled valves and a 40-kilowatt reverse pump generator and restoring site to original condition.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. *Mailing list:* Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (*see* item (j) above).

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," or "TERMS AND CONDITIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Comments and motions to intervene may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12605–004) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22517 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11475–013]

Central Vermont Public Service Corporation; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 11475–013.

c. *Date Filed:* June 17, 2010.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Carver Falls Hydroelectric Project.

f. *Location:* On the Poultney River, in Washington County, New York and Rutland County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael Scarzello, Generation Asset Manager, Central Vermont Public Service Corporation, 77 Grove St., Rutland, VT 05701, (802) 747–5207.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 4, 2010.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The applicant seeks approval to replace the existing Unit #1 turbine, with a hydraulic capacity of 162 cfs and a nameplate capacity of 1,100 kW, with a new turbine unit having a hydraulic capacity of 177 cfs and a nameplate capacity of 1,451 kW. The replacement of the Unit #1 turbine will increase the total project generation from 1,900 kW to 2,251 kW, and increase total project hydraulic capacity from 254 cfs to 269 cfs.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22516 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2662–002; Project No. 12968–001]

FirstLight Hydro Generating Company; City of Norwich Department of Public Utilities; Notice of Applications Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

September 2, 2010.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New Major License.

b. *Project Nos.:* 2662–002 and 12968–001.

c. *Date Filed:* August 31, 2010 (P–2662) and August 27, 2010 (P–12968).

d. *Applicants:* Existing licensee—FirstLight Hydro Generating Company (FirstLight); and Competitor—City of Norwich Department of Public Utilities (Norwich Public Utilities).

e. *Name of Project:* Scotland Hydroelectric Project.

f. *Location:* On the Shetucket River, in Windham County, Connecticut. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:*

For Project No. 2662: John Whitfield, Senior Project Engineer, FirstLight Hydro Generating Company, 20 Church Street, Hartford, CT 06103.

For Project No. 12968: John F. Bilda, General Manager, Norwich Public Utilities, 16 South Golden Street, Norwich, CT 06360.

i. *FERC Contact:* John Costello, (202) 502–6119 or *john.costello@ferc.gov*

j. These applications are not ready for environmental analysis at this time.

k. *The Project Description:* The project includes the following constructed facilities: (1) A 480-foot-long earthen dam with a 12-inch reinforced concrete corewall consisting of (a) A 183-foot-long, 32.5-foot-high earthen dike with a top elevation 90.0 feet local datum; (b) a 119-foot-long, 34-foot-high Taintor gate section with a sill elevation at 64 feet local datum and a 3-foot-wide transition section, five 20-foot-wide bays, and four 4-foot-wide gate piers; (c) an 89-foot-long, 35-foot-high Ambursen-type ungated spillway section with a crest elevation of 75.38 feet local datum; (d) an 18.83-foot-long gravity-type ungated spillway section with a crest elevation of 75.38 feet local datum and 30-inch wooden pin-type flashboards; and (e) a 70-foot-long powerhouse and intake integral with the dam containing a single 2,000 kW turbine-generator; (2) a 134-acre reservoir at an elevation of 77.9 feet local datum with a usable storage capacity of 268 acre-feet at a drawdown of 2 feet; and (3) appurtenant facilities.

The existing Scotland project operates in a run-of-river mode during high flow periods and a store-and-release mode, with ponding, during low-flow periods.

Both applicants propose to increase capacity by installing an additional turbine and generator in the existing powerhouse. Norwich Public Utilities' proposal would increase capacity by 3.0 MW. FirstLight's proposal would increase capacity by 1.026 MW. Both applicants propose to operate the project in a run-of-river mode.

l. *Locations of the Applications:* Copies of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule:

The applications will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis (when FERC approved studies are complete)	November 11, 2010.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	December 29, 2010.
Commission issues EA	June 13, 2011.
Comments on EA or EIS	July 13, 2011.
Modified terms and conditions	September 11, 2011.

o. Final amendments to the applications must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22515 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 1, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–86–000.
Applicants: NRG South Central Generating LLC, CottonWood Energy Company LP.
Description: Cottonwood Energy Company LP submits application for authorization under Section 203 of the Federal Power Act.
Filed Date: 08/26/2010.
Accession Number: 20100827–0205.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: EC10–90–000.
Applicants: Central Vermont Public Service Corp.
Description: Application under Section 203 of the Federal Power Act of Central Vermont Public Service Corporation for the Merger of Facilities.
Filed Date: 08/31/2010.
Accession Number: 20100831–5246.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1304–002.
Applicants: DownEast Power Company, LLC.
Description: DownEast Power Company, LLC submits tariff filing per 35: eTariff Compliance Filing to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5127.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–1467–001.
Applicants: Ohio Edison Company.
Description: Ohio Edison Company submits tariff filing per 35: Compliance-Remove Headers to be effective 6/17/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5115.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–1469–001.
Applicants: The Cleveland Electric Illuminating Comp.
Description: The Cleveland Electric Illuminating Company submits tariff filing per 35: Compliance filing Remove Headers to be effective 6/17/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5054.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–1468–001.
Applicants: The Toledo Edison Company.
Description: The Toledo Edison Company submits tariff filing per 35: Compliance Filing Remove Headers 2 to be effective 6/17/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5132.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–1720–001.
Applicants: Dry Lake Wind Power II LLC.
Description: Dry Lake Wind Power II LLC submits an amendment to Section III.A of their application to demonstrate that Dry Lake II lacks generation market power within the Arizona Public Service Company balancing authority area, effective 9/4/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5147.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–1736–001.

Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company's Compliance Filing; Second Revised Rate Schedule FERC No. 88, Third Revised Sheet No. 38 Superseding Substitute Second Revised Sheet No. 38.
Filed Date: 08/31/2010.
Accession Number: 20100831–5248.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 07, 2010.

Docket Numbers: ER10–1777–001.
Applicants: Sundevil Power Holdings, LLC.
Description: Sundevil Power Holdings, LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Application to be effective 8/16/2010.
Filed Date: 08/26/2010.
Accession Number: 20100826–5115.
Comment Date: 5 p.m. Eastern Time on Thursday, September 09, 2010.

Docket Numbers: ER10–2068–002.
Applicants: Delaware City Refining Company LLC.
Description: Delaware City Refining Company LLC submits tariff filing per 35: Revised Change in Status Notification to be effective 10/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5158.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2077–001.
Applicants: PBF Power Marketing LLC.
Description: PBF Power Marketing LLC submits tariff filing per 35: Revised Change in Status Notification to be effective 10/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5161.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2092–002.
Applicants: Boralex Ashland LP.
Description: Boralex Ashland LP submits tariff filing per 35: Boralex Ashland LP Baseline Compliance to be effective 8/3/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5084.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2117–002.
Applicants: Boralex Livermore Falls LP.
Description: Boralex Livermore Falls LP submits tariff filing per 35: Boralex Livermore Falls LP Baseline Compliance to be effective 8/5/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5079.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2118–002.
Applicants: Boralex Stratton Energy LP.
Description: Boralex Stratton Energy LP submits tariff filing per 35: Boralex Stratton Energy LP Baseline Compliance to be effective 8/5/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5081.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2119–002.
Applicants: Boralex Fort Fairfield LP.
Description: Boralex Fort Fairfield LP submits tariff filing per 35: Boralex Fort Fairfield LP Baseline Compliance to be effective 8/5/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5083.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2294–001.
Applicants: ORNI 18, LLC.
Description: ORNI 18, LLC submits tariff filing per 35: ORNI 18 Baseline MBR Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5109.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2322–001.
Applicants: BE Ironwood LLC.
Description: BE Ironwood LLC submits tariff filing per 35: eTariff Compliance Filing to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5188.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2324–001.
Applicants: BE KJ LLC.
Description: BE KJ LLC submits tariff filing per 35: eTariff Compliance Filing to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5187.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2327–001.
Applicants: Cedar Brakes II LLC.
Description: Cedar Brakes II LLC submits its baseline eTariff filing of Rate Schedule FERC No. 1 in Compliance with Order 614, to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5186.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2490–000.
Applicants: The Dayton Power and Light Company.
Description: The Dayton Power and Light Company submits tariff filing per 35.12: FERC Electric Tariff, Volume No. 6 to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5106.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2491–000.
Applicants: DPL Energy, LLC.
Description: DPL Energy, LLC. submits tariff filing per 35.12: FERC Rate Schedule No. 1 to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5117.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2492–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35.12: Electric Coordination Tariff No. 1 to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5125.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2493–000.
Applicants: DPL Energy, LLC.
Description: DPL Energy, LLC. submits tariff filing per 35.12: FERC Electric Tariff, Vol. No. 2 to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5128.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2494–000.
Applicants: Unitil Power Corp.
Description: Unitil Power Corp. submits tariff filing per 35.12: UPC Market Based Rate Tariff Baseline Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5133.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2495–000.
Applicants: Fulgora Arbitrage Fund, LLC.
Description: Fulgora Arbitrage Fund, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization of Fulgora Arbitrage Fund, LLC to be effective 9/15/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2496–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Section 7 Errata_7.16.2 to be effective 10/26/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5148.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2497–000.
Applicants: Alliant Energy Corporate Services, Inc.
Description: Alliant Energy Corporate Services, Inc. submits tariff filing per 35.12: Baseline Alliant Energy Corporate Services Agreements to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5167.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2498–000.
Applicants: South Carolina Electric & Gas Transmission.
Description: South Carolina Electric & Gas Transmission submits tariff filing per 35.12: Compliance filing for WR, NMST and Cost-Based Tariffs to be effective 3/30/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5175.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2499–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.12: Westar Energy, OATT Baseline Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5183.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2500–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.12: Baseline Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 2 to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5194.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2501–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): METC–Consumers DTIA to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5206.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2502–000.
Applicants: Black Hills/Colorado Electric Utility Company, LP.
Description: Black Hills/Colorado Electric Utility Company, LP submits tariff filing per 35.12: Baseline MBR Tariff Filing of Black Hills/Colorado Electric Utility Company, LP to be effective 9/2/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5210.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2503–000.
Applicants: Indiana Michigan Power Company, Appalachian Power Company, AEP Texas Central Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Kingsport Power Company, Columbus Southern Power Company, Kentucky Power Company, Wheeling Power Company, AEP Texas North Company.
Description: Indiana Michigan Power Company submits tariff filing per 35.12: APCo OATT Baseline 20100831 to be effective 9/1/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5223.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2504–000.
Applicants: Shiloh Wind Project 2, LLC.
Description: Shiloh Wind Project 2, LLC submits tariff filing per 35.12: Shiloh Wind Project 2 LLC Market-Based Rate Tariff Baseline Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5224.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2505–000.
Applicants: Northwest Wind Partners, LLC.
Description: Northwest Wind Partners, LLC submits tariff filing per 35.12: Northwest Wind Partners LLC Market-Based Rate Tariff Baseline Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5228.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2506–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits tariff filing per 35.12: Westar Energy, Cost-Based Tariff Baseline Tariff Filing to be effective 8/31/2010.
Filed Date: 08/31/2010.
Accession Number: 20100831–5229.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2507–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits its Baseline Filing of its Market-Based Rate Tariff, FERC Electric Tariff, Fourth Revised Volume No 6. to comply with Order No. 714, to be effective 9/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5003.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2508–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination for GWF LLC GSFA and GIA of Pacific Gas and Electric Company.
Filed Date: 08/31/2010.
Accession Number: 20100831–5241.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2509–000.
Applicants: Otter Tail Power Company.
Description: Otter Tail Power Company submits tariff filing per 35: Transmission Capacity Exchange Agreement Compliance to be effective 12/31/1998.
Filed Date: 09/01/2010.
Accession Number: 20100901–5044.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2510–000.
Applicants: Goshen Phase II LLC.
Description: Goshen Phase II, LLC submits Shared Facilities Agreement between Goshen II, RAE, and AE Power Services, LLC, effective 9/1/10.
Filed Date: 08/31/2010.
Accession Number: 20100901–0206.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2511–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Network Integration Transmission Service Agreement between Bonneville Power Administration, et al.
Filed Date: 08/31/2010.
Accession Number: 20100901–0207.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2512–000.
Applicants: New England Power Pool.
Description: New England Power Pool Participants Committee submits counterpart signature pages of the NEPOOL, dated as of 9/1/71, as amended executed by Hexis Energy et al.
Filed Date: 08/31/2010.
Accession Number: 20100901–0208.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2513–000.
Applicants: Alta Wind II, LLC.
Description: Alta Wind II, LLC submits petitions for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 08/31/2010.
Accession Number: 20100901–0209.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2514–000.
Applicants: Alta Wind III, LLC.

Description: Petition of Alta Wind III, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 08/31/2010.
Accession Number: 20100901–0210.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2515–000.
Applicants: Alta Wind IV, LLC.
Description: Alta Wind IV, LLC submits petitions for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 08/31/2010.
Accession Number: 20100901–0211.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2516–000.
Applicants: Alta Wind V, LLC.
Description: Petition of Alta Wind V, LLC for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.
Filed Date: 08/31/2010.
Accession Number: 20100901–0212.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2517–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator submits tariff filing per 35.13(a)(2)(iii): NYISO 205—Pre-Scheduled Transaction Capability—Bluvas 9/1/10 to be effective 1/19/2011.
Filed Date: 09/01/2010.
Accession Number: 20100901–5130.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2518–000.
Applicants: New Brunswick Power Generation Corporation.
Description: New Brunswick Power Generation Corporation submits tariff filing per 35.12: NB Power MBR Tariff to be effective 9/2/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5144.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–57–000.
Applicants: Ameren Services Company.
Description: Application of Ameren Illinois Co. for Section 204 Authorization.
Filed Date: 08/31/2010.
Accession Number: 20100831–5251.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–14–001.
Applicants: North American Electric Reliability Corporation.
Description: Second Quarter 2010 Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 629 of Order No. 693 and Request to Terminate Compliance Filing Obligation.
Filed Date: 08/31/2010.
Accession Number: 20100831–5154.
Comment Date: 5 p.m. Eastern Time on Thursday, September 09, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification or (self-recertification) listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification (or self-recertification) simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–22601 Filed 9–9–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 2, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–91–000.
Applicants: Entergy Power Ventures, L.P.
Description: Application for authorization of disposition of jurisdictional assets under Section 203 of the Federal Power Act re Entergy Power Ventures, LP.
Filed Date: 09/01/2010.
Accession Number: 20100902–0214.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: EC10–92–000.
Applicants: Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC.
Description: Application for Authorization of Sale/Leaseback Financing Transactions and Requests for Expedited Consideration and Confidential Treatment of Alta Wind III, LLC, et al.
Filed Date: 09/01/2010.
Accession Number: 20100901–5249.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3502–011.
Applicants: Berkshire Power Company, LLC.
Description: Berkshire Power Company, LLC Notice of Non-Material Change of Status.
Filed Date: 09/02/2010.
Accession Number: 20100902–5109.
Comment Date: 5 p.m. Eastern Time on Thursday, September 23, 2010.

Docket Numbers: ER06–736–004.
Applicants: Midway Sunset Cogeneration Company.
Description: Midway Sunset Cogeneration Company Supplement to Updated Market Power Analysis.
Filed Date: 09/01/2010.
Accession Number: 20100901–5246.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER05–717–015; ER04–374–016; ER06–1334–012; ER05–721–015; ER06–230–012; ER07–277–011; ER07–810–010; ER08–1172–009; ER08–237–010; ER09–1339–005; ER09–1340–005; ER09–1342–005; ER09–1341–005; ER09–429–006; ER09–430–006; ER09–946–005; ER99–2341–018.
Applicants: Forward Energy LLC, Sheldon Energy LLC, Invenergy Cannon Falls LLC, Spindle Hill Energy LLC, Spring Canyon Energy LLC, Grays Harbor Energy LLC, Grand Ridge Energy LLC, Willow Creek Energy LLC, Hardee Power Partners Limited, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy V LLC, Beech Ridge Energy LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC.
Description: Notification of Change in Facts Under Market-Based Rate Authority of Spring Canyon Energy LLC, *et al.*
Filed Date: 09/01/2010.
Accession Number: 20100901–5247.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–1750–001; ER10–1751–001.
Applicants: Stream Energy Pennsylvania, LLC; SGE Energy Sourcing, LLC.
Description: Stream Energy Pennsylvania, LLC *et al.* submits additional information requested by FERC Staff for Attachments A and B to the pending market-based rate applications.
Filed Date: 09/02/2010.
Accession Number: 20100902–0217.
Comment Date: 5 p.m. Eastern Time on Thursday, September 23, 2010.

Docket Numbers: ER10–2519–000.
Applicants: Allegheny Power.
Description: Allegheny Power submits Construction Services Agreement.
Filed Date: 08/31/2010.
Accession Number: 20100901–0225.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 21, 2010.

Docket Numbers: ER10–2520–000.
Applicants: Wisconsin Power and Light Company.
Description: Wisconsin Power and Light Company submits tariff filing per 35.12: Baseline WPL Agreements to be effective 9/1/2010.
Filed Date: 09/01/2010.
Accession Number: 20100901–5236.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2521–000.
Applicants: Southwest Power Pool, Inc.
Description: Cancellation Notice of Southwest Power Pool, Inc.
Filed Date: 09/01/2010.
Accession Number: 20100901–5242.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 22, 2010.

Docket Numbers: ER10–2522–000.
Applicants: Top of the World Wind Energy, LLC.
Description: Top of the World Wind Energy, LLC submits their Initial Market Based-Rate Application and Tariff Filing, to be effective 9/3/2010.
Filed Date: 09/02/2010.
Accession Number: 20100902–5130.
Comment Date: 5 p.m. Eastern Time on Thursday, September 23, 2010.

Docket Numbers: ER10–2523–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): MidAmerican-NIPCO IA to be effective 9/7/2010.
Filed Date: 09/02/2010.
Accession Number: 20100902–5155.
Comment Date: 5 p.m. Eastern Time on Thursday, September 23, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–22600 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–86–000]

Jeffers South, LLC v. Midwest Independent Transmission System Operator, Inc.; Notice of Complaint

September 2, 2010.

Take notice that on September 1, 2010, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824c, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Jeffers South, LLC (Complainant) filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Respondent), alleging that the Respondent violated its obligations with respect to the study of network upgrades that are required to accommodate Complainant's requested generation interconnection.

Complainant certifies that copies of the complaint were served on the contacts listed for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 21, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22512 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12492–001]

Ha-Best, Inc.; Notice of Availability of Environmental Assessment

August 31, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 **Federal Register** [FR] 47897), the Office of Energy Projects has reviewed Ha-Best's application for license for the Miner Shoal Waterpower Project (FERC Project No. 12492–001), located on the Soque River, near the town of Demorest, Habersham County, Georgia. The project does not occupy federal lands.

Staff prepared an environmental assessment (EA), which analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/ferconline.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/dcos-filing/ecomment.asp.* You must include your name and contact information at the end of the your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 12492–001 to all comments.

For further information, contact Jennifer Adams by phone at 202–502–8087, or by e-mail at *jennifer.adams@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22272 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–85–000]

Alta Wind Holdings, LLC; Notice of Petition for Declaratory Order

September 2, 2010.

Take notice that on August 31, 2010, Alta Wind Holdings, LLC filed a Petition for Declaratory Order requesting that the Federal Energy Regulatory Commission (Commission) disclaim jurisdiction, under section 201 of the Federal Power Act, over passive owner lessors and owner participants associated with a proposed sale and leaseback of generation associated with four generation projects under development.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 30, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22511 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–489–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

September 2, 2010.

Take notice that on August 23, 2010, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, TX, 77056, filed an application pursuant to Section 7(b), Parts 157.205 and 157.216, of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon: (1) The Weaver Storage Well No. 9297 together with the associated well pipeline designated as Line SLW–9297 and appurtenances; and (2) the Lucas Storage Well No. 10572 together with the associated well pipeline designated as Line SWL–10572 and appurtenances, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Fredic J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359, or by e-mail at *fgeorge@nisource.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–22510 Filed 9–9–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0689; FRL–9200–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; 2011 Drinking Water Infrastructure Needs Survey and Assessment (Reinstatement); EPA ICR No. 2234.03; OMB Control No. 2040–0274

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the Environmental Protection Agency (EPA) is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 9, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0689, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: barles.robert@epa.gov.*
- *Fax:* 202–564–3757.
- *Mail:* Water Docket, EPA Docket Center (EPA/DC), Environmental Protection Agency, *Mailcode:* 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Water Docket, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2010–0689. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information of which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or by e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of

encryption and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

Robert Barles, Drinking Water Protection Division (Mail Code 4606M), Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–3814; fax number: 202–564–3757; e-mail address: *barles.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2010–0689 which is available for online viewing at *http://www.regulations.gov* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744 and the telephone number for the Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25 people) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are those which own, operate or regulate community water systems including, but not limited to, owners/operators of community water systems, state environmental water quality agencies, and state departments of health.

Title: 2011 Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) (Reinstatement).

ICR numbers: EPA ICR No. 2234.03, OMB Control No. 2040–0274.

ICR status: This ICR seeks reinstatement of a previously approved information collection activity that was discontinued on December 31, 2009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this information collection is to identify the infrastructure needs of public water systems for the 20-year period from January 2011 through December 2031. EPA's Office of Ground Water and Drinking Water (OGWDW) will collect these data to comply with Sections 1452(h) and 1452(i)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12).

EPA will use a questionnaire to collect capital investment need information from community water systems serving more than 3,300 persons and from American Indian and Alaskan Native Village community water systems and not-for-profit non-community water systems serving more than 25 persons. Participation in the survey is voluntary. The data from the questionnaires will provide EPA with a basis for estimating the nationwide infrastructure needs of public water systems. Also, as mandated by section 1452(a)(1)(D)(ii) of the Safe Drinking Water Act, EPA uses the results of the latest survey to allocate the next fiscal year's appropriation of the Drinking Water State Revolving Fund (DWSRF) monies to the States. Under the allotment formula, each state receives a grant of the annual DWSRF appropriation in proportion to its share of the total national need—with the proviso that each state receives at least one percent of the total funds available.

Burden Statement: Over the entire survey effort, the annual public reporting and recordkeeping burden for this collection of information is estimated to average 7.55 hours per response for States and water system respondents combined. However, nearly all of the responses from water systems will occur in the single year of 2011. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and

review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

- Estimated total number of potential respondents: 3,176.
- Frequency of response: Once.
- Estimated total average number of responses for each respondent: One per system.
- Estimated total annual burden: 16,250 hours.
- Estimated total annual costs: $613,014. This includes an estimated burden cost of $613,014 and an estimated cost of $0.00 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under the **FOR FURTHER INFORMATION CONTACT** section.

Dated: September 3, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–22642 Filed 9–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8992–6]

Environmental Impacts Statements; Notice of Availability

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

Weekly receipt of Environmental Impact Statements.

Filed 08/30/2010 through 09/03/2010.

Pursuant to 40 CFR 1506.9.

Notice:

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

EIS No. 20100360, Draft EIS, USFS, CA, Gemmill Thin Project, Updated Information on Four Alternatives, Chanchellula Late-Successional Reserve, Shasta-Trinity National Forest, Trinity County, CA, Comment Period Ends: 10/25/2010, Contact: Bobbie DiMonte Miller 530–226–2425.

EIS No. 20100361, Revised Draft EIS, FHWA, CO, PROGRAMMATIC—I–70 Mountain Corridor Tier 1 Project, from Glenwood Springs and C–470, Proposes to Increase Capacity, Improve Accessibility and Mobility, and Decrease Congestion, Colorado, Garfield, Eagle, Summit, Clear Creek, and Jefferson Counties, CO, Comment Period Ends: 11/08/2010, Contact: Monica Pavilik, P.E. 720–963–3012.

EIS No. 20100362, Draft EIS, USFS, CA, Big Pony Project, Proposes to Reduce Fire Hazard to Permanent Research Plots and to Areas Within and Adjacent to Wildland Urban Interface near Tennant, Goosenest Ranger District, Klamath National Forest, Siskiyou County, CA, Comment Period Ends: 10/25/2010, Contact: Wendy Coats 530–841–4470.

EIS No. 20100363, Draft EIS, NOAA, CA, Gray's Reef National Marine Sanctuary (GRNMS) Research Areas Designation, Establish a Research Area, Implementation, GA, Comment Period Ends: 12/08/2010, Contact: George Sedberry 912–598–2345.

EIS No. 20100364, Final EIS, USN, 00, Northwest Training Range Complex (NWTRC), Support and Conduct Current, Emerging, and Future Training, and Research Development, Test and Evaluation (RDT&E) Activities, WA, OR, and CA, Wait Period Ends: 10/11/2010, Contact: Kimberly Kler 360–396–0927.

EIS No. 20100365, Final EIS, BLM, NV, Silver State Solar Energy Project, Construction and Operation of a 400-megawatt Photovoltaic Solar Plant and Associated Facilities on Public Lands, Application, Right-of-Way Grant, Primm and Clark Counties, NV, Wait Period Ends: 10/11/2010, Contact: Greg Helseth 702–515–5173.

EIS No. 20100366, Final EIS, USFWS, MT, Montana Department of Natural Resources and Conservation Forested Trust Lands Habitat Conservation Plan, Issuance of Incidental Take Permit, Implementation, MT, Wait Period Ends: 10/11/2010, Contact: Kathleen Ports 406–542–4330.

Amended Notices

EIS No. 20100322, Draft EIS, USAF, 00, Powder River Training Complex Project, Proposal to Improve Airspace for Training, Primarily, B–1 Aircrews at Ellsworth AFB, South Dakota, and B–52 Aircrews at Minot AFB, North Dakota, Comment Period Ends: 11/15/2010, Contact: Linda Devine 757–964–9434.

Revision to FR Notice Published 08/20/2010: Change to Contact Phone Number and Change Comment Period from 11/17/2010 to 11/15/2010.

Dated: September 7, 2010.

Cliff Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 2010–22617 Filed 9–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9199–9]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Malone Service Company Superfund Site, Texas City, Galveston County, Texas.

The settlement requires the thirty-two (32) settling parties to pay a total of $1,015,013 payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Sections 106 or 107 of CERCLA, 42, U.S.C. 9606 or 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating

to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before October 12, 2010.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Patrice Miller, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–3158. Comments should reference the Malone Service Company Superfund Site, Texas City, Galveston County, Texas, and EPA Docket Number 06–17–07, and should be addressed to Patrice Miller at the address listed above.

FOR FURTHER INFORMATION CONTACT: Anne Foster, 1445 Ross Avenue; Dallas, Texas 75202–2733 or call (214) 665–2169.

Dated: August 30, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–22641 Filed 9–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0128; FRL–8843–2]

Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione (Dazomet); Notice of Receipt of Request to Voluntarily Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily amend two tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione product registrations to terminate or delete one or more uses. The request would delete tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione use in or on air washer systems; eating establishments; hospitals and related institutions; commercial institutions; institutional and industrial areas/premises; swimming pool water systems; household or domestic dwelling contents; evaporated condenser water systems; irrigation systems; and metal working fluids. The request would not terminate the last tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione products registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request. If this request is granted, any sale, distribution, or use of products listed in this notice will be permitted after the uses are deleted only if the sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0128, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility's telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0128. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Abigail Downs, Antimicrobials Division (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5259; fax number: (703) 308–6467; e-mail address: *downs.abigail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected

by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from registrant Verichem, Inc., to delete certain uses of tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione product registrations. In letters dated April 29, 2009, October 6, 2009, and July 8, 2010, Verichem, Inc., requested EPA to amend to delete certain uses of pesticide product registrations identified in Table 1 of Unit III.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from Verichem, Inc., to delete certain uses of tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione product registrations. The affected products are identified in Tables 1 and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order amending the affected registrations.

TABLE 1.—TETRAHYDRO-3,5-DIMETHYL-2H-1,3,5-THIADIAZINE-2-THIONE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration Number	Product Name	Company	Uses to be Deleted
67869–18	N521 Technical	Verichem, Inc.	Air washer systems Eating establishments Hospitals and related institutions Commercial institutions Institutional and industrial areas/premises Swimming pool water systems Household or domestic dwelling contents Evaporated condenser water systems Irrigation systems
67869–46	VeriGuard OD	Verichem, Inc.	Metal working Fluids

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2.— REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
67869	Verichem, Inc. 3499 Grand Avenue Pittsburgh, PA 15225

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione registrant has requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the proposed requests.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subjected to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and were packaged, labeled, and released for shipment prior to the effective date of the action. If the request for amendments to delete uses is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to this request for an amendment to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit III.

For voluntary product cancellations, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to delete uses, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that the sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

List of Subjects

Environmental protection, Antimicrobials, Pesticides and pests, Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione.

Dated: August 26, 2010.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2010–22482Filed 9–9–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

September 3, 2010.

TIME AND DATE: 10 a.m., Thursday, September 16, 2010.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Dynamic Energy, Inc.,* Docket No. WEVA 2007–448–R. (Issues include whether the administrative law judge properly found a violation of 30 CFR 77.1607(b), which requires mobile equipment operators to have "full control" of their equipment while it is in motion.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 2010–22700 Filed 9–8–10; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/Address	Date reissued
018694F	Global Parcel System LLC, 8304 Northwest 30th Terrace, Miami, FL 33122.	Aug. 13, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–22553 Filed 9–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–416]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506I(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:* Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services Participation Report; *Form Number:* CMS–416 (OMB#: 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services pursuant to section 1902(a)(43)(D) of the Social Security Act. These reports provide CMS with data necessary to assess the effectiveness of State EPSDT programs, to determine a State's results in

achieving its participation goal and to respond to inquiries. Respondents are State Medicaid Agencies. The data is due April 1 of every year so States need to have the form and instructions as soon as possible in order to report timely. *Frequency:* Yearly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 56; *Total Annual Responses:* 112; *Total Annual Hours:* 1,568. (For policy questions regarding this collection contact Cindy Ruff at 410–786–5916. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *October 12, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: September 3, 2010.

Martique Jones,

Director, Regulations Development Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–22592 Filed 9–9–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10207, CMS–10244, CMS–10343 and CMS–R–131]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and 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:* Physician Self-Referral Exceptions for Electronic Prescribing and Electronic Health Records; *Use:* Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) directed the Secretary to create an exception to the physician self-referral prohibition in section 1877 of the Social Security Act for certain arrangements in which a physician receives compensation in the form of items or services (not including cash or cash equivalents) ("nonmonetary remuneration") that is necessary and used solely to receive and transmit electronic prescription information. Also, CMS created a separate regulatory exception for certain arrangements involving the provision of nonmonetary remuneration in the form of electronic health records software or information technology and training services necessary and used predominantly to create, maintain, transmit, or receive electronic health records.

The conditions for both exceptions require that arrangements for the items and services provided must be set forth in a written agreement, be signed by the parties involved, specify the items or services being provided and the cost of those items or services, and cover all of the electronic prescribing and/or electronic health records technology to be provided by the donating entity. CMS would use the collected information for enforcement purposes; specifically, if we were investigating the financial relationships between the donors and the physicians to determine whether the provisions in the exceptions were met. *Form Number:* CMS–10207 (OMB#: 0938–1009); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 9,796; *Total Annual Responses:* 38,959; *Total Annual Hours:* 12,451.5. (For policy questions regarding this collection contact Kristin Bohl at 410–786–8680. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid State Program Integrity Assessment (SPIA); *Use:* Under the provisions of the Deficit Reduction Act (DRA) of 2005, the Congress directed CMS to establish the Medicaid Integrity Program (MIP), CMS' first national strategy to combat Medicaid fraud, waste, and abuse. CMS has two broad responsibilities under the MIP: (1) Reviewing the actions of individuals or entities providing services or furnishing items under Medicaid; conducting audits of claims submitted for payment; identifying overpayments; and educating providers and others on payment integrity and quality of care; and (2) Providing effective support and assistance to States to combat Medicaid fraud, waste, and abuse.

In order to fulfill the second of these requirements, CMS developed SPIA. CMS uses SPIA to collect data on State Medicaid program integrity activities, develop reports for each State based on these data, determine areas to provide States with technical support and assistance, and develop measures to assess States' performance. *Form Number:* CMS–10244 (OMB#: 0938–1033); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,400. (For policy questions regarding this collection contact Mary Jo Cook at 410–786–3231. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* State Plan Preprint for Medicaid Recovery Audit Contractors (RACs); *Use:* Under section 1902(a)(42)(B)(i) of the Social Security Act, States are required to establish programs to contract with one or more Medicaid RACs for the purpose of identifying underpayments and recouping overpayments under the State plan and any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver. Further, the statute requires States to establish programs to contract with Medicaid RACs in a manner consistent with State law, and generally in the same manner as the Secretary contracts with Medicare RACs.

State programs contracted with Medicaid RACs are not required to be fully operational until after December 31, 2010. States may submit, to CMS, a State Plan Amendment (SPA) attesting

that they will establish a Medicaid RAC program. States have broad discretion regarding the Medicaid RAC program design and the number of entities with which they elect to contract. Many States already have experience utilizing contingency-fee-based Third Party Liability recovery contractors. *Form Number:* CMS–10343 (OMB#: 0938–NEW); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; Total *Annual Responses:* 56; *Total Annual Hours:* 56. (For policy questions regarding this collection contact Mary Jo Cook at 410–786–3231 or Eva Tetteyfio at 410–786–3653. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice of Noncoverage (ABN); *Use:* Under section 1879 of the Social Security Act, a physician, provider, practitioner, or supplier of items or services participating in the Medicare program, or taking a claim on assignment, may bill a Medicare beneficiary for items or services usually covered under Medicare, but denied in an individual case under one of the several statutory exclusions, if they inform the beneficiary, prior to furnishing the service, that Medicare is likely to deny payment. Sections 42 CFR 411.404(b) and (c), and 411.408(d)(2) and (f), require written notice be provided to inform beneficiaries in advance of potential liability for payment. *Form Number:* CMS–R–131 (OMB#: 0938–0566); *Frequency:* Reporting: Weekly, Monthly, Yearly, Biennially and Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 1,326,282 ; *Total Annual Responses:* 43,725,850; *Total Annual Hours:* 5,099,309. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *November 9, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 3, 2010.

Martique Jones,

Director, Regulations Development Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–22593 Filed 9–9–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–E–0041]

Determination of Regulatory Review Period for Purposes of Patent Extension; SAPHRIS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SAPHRIS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SAPHRIS (asenapine). SAPHRIS is an atypical antipsychotic indicated for acute treatment of schizophrenia in adults and acute treatment of manic or mixed episodes associated with bipolar I disorder in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SAPHRIS (U.S. Patent No. 5,763,476) from NV Organon, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 3, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SAPHRIS represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SAPHRIS is 4,547 days. Of this time, 3,833 days occurred during the testing phase of the regulatory review period, while 714 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: March 4, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on March 4, 1997.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: August 31, 2007. FDA has verified the applicant's claim that the new drug application (NDA) for SAPHRIS (NDA 22–117) was submitted on August 31, 2007.

3. *The date the application was approved*: August 13, 2009. FDA has verified the applicant's claim that NDA 22–117 was approved on August 13, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by November 9, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 9, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–22519 Filed 9–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0527]

Determination of Regulatory Review Period for Purposes of Patent Extension; ULORIC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ULORIC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ULORIC (febuxostat). ULORIC is indicated for chronic management of hyperuricemia in patients with gout. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ULORIC (U.S. Patent No. 5,614,520) from Teijin Pharma Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 17, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ULORIC represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ULORIC is 3,395 days. Of this time, 1,873 days occurred during the testing phase of the regulatory review period, while 1,522 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 31, 1999. The applicant claims April 28, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 31, 1999, which was 30 days after FDA receipt of the active IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 15, 2004. The applicant claims December 14, 2004, as the date the new drug application (NDA) for Uloric (NDA 21–856) was initially submitted. However, FDA records indicate that NDA 21–856 was submitted on December 15, 2004.

3. *The date the application was approved*: February 13, 2009. FDA has verified the applicant's claim that NDA 21–856 was approved on February 13, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by November 9, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 9, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 13, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–22521 Filed 9–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics, (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee.

Times and Dates:

11 a.m.–5:30 p.m., September 23, 2010.

8:30 a.m.–2 p.m., September 24, 2010.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public on a first come, first serve basis up to the meeting room's capacity. However, visitors must be processed in accordance with established Federal policies and procedures. For foreign nationals or non-US citizens, pre-approval is required (please contact Althelia Harris, 301–458–4261, *adw1@cdc.gov* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, Federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be discussed: The agenda will include welcome remarks by the Director, NCHS; update on the long-term care research program; a discussion of the NCHS visitation program and an open session for comments from the public.

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 17, 2010.

The agenda items are subject to change as priorities dictate.

Contact person for more information: Virginia S. Cain, PhD, Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7211, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 3, 2010.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–22594 Filed 9–9–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Nominations for AHRQ Study Section Members

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for nominations for public members.

SUMMARY: In accordance with Title IX of the Public Health Service Act, see 42 U.S.C. 299c–1, and AHRQ's grant and contract regulations, 42 CFR part 67, applications submitted to AHRQ will be evaluated using the AHRQ peer review process to ensure a fair, equitable, and unbiased evaluation of their scientific and technical merit. The initial peer review of grant applications involves an assessment conducted by panels of experts established to include pertinent scientific disciplines and medical specialty areas. The confidential part of the peer review meetings devoted to critical evaluations will be closed meetings in accordance with section 10(d) of the Federal Advisory

Committee Act, as amended (5 U.S.C. Appendix 2).

AHRQ is seeking nominations to fill approximately 20 to 30 percent of its study section membership, across the following study sections:

(1) Health System Research (HSR),

(2) Health Care Technology and Decision Sciences (HCTDS),

(3) Health Care Quality and Effectiveness Research (HCQER), and

(4) Health Care Research Training (HCRT).

The primary research foci and functions of these four study sections are described on the AHRQ Web site: (*http:Ilwww.AHRQ .qovlfundlpeerrevlpeerdesc. htm*).

Individuals from the health services research and health care community who could serve as peer reviewers on these study sections are sought to replace study section members whose terms have expired. In sending your nomination, please specify the nominee's professional/scientific/ technical expertise, affiliations and full contact information, if this information is available.

Factors that will be considered in the selection of individuals to serve on study sections include: competence in a scientific, technical or clinical discipline or research specialty, particularly in health services research; fairness and evenhandedness in judgment and review; ability to work effectively in a group context; and commitment to complete work assignments.

A diversity of perspectives is valuable to AHRQ's work. To help obtain a diversity of perspectives among nominees, AHRQ encourages nominations of women and members of minority populations. AHRQ also seeks broad geographic representation.

DATES: AHRQ would like to receive your recommendations no later than Friday, October 1,2010.

ADDRESSES: Please direct your correspondence to: Kishena C. Wadhwani, PhD., M.P.H., Director, Division of Scientific Review (DSR), Office of Extramural Research, Education and Priority Populations (OEREP), Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (DHHS), 540 Gaither Road, Room 2032, Rockville, MD 20850, Phone: (301) 427–1556, Fax: (301) 427–1562, e-mail: *Kishena.WadhwanjAHRQ hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Kishena C. Wadhwani, PhD., M.P.H. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

Background

Currently, AHRQ has one chartered Health Services Research Initial Review Group (IRG) responsible for the peer review of research and training grant applications submiffed for funding consideration. The IRG is to advise the Director of the Agency on matters related to scientific and technical merit of research grant proposals to improve the quality, safety, efficiency, and effectiveness of health care for all Americans.

This IRG is currently comprised of four subcommittees or study sections, each with a particular research focus around which peer reviewers' expertise is assembled. These study sections convene three times per year to review the grant applications submitted to the three different submission cycles. Study section members are appointed for up to a maximum of four years.

Dated: September 1, 2010.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2010–22544 Filed 9–9–10; 8:45 am]

BILLING CODE 416Q–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0444]

Schmid Laboratories, Inc. et al.; Withdrawal of Approval of Five New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five new drug applications (NDAs) from multiple holders of these applications. The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports for the applications.

DATES: Effective September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the **Federal Register** of September 24, 2009 (74 FR 49760), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of five NDAs because the firms had failed to submit the required annual reports for these applications. The holders of these applications did not respond to the NOOH. Failure to file a written notice of participation and request for hearing as required by § 314.200 (21 CFR 314.200) constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the five applications listed in table 1 of this document.

TABLE 1.

Application No.	Drug	Applicant
NDA 5–766	Ramses Vaginal Jelly	Schmid Laboratories, Inc., Route 46 West, Little Falls, NJ 07424
NDA 7–220	Synthetic Vitamin A (vitamin A palmitate)	Merck & Co., Inc., 770 Sumneytown Pike, P.O. Box 4, West Point, PA 19486
NDA 8–595	Immolin Vaginal Cream Jel	Schmid Laboratories, Inc.
NDA 8–612	Silicote (simethicone) Ointment	Arnar-Stone Laboratories, Inc., 601 East Kensington Rd., Mount Prospect, IL 60056

TABLE 1.—Continued

Application No.	Drug	Applicant
NDA 10–915	Q.E.D. Hairgroom (captan)	A.R. Winarick, Inc., 783 Palisade Ave., Cliffside, NJ 07010

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated by the Commissioner, finds that the holders of the applications listed in this document have repeatedly failed to submit reports required by § 314.81. In addition, under § 314.200, we find that the holders of the applications have waived any contentions concerning the legal status of the drug products. Therefore, under these findings, approval of the applications listed in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 10, 2010.

Dated: August 31, 2010.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2010–22603 Filed 9–9–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0075]

Privacy Act of 1974; Privacy Act of 1974: Department of Homeland Security/ALL–031 Information Sharing Environment Suspicious Activity Reporting Initiative System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records titled, "Department of Homeland Security/ALL—031 Information Sharing Environment Suspicious Activity Reporting Initiative System of Records." This system of records will allow DHS to compile suspicious activity report data that meet the Information Sharing Environment Suspicious Activity Reporting Functional Standard and share these Suspicious Activity Reporting data with authorized participants in the Nationwide Suspicious Activity Reporting Initiative, including other DHS components, Federal departments and agencies, State, local and Tribal law enforcement agencies, and the private sector. Additionally, the Department of Homeland Security is issuing a Notice of Proposed Rulemaking to exempt this system from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before October 12, 2010. This new system will be effective October 12, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0075 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Ronald Athmann (202–447–4332), Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, "DHS/ALL–031 Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records."

This system of records will allow DHS components that produce, receive, and store suspicious activity reports (SARs) pursuant to their existing authorities, responsibilities, platforms, and programs to compile and share report data that also meet the ISE–SAR Functional Standard with authorized participants in the Nationwide SAR Initiative (NSI) including, Federal departments and agencies, State, local and Tribal law enforcement agencies, and the private sector. The NSI is one of a number of government-wide efforts designed to implement guidelines first issued by the President on December 16, 2005, for establishing the ISE pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended. The NSI establishes a nationwide capability to gather, document, process, analyze and share information about suspicious activity, incidents, or behavior reasonably indicative of terrorist activities (hereafter collectively referred to as suspicious activity or activities) to enable rapid identification and mitigation of potential terrorist threats.

There is a long history of documenting of suspicious activity, particularly in the law enforcement community; these reports are sometimes referred to as suspicious activity reports, tips and leads, or other similar terms. Federal, State, local and Tribal agencies and the private sector currently collect and document suspicious activities in support of their responsibilities to investigate and prevent potential crimes, protect citizens, and apprehend and prosecute criminals. Since some of these documented activities may bear a nexus to terrorism, the Program Manager for the Information Sharing Environment (PM–ISE) has developed a standardized process for identifying, documenting, and sharing terrorism-related SAR data (hereinafter referred to as an "ISE–SAR"), which meet the definition and criteria set forth in the ISE Functional Standard Suspicious Activity Reporting, (Version 1.5, May 2009) to the maximum extent possible consistent with the protection of individual privacy, civil rights, and civil liberties. The Functional Standard defines an ISE–SAR as official documentation of observed behavior determined to have a potential nexus to terrorism (*i.e.,* to be reasonably

indicative of criminal activity associated with terrorism).

Several operational components within DHS regularly observe or otherwise encounter suspicious activities while executing their authorized missions and performing operational duties. Components document those observations or encounters in SARs. Across the Department the operational setting or context for activities reported in SARs are as varied as the Department's mission responsibilities. Engagement with the NSI will alter neither those underlying mission functions nor upset the current methodologies employed by DHS components collecting information on suspicious activities and issuing SARs. Rather, the NSI will facilitate the more effective sharing and discovery—both internally and between DHS and external NSI participants—by incorporating a standardized technological and functional approach for recording and storing ISE–SARs throughout DHS. Once trained in the NSI program and the application of these technical and functional standards, DHS personnel will review component SARs and submit the data only from those that meet the ISE–SAR Functional Standard into the NSI Shared Space.

In keeping with NSI standards, whenever suspicious activity is determined to have a potential nexus to terrorism, DHS personnel will extract data from the component level SARs and input that data in a standardized format to the NSI Shared Space. All ISE–SAR data introduced into the NSI Shared Space are stored locally, but made available to other authorized users when a user's search criteria are met. For example, DHS ISE–SAR data remains under the control of the Department until an authorized user queries the NSI Shared Space with terms that match the data in the DHS ISE–SAR server. The results of each user's search or query cannot be downloaded or edited.

Additionally, DHS is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act elsewhere in the **Federal Register**. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A system of records is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5. As published elsewhere in today's **Federal Register**, the Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL–031 system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DHS/ALL–031

SYSTEM NAME:

DHS/ALL–031 Information Sharing Environment (ISE) Suspicious Activity Reporting (SAR) Initiative System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, and law enforcement sensitive.

SYSTEM LOCATION:

Records are maintained at the Department of Homeland Security (DHS) Headquarters on the DHS Nationwide Suspicious Activity Report Initiative (NSI) Shared Space Server in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

- DHS employees and contractors who have submitted ISE–SAR data to the NSI Shared.
- DHS employees and contractors who use the NSI Shared Space for conducting research and analysis with a potential terrorism nexus.
- Federal, State, local, Tribal, territorial and private sector officials whose agency or organization is part of the NSI and have submitted a ISE–SAR that meets the ISE–SAR Functional Standard and whose information DHS personnel have a need to know for the performance of their official duties.
- Federal, State, local, Tribal, territorial, and private sector officials whose agency or organization is an NSI participant and who use the NSI Shared Space for conducting research and analysis with a potential terrorism nexus.
- Individuals whose behavior is reasonably indicative of pre-operational planning related to terrorism or other criminal activity associated with terrorism.
- Witnesses who have observed individuals whose behavior reasonably is indicative of pre-operational planning related to terrorism or other criminal activity associated with terrorism.
- Individuals who have a material relationship to the activity or behavior reported in an ISE–SAR (e.g., the owner of a particular vehicle that was observed in a SAR, where it is unclear whether the person was actually driving the vehicle).

CATEGORIES OF RECORDS IN THE SYSTEM:

As described in the ISE–SAR Functional Standard Version 1.5 published in May 2009, the below information related to individuals may be maintained in this system. The ISE–SAR Functional Standard identifies privacy fields, which are also noted below.

- Aircraft descriptions, including:
  - Aircraft engine quality.
  - Aircraft fuselage color.
  - Aircraft wing color.
  - Aircraft ID (privacy field).
  - Aircraft make code.
  - Aircraft model code.
  - Aircraft style code .
  - Aircraft tail number (privacy field).
- Attachment:
  - Attachment type text.
  - Binary image.

- Capture date.
- Description text.
- Format type text.
- Attachment URI.
- Attachment privacy field indicator.

• Contact information for the submitter of the ISE–SAR:
- Person first name.
- Person last name.
- Person middle initial/name.
- E-mail address.
- Organization/Affiliation, such as DHS.
- Full telephone number.

• Driver License:
- Expiration date (privacy field).
- Expiration year.
- Issuing authority text.
- Driver license number (privacy field).
- Driver license endorsements, such as Hazardous Materials, Commercial Driver's License, Motorcycle.

• Follow-up Action:
- Activity date.
- Activity time.
- Assigned by text.
- Assigned to text.
- Disposition text.
- Status text.

• Location:
- Location description (privacy field).

• Location Address:
- Building description.
- County name.
- Country name.
- Cross street description.
- Floor identifier.
- International Civil Aviation Organization (ICAO) airfield code for departure.
- ICAO airfield code for planned destination.
- ICAO for actual destination.
- ICAO airfield for alternate.
- Mile marker text.
- Municipality name.
- Postal code.
- State name.
- Street name.
- Street number (privacy field).
- Street post directional.
- Street pre directional.
- Street type.
- Unit ID (privacy field).

• Location Coordinates:
- Altitude.
- Coordinate datum.
- Latitude degree.
- Latitude minute.
- Latitude second.
- Longitude degree.
- Longitude minute.
- Longitude second.
- Conveyance track/intent.

• Observer:
- Observer type text.
- Person employer ID (privacy field).

• Owning organization:
- Organization item.
- Organization description.
- Organization ID (privacy field).
- Organization Local ID.

• Other Identifier:
- Person identification number (PID) (privacy field).
- PID effective date (privacy field).
- PID effective year.
- PID expiration date (privacy field).
- PID expiration year.
- PID issuing authority text.
- PID type code.

• Passport:
- Passport ID (privacy field).
- Expiration date (privacy field).
- Expiration year.
- Issuing country code.

• Person:
- AFIS FBI number (privacy field).
- Age.
- Age unit code.
- Date of birth (privacy field).
- Year of birth.
- Ethnicity code.
- Maximum age.
- Minimum age.
- State identifier (privacy field).
- Tax identification number (privacy field).

• Person Name:
- First name (privacy field).
- Last name (privacy field).
- Middle name (privacy field).
- Full name (privacy field).
- Moniker (privacy field).
- Name suffix.
- Name type.

• Physical descriptors:
- Build description.
- Eye color code.
- Eye color text.
- Hair color code.
- Hair color text.
- Person eyewear text.
- Person facial hair text.
- Person height.
- Person height unit code.
- Person maximum height.
- Person minimum height.
- Person maximum weight.
- Person minimum weight.
- Person sex code.
- Person weight.
- Person weight unit code.
- Race code.
- Skin tone code.
- Clothing description text.

• Physical feature:
- Feature description.
- Feature type code.
- Location description.

• Registration:
- Registration authority code.
- Registration number (privacy field).
- Registration type.
- Registration year.

• ISE–SAR Submission:
- Additional details indicator.
- Data entry date.
- Dissemination code.
- Fusion center contact first name.
- Fusion center contact last name.
- Fusion center contact e-mail address.
- Fusion center contact telephone number.
- Message type indicator.
- Privacy purge data.
- Privacy purge review date.
- Submitting ISE–SAR Record ID.
- ISE–SAR submission date.
- ISE–SAR title.
- ISE–SAR version.
- Source agency case ID.
- Source agency record reference name.
- Source agency record status code.
- Privacy information exists indicator.

• Sensitive Information Details:
- Classification label.
- Classification reason text.
- Sensitivity level.
- Tearlined indicator (information that indicates the report does not contain classified information).

• Source Organization:
- Organization name.
- Organization ORI.
- System ID.
- Fusion center submission date.
- Source agency contact first name.
- Source agency contact last name.
- Source agency contact e-mail address.
- Source agency contact phone number.

• Suspicious Activity Report:
- Community description.
- Community URI.
- LEXS version.
- Message date/time.
- Sequence number.
- Source reliability code.
- Content validity code.
- Nature of source-code.
- Nature of source-text.

• Submitting organization:
- Organization name.
- Organization ID.
- Organization ORI.
- System ID.

• Suspicious Activity:
- Activity end date.
- Activity end time.
- Activity start date.
- Activity start time.
- Observation description text.
- Observation end date.
- Observation end time.
- Observation start date.

- Observation start time.
- Threat type code.
- Threat type detail text.
- Suspicious activity code.
- Weather condition details.

• Target:
- Critical infrastructure indicator.
- Infrastructure sector code.
- Infrastructure tier text.
- Structure type code.
- Target type text.
- Structure type text.
- Target description text.

• Vehicle:
- Color code.
- Description.
- Make name.
- Model name.
- Style code.
- Vehicle year.
- Vehicle identification number (privacy field).
- US DOT number (privacy field).
- Vehicle description.

• Related ISE–SAR:
- Fusion center ID.
- Fusion center ISE–SAR Record ID.
- Relations description text.

• Vessel:
- Vessel official Coast Guard number identification (privacy field).
- Vessel ID (privacy field).
- Vessel ID issuing authority.
- Vessel IMO number identification (privacy field).
- Vessel MMSI identification.
- Vessel make.
- Vessel model.
- Vessel model year.
- Vessel name.
- Vessel hailing port.
- Vessel national flag.
- Vessel overall length.
- Vessel overall length measure.
- Vessel serial number (privacy field).
- Vessel type code.
- Vessel propulsion text.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, as amended; and the Intelligence Reform and Terrorism Prevention Act of 2004, as amended; the National Security Act of 1947, as amended; Executive Order 13388.

PURPOSE(S):

The ISE–SAR Functional Standard is designed to support the sharing, specifically through the NSI, of information about suspicious activities that have a potential terrorism nexus throughout the ISE. The NSI participants include DHS; the Department of Justice; other Federal agencies carrying out counterterrorism mission function; State, local, and Tribal entities, including law enforcement agencies, represented at State, regional, major urban area fusion centers; and the private sector to the extent authorized by applicable law. In addition to providing specific indicators of possible terrorism-related crimes, ISE–SARs can be used to look for patterns and trends by analyzing information at a broader level than would typically be recognized within a single jurisdiction, State, or territory. Standardized and consistent sharing of suspicious activity information regarding potential terrorist threats and possible criminal activity associated with terrorism among State and major urban area fusion centers and Federal agencies is vital to assessing, deterring, preventing, or prosecuting those involved in criminal activities associated with terrorism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has 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 or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individuals that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate public or private sector organization who is a participant in the Nationwide SAR Initiative and authorized access through the NSI Shared Space for the purpose of supporting an authorized law enforcement, counterterrorism, national security, or homeland security function.

H. To Federal government counterterrorism agencies where DHS becomes aware of an indication of a threat or potential threat to national or international security, and where such use is to assist in anti-terrorism efforts.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life, property or other vital interests of a data subject and disclosure is proper and consistent with the official

duties of the person making the disclosure.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Much of the data within this system does not pertain to an individual; rather, the information pertains to locations, geographic areas, facilities, and other things or objects not related to individuals. However, personal information may be captured. Personal data may be retrieved by name, Social Security number, any privacy fields noted under Categories of Records, and other identifiers listed under the Categories of Records section.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

DHS is in the process of developing a retention schedule for DHS ISE–SAR data. This retention schedule will be based upon the underlying retention schedules of the information identified in existing components' retention schedules. DHS components maintain the authority to withdraw and/or edit any and all ISE–SAR data that they have entered into the NSI Shared Space in accordance with their respective policies. The NSI Shared Space does not have any internal retention mandates independent of the retention policies of the DHS components that enter their information into the NSI Shared Space.

SYSTEM MANAGER AND ADDRESS:

Ronald Athmann (202) 447–4332, Office of Intelligence and Analysis, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are obtained from ISE–SARs submitted by Federal, State, local, Tribal, and territorial agencies and private sector organizations who are NSI participants. The respective mission sets of DHS components are varied and entail coverage across multiple sectors. DHS components use a standardized technical approach across DHS to incorporate SAR data into the NSI Shared Space. DHS personnel, trained in the ISE–SAR program, will review component SARs and submit only those SAR data that meet the ISE–SAR Functional Standard to the NSI Shared Space.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), and (e)(12); (f); (g)(1); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), and (k)(3).

Dated: September 7, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–22636 Filed 9–9–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID FEMA–2010–0033]

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0030; Request for the Site Inspection and Landowners Authorization/Ingress-Egress Agreement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0030; FEMA Form 010–0–09 (formerly 90–1), Request for the Site Inspection; FEMA Form 010–0–10 (formerly 90–31), Landowner's Authorization/Ingress-Egress Agreement.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before October 12, 2010.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Request for the Site Inspection, Landowners Authorization/Ingress-Egress Agreement.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0030.

Form Titles and Numbers: FEMA Form 010–0–09 (formerly 90–1), Request for the Site Inspection; FEMA Form 010–0–10 (formerly 90–31), Landowner's Authorization/Ingress-Egress Agreement.

Abstract: FEMA's temporary housing assistance provides temporary housing to eligible applicants and survivors of federally declared disasters. This information is required to determine that the infrastructure of the site supports the installation of the unit. This collection also obtains permission for the unit to be placed on the property, and the property owner certifies that they will not have a lien placed against the unit for their own debts and will maintain the property so that FEMA can remove the unit when required.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: .34 Hour.

Estimated Total Annual Burden Hours: 1,700 Hours.

Estimated Cost: There are no annual capital, start-up, maintenance or operation costs associated with this collection.

Dated: September 3, 2010.

Lesia Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–22582 Filed 9–9–10; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0053]

Recovery Fact Sheet 9580.100, Mold Remediation

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Fact Sheet RP9580.100, *Mold Remediation.*

DATES: Comments must be received by October 12, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0053 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Docket Manager, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Michele Gast, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, 202–646–2706, *Michele.Gast@dhs.gov.*

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2010–0053. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

II. Background

The Recovery Fact Sheet RP9580.100, *Mold Remediation,* identifies the expenses related to mold remediation that are eligible for reimbursement under Public Assistance Category B, emergency protective measures.

FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0053. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207; 44 CFR 13.36; 44 CFR 206.222.

Dated: August 31, 2010.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–22587 Filed 9–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0056]

Recovery Policy RP9523.12, Debris Operation—Hand-Loaded Trucks and Trailers

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing Recovery Policy RP9523.12, *Debris Operation—Hand-Loaded Trucks and Trailers.*

DATES: This policy is effective April 12, 2010.

ADDRESSES: This final policy is available at *http://www.regulations.gov* and on FEMA's Web site at *http://www.fema.gov.* You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Preston Wilson, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472–3100, 202–646–1648, or via e-mail at *Preston.Wilson@dhs.gov.*

SUPPLEMENTARY INFORMATION: This policy establishes procedures for reimbursing applicants for eligible debris removal accomplished with trucks and trailers loaded physically by hand, rather than with mechanical equipment.

FEMA previously issued this policy on May 1, 2006. FEMA reviewed this policy according to the established schedule for FEMA Public Assistance policies. Therefore, FEMA requested review and comment on the draft policy in September 2009. FEMA did not receive substantive comments on the policy. This policy does not implement any major changes to the previously effective policy dated May 1, 2006. However, this policy does state that debris monitors should not reduce the capacity of each hand-loaded truck or trailer for debris types that mechanical loading methods cannot significantly reduce volumes.

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

Dated: August 31, 2010.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–22584 Filed 9–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0055]

Recovery Policy, RP 9523.6, Mutual Aid Agreements for Public Assistance and Fire Management Assistance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Policy, RP 9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance.* This is an existing policy that is scheduled for review to ensure that Recovery Directorate policies are up to date, incorporate lessons learned and are consistent with current laws and regulations. The purpose of this proposed policy is to define the eligible costs incurred through mutual aid agreements and remove the unintended restriction on permanent work. The previous policy limited reimbursement for mutual aid costs to emergency work.

DATES: Comments must be received by October 12, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0055 and may be submitted by one of the following methods:

Federal eRulmaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Docket Manager, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Yolanda Gaston, Public Assistance Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472–3100, *yolandaL.gaston@dhs.gov,* (202) 646–4543.

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy Notice" link in the footer of *http://www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed policy is available in docket ID FEMA–2010–0055. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

II. Background

The purpose of this policy is to describe the criteria the Federal Emergency Management Agency (FEMA) will use to determine eligibility of costs under the Public Assistance (PA) Program incurred through mutual aid agreements between applicants and other entities after major disasters and emergencies declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

This policy was previously issued on August 13, 2007. The previous version indicated that mutual aid costs for permanent work was not eligible for Public Assistance funding. The significant change to the proposed policy is the allowance of mutual aid for permanent work. The primary reason of the limitation of mutual aid costs to emergency work is the assumption that mutual aid is provided for assistance with emergency work only. The intent of the policy was not to make emergency power restoration through

permanent repairs performed through mutual aid ineligible for Public Assistance funding. Further there is no restriction in FEMA regulations on mutual aid assistance for permanent work.

FEMA seeks comment on the proposed policy, which is available online at *http://www.regulations.gov* in docket ID FEMA–2010–0055. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at *http://www.regulations.gov.*

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

Dated: August 31, 2010.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–22585 Filed 9–9–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–15]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Jacksonville Housing Authority for the purchase and installation of programmable thermostats, compact fluorescent light (CFL) bulbs, and ENERGY STAR-qualified ceiling fans at several of its properties.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on August 25, 2010, upon request of the Jacksonville Housing Authority, HUD granted an exception to the applicability of the Buy American requirements with respect to work, using CFRFC grant funds, based on the fact that the relevant manufactured goods (programmable thermostats, CFL bulbs, and ENERGY STAR-qualified ceiling fans) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: September 1, 2010.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2010–22507 Filed 9–9–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–35]

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.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days

from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert Moore, Air Force Real Property Agency, 2261 Hughes Ave., Suite 121, Lackland AFB, TX 78236; (210) 395–9512; ENERGY: Mr. Mark Price, Department of Energy, OECM, MA–50, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–5422; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; NAVY: Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: September 2, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM

FEDERAL REGISTER REPORT FOR 09/10/2010

Unsuitable Properties

Building

California

Bldgs. 616, 5226
Lawrence Livermore Natl Lab
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201030001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

14 Bldgs.
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77201030024
Status: Unutilized
Directions: 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 7212
Marine Corps Air Station
Miramar CA
Landholding Agency: Navy
Property Number: 77201030025
Status: Excess
Reasons: Secured Area, Extensive deterioration

10 Bldgs.
Naval Weapons Station
Seal Beach CA 90740
Landholding Agency: Navy
Property Number: 77201030026
Status: Unutilized
Directions: 231, 233, 234, 248, 253, 260, 300, 411, 420, 876, 920
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs.
Naval Base
Ventura CA 93042
Landholding Agency: Navy
Property Number: 77201030029
Status: Unutilized
Directions: 4–32, 5–24, 555, 737, 764, 852, 853
Reasons: Extensive deterioration, Secured Area

4 Bldgs.
Naval Base
Ventura CA 93043
Landholding Agency: Navy
Property Number: 77201030030
Status: Unutilized
Directions: 2–825, 4–30, 353, 789
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Naval Base
Ventura CA 93042
Landholding Agency: Navy
Property Number: 77201030031
Status: Unutilized
Directions: 71, 73, 76, 77, 240, 244, 246, 248, 565, 700, 704
Reasons: Secured Area, Extensive deterioration

Florida

14 Bldgs.
Naval Air Station
Jacksonville FL
Landholding Agency: Navy
Property Number: 77201030027
Status: Unutilized
Directions: 108, 151, 152, 153, 173, 192, 234, 318, 790, 847, 947, 1205, 1524, 1846
Reasons: Secured Area, Extensive deterioration

Hawaii

Bldg. 237
Joint Base Pearl Harbor
Hickam
Wahiawa HI 96786
Landholding Agency: Navy
Property Number: 77201030028
Status: Excess
Reasons: Extensive deterioration

Maryland

Appraisers Store
Baltimore MD 21202
Landholding Agency: GSA
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Reasons: Floodway

New Mexico

Bldg. 790
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18201030013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

[FR Doc. 2010–22441 Filed 9–9–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14828–L, F–14935–J, F–14877–B, F–14877–E and F–14877–F, LLAK962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision approving the conveyance of surface estate for certain lands to NANA Regional Corporation, Inc., Successor in Interest to Ivisaapaagmiit Corporation, Koovukmeut Incorporated, and Isingmakmeut Incorporated, pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to NANA Regional Corporation, Inc. when the surface estate is conveyed to NANA Regional Corporation, Inc., Successor in Interest to Ivisaapaagmiit Corporation, Koovukmeut Incorporated, and Isingmakmeut Incorporated. The lands are in the vicinity of Ambler, Shungnak, and Kobuk, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 21 N., R. 6 E.,
Sec. 21.
Containing 640 acres.
T. 16 N., R. 8 E.,
Sec. 19.
Containing 594.40 acres.
T. 19 N., R. 10 E.,
Sec. 13.
Containing 545 acres.
T. 19 N., R. 11 E.,
Secs. 7, 8, 17 and 18.
Containing 2,471,78 acres.
T. 20 N., R. 11 E.,
Sec. 2, 4, 5 and 13.
Containing approximately 1,915 acres.
Aggregating approximately 6,166 acres.

Notice of the decision will also be published four times in the *Arctic Sounder.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until October 12, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Joe J. Labay,

Land Transfer Resolution Specialist, Land Transfer Resolution Branch.

[FR Doc. 2010–22609 Filed 9–9–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTC01000—16100000—LXSS005J0000]

Notice of Intent To Prepare a Resource Management Plan for the Cedar City Field Office, Utah, and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Cedar City Field Office, Cedar City, Utah, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Cedar City Field Office. This notice announces the beginning of the scoping process to solicit public comments and identify issues. The RMP will replace the existing Cedar-Beaver-Garfield-Antimony RMP (1986) and Pinyon Management Framework Plan (1983).

DATES: This notice initiates the public scoping process for the RMP with associated EIS. Comments on issues may be submitted in writing until December 9, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media outlets and through the Cedar City BLM Web site at: *http://www.blm.gov/ut/st/en/fo/cedar_city.html.* In order to be included in the Draft RMP/EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft RMP/EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Cedar City RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/ut/st/en/fo/cedar_city.html.*
- *E-mail: utccrmp@blm.gov.*
- *Fax:* 435–865–3058.
- *Mail:* 176 East DL Sargent Drive, Cedar City, Utah 84721.

Documents pertinent to this proposal may be examined at the Cedar City Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Keith Rigtrup, Project Manager, telephone: 435–586–2401; address: 176 East DL Sargent Drive, Cedar City, Utah 84721; e-mail: *utccrmp@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Field Office, Cedar City, Utah, intends to prepare an RMP with an associated EIS for the Cedar City Field Office; announces the beginning of the scoping process; and seeks public input on issues and planning criteria. The planning area is located in Beaver, Iron, and Washington Counties, Utah, and encompasses approximately 2.1 million acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and to guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel; Federal, state, and local agencies; and other stakeholders. The issues include: Renewable energy development for geothermal, wind, and solar power; management of [site type] rights-of-way for renewable energy and other uses; visual resource management; evaluation of potential new Areas of Critical Environmental Concern (ACEC); Wild and Scenic River recommendations; Off-Highway Vehicle Area Designations; Special Recreation Management Areas; Wild Horse and Burro management; consideration of non-Wilderness Study Area lands with wilderness characteristics; and fluid and solid minerals management, including stipulations to protect sensitive

resources. Preliminary planning criteria include:

1. Lands addressed in the RMP will be public lands (including split estate lands) managed by the BLM. There will be no decisions in the RMP for lands not managed by the BLM.

2. The BLM will use a collaborative and multi-jurisdictional approach, where possible, to determine the desired future condition of public lands.

3. The BLM will ensure compliance with all applicable local, state, tribal, and Federal air quality laws, statutes, regulations, standards, and implementation plans and include an analysis of climate change.

4. Areas potentially suitable for ACECs and other special management designations will be identified and brought forward for analysis in the RMP. Public nominations will be requested.

5. All river segments will be considered, and determinations of eligibility, suitability, tentative classification, and protective management will be made in accordance with Section 5(d) of the Wild and Scenic Rivers Act and BLM Manual Section 8351. Public nominations will be requested.

6. Herd Areas will be identified and boundaries for Wild Horse Herd Management Areas will be addressed in the plan.

7. Decisions of the RMP will be consistent with the goals and objectives of the legislation designating the Old Spanish National Historic Trail.

Parties interested in leasing and development of Federal coal in the planning area should provide coal resource data for their area(s) of interest. Specifically, information is requested on the location, quality, and quantity of Federal coal with development potential, and on surface resource values related to the 20 coal unsuitability criteria described in 43 CFR part 3461. This information will be used for any necessary updating of coal screening determinations (43 CFR 3420.1–4) in the Decision Area and in the environmental analysis. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments before the close of the comment period or within 15 days after the last public meeting. 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: rangeland management, air quality, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics, wildland fire, and public affairs.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2. Approved:

Jeff Rawson,

Associate State Director.

[FR Doc. 2010–22607 Filed 9–9–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA02000 L16100000.XH0000]

Notice of Availability of Record of Decision for the Socorro Field Office Resource Management Plan/ Environmental Impact Statement, New Mexico

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)/Approved Resource Management Plan (RMP) for the Socorro Field Office located in Socorro and Catron Counties, New Mexico. The State Director signed the ROD on August 20, 2010, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/ Approved RMP are available upon request from the Field Manager, Socorro Field Office, Bureau of Land Management, 901 S. Highway 85, Socorro, New Mexico 87801 or via the Internet at *http://www.blm.gov/nm.* Copies of the ROD/Approved RMP are also available for public inspection at the Socorro Public Library located at 401 Park Street, Socorro, New Mexico.

FOR FURTHER INFORMATION CONTACT: For further information, contact Kevin Carson, Outdoor Recreation Planner, telephone 575–838–1280; address Socorro Field Office, Bureau of Land Management, 901 S. Highway 85, Socorro, New Mexico 87801; e-mail *Kevin_I_Carson@nm.blm.gov.*

SUPPLEMENTARY INFORMATION: The Approved RMP provides direction for the long-term management of 1.5 million surface acres of public land and 6 million acres of Federal mineral estate public land within Socorro and Catron Counties and revises the 1989 Socorro RMP. Collaborative planning was used throughout the development of the RMP, which included public meetings, mailings, and other outreach activities. Catron County and the Pueblo of Zuni were cooperating agencies.

Six issues are addressed in the Approved RMP. The issues include:

(1) Special designations, such as Areas of Critical Environmental Concern;

(2) Improving soil and vegetation conditions at the watershed level;

(3) Fluid and solid mineral development;

(4) Travel and transportation (*e.g.,* off-highway vehicle use, mountain biking, hiking, and horseback riding);

(5) Land-use allocations and initiatives (*e.g.,* land tenure, right-of-way corridors, and areas where public and private lands abut one another); and

(6) Regional heritage/tourism opportunities on the BLM-managed public land. Management actions in the Approved RMP consequently address those issues by program and resource area, including special designations, soil and water resources; vegetation and land health; wildlife, riparian and special status species; recreation,

cultural, visual, paleontological, and recreation resources; lands and realty; nonrenewable and renewable energy development; wilderness; and transportation and travel management.

On April 16, 2007, the BLM New Mexico released the Draft RMP/EIS for a 90-day public comment period concurrent with a Notice of Availability, which was published in the **Federal Register**. The BLM New Mexico conducted public hearings on the Draft RMP/EIS and analyzed public comments received. Minor modifications and technical changes were made to the Preferred Alternative, which was carried forward as the Proposed Alternative (Alternative B) in the Proposed RMP/Final EIS.

The BLM New Mexico released the Proposed RMP/Final EIS for a 60-day Governor's Consistency Review and 30-day protest period on December 5, 2008. The BLM New Mexico modified one decision in the Approved RMP as a result of the Governor's Consistency Review. The Governor's letter stated that the BLM's land tenure and fluid mineral decisions regarding a state-designated conservation easement at Horse Springs Ranch were inconsistent with the purposes of the Conservation Easement (CE), which is to protect wildlife habitat. In light of the Governor's letter, the State Director modified Alternative B by selecting the lands and realty decision in the No Action Alternative, which will retain the BLM scattered parcels (3,856 acres) within the CE boundary. This decision meets the objectives of the State's CE. With regard to the Governor's concerns about the potential impacts that fluid mineral leasing decisions may have within the area of the State's Horse Springs Conservation Easement ("CE"), the State Director maintains the discretion to decline to issue leases on a case-by-case basis. In recognition of the particular resource concerns of this CE, the State Director will carefully exercise this discretion for any lease proposal in the surface area covered by the CE. After the issuance of this ROD, the BLM will undertake a plan amendment process to consider closing the area covered by the CE to fluid mineral leasing.

The BLM received three protests on the Proposed RMP/Final EIS. The protests raised issues regarding rangeland resources, lands with wilderness characteristics, and the Continental Divide National Scenic Trail (Trail). As a result of the protests, minor editorial modifications and technical clarifications were made in the ROD and in the Approved RMP.

The first modification concerns lands with wilderness characteristics. After review of the wilderness protest, an error in the original wilderness inventory was identified in one small area within a unit the protestor had proposed as having wilderness characteristics. Approximately 600 acres of BLM public land was found to contain wilderness characteristics because they adjoin the Chupadera Wilderness, which the U.S. Fish and Wildlife Service manages. Therefore, the BLM will select Alternative C for this area, which has a higher level of protection through a Lands and Realty decision. The BLM will issue this ROD and subsequently initiate a Resource Management Plan Amendment (RMPA) and supporting NEPA analysis to further address this area's wilderness characteristics. The RMPA process will include opportunities for public participation. The second modification concerns the Trail and future opportunities for trail routing. The decision reflects a map revision in the final RMP by adopting portions of Alternative C and the No Action Alternative, lands suitable for disposal in the Proposed RMP/Final EIS. This modified decision will provide more options for the future protection of the Trail.

Following modification of the aforementioned decisions and review of the protests, it was determined that the Socorro Field Manager followed all applicable procedures, laws, regulations, and policies, and considered all relevant resource factors, as well as public input in developing the Socorro RMP. Therefore, the protests were dismissed.

Decisions identifying routes of travel within designated areas for motorized vehicles are implementation decisions, and are appealable under 43 CFR part 4. These decisions are contained in Appendix J of the Approved RMP. Any party adversely affected by the proposed route identifications 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 route(s), as identified in Appendix J of the Approved RMP, on which the decision is being appealed. The appeal must be filed with the Socorro Field Office Manager at the above listed address. Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6(b)(2).

Jesse Juen,

Associate State Director.

[FR Doc. 2010–22432 Filed 9–9–10; 8:45 am]

BILLING CODE 4310–MW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 99842]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw 50 acres of National Forest System land from mining to protect the recreational uses and improvements within this portion of the Steamboat Rock Picnic Grounds. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by December 9, 2010.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Black Hills National Forest, 1019 North 5th Street, Custer, South Dakota 57730 or the BLM Montana State Director, 5001 Southgate Drive, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Valerie Hunt, Forest Service, Rocky Mountain Region, 303–275–5071 or Sandra Ward, BLM Montana State Office, 406–896–5052.

SUPPLEMENTARY INFORMATION: The USDA Forest Service has filed an application with the BLM pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, to withdraw the following-described National Forest System land within the Black Hills National Forest from location or entry under the United States mining laws (30 U.S.C. Ch. 2) for a period of 20 years, subject to valid existing rights:

Black Hills National Forest

Black Hills Meridian

Steamboat Picnic Grounds

T. 2 N., R. 5 E.,

Sec. 1, S½NW¼SW¼, N½SW¼SW¼, and NW¼SE¼SW¼.

The area described contains 50 acres in Lawrence County.

The purpose of the proposed withdrawal is to protect the recreational uses and improvements within this portion of the Steamboat Rock Picnic Grounds.

The use of a right-of-way or cooperative agreement would not provide adequate protection of the Federal investment in improvements and current uses in this area due to the broad scope and nondiscretionary nature of the general mining laws.

No alternative sites are feasible due to the specific uses and improvements already in place.

No water will be needed to fulfill the purpose of the requested withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Black Hills National Forest, P.O. Box 948, Glenwood Springs, Colorado 81602.

Records related to the application, as well as comments, including names and street addresses of respondents, will be available for public review at the Forest Supervisor's Office, Black Hills National Forest, P.O. Box 948, 900 Grand Avenue, Glenwood Springs, Colorado 81602, during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor's Office within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper no less than 30 days before the scheduled date of the meeting.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from location or entry under the United States mining laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. The land will remain open to other uses within the statutory authority pertinent to National Forest System lands and subject to discretionary approval.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

(Authority: 43 CFR 2310.3–1(b))

Cynthia Staszak,

Chief, Branch of Land Resources.

[FR Doc. 2010–22608 Filed 9–9–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF01000.L143000000.EU0000; NMNM 122597]

Notice of Realty Action: Competitive Sale of Public Land Near Aztec in San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer, by competitive sale, one parcel of land totaling 73.75 acres within the Aztec city limits in San Juan County, New Mexico. The sale will be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), respectively, and BLM land sale regulations. The purpose of the sale is to dispose of lands which are difficult and uneconomic to manage. The sales will be conducted as a competitive bid auction in which interested bidders must submit written sealed bids equal to or greater than the appraised fair market value of the land. Bidders who submit written sealed bids will have the opportunity to increase their bids in a silent auction to be held after the BLM opens all written sealed bids.

DATES: Comments regarding the proposed sale must be received by the BLM on or before October 25, 2010. Sealed bids must be received no later than 3 p.m., Mountain Time on November 15, 2010. The BLM will open the sealed bids and allow supplemental bidding in a silent auction on November 15, 2010, which will be the sale date. Other deadline dates for payment are specified in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401. Sealed bids must also be submitted to this address. Supplemental bidding in the silent auction will be conducted at this address. Additional information including bid forms, times, and bidding procedures will be available in an Invitation for Bids available from the Farmington Field Office. More detailed information regarding the proposed sale and the land involved, including maps and current appraisal, may be reviewed during normal business hours between 7:45 a.m. and 4:30 p.m. at the Farmington Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Albert M. Gonzales, Realty Specialist, (505) 599–6334 or via e-mail at *Albert_Gonzales@blm.gov.*

SUPPLEMENTARY INFORMATION: The following public land is proposed for competitive sale in accordance with Section 203 of FLPMA (43 U.S.C. 1713):

New Mexico Principal Meridian

T. 30 N., R. 11 W.,
Sec. 17, S½SE¼SE¼, S½N½SE¼SE¼, and N½NE¼SE¼SE¼;
Sec. 20, lot 1.

The area described contains 73.75 acres, more or less, in San Juan County.

The public land has been identified as suitable for disposal in the BLM's September 29, 2003, Farmington Resource Management Plan, as amended, and is not needed for any Federal purpose. The sale is consistent with current BLM planning for this area and would be in the public interest. The land meets the criteria for sale under 43 CFR 2710.0–3(a)(3), because its location and other characteristics make it difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The land is intermingled with private land. This land contains no other known public

values. The land has not been identified for transfer to the State or any other local government or nonprofit organization. The land is adjacent to commercially developed private land and is suitable for similar uses. The parcel will be offered through competitive sale procedures pursuant to 43 CFR 2711.3–1.

On September 10, 2010, the above described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, or termination of the segregation, the BLM will no longer accept land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2802.15. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or September 10, 2012, whichever occurs first, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2 (d) prior to the termination dates. The land will not be sold until at least 60 days after the date of publication of this notice in the **Federal Register.** In the event of a sale, conveyance will be made of surface interest only; the BLM intends to retain all mineral rights. Any patent issued will contain the following reservations, covenants, terms and conditions:

1. All minerals, including coal, will be reserved to the United States with the right to prospect for or mine, and remove the minerals;

2. The land will be conveyed with a reservation of right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The land will also be conveyed subject to the following valid existing rights:

(a) Oil and Gas Lease NMSF 078402 and NMSF 078402A leased to Burlington Resources Oil and Gas Company;

(b) Right-of-Way Grant NMNM 92866 and NMNM 109478 for road purposes, granted to Burlington Resources Oil and Gas Company;

(c) Right-of-Way Grant NMNM 28540 for water pipeline, granted to Southside Water Users;

(d) Right-of-Way Grant NMNM 68504, NMNM 011405, and NMNM 68504, for gas pipeline purposes, granted to Enterprise Field Services, LLC;

(e) Right-of-Way Grant NMNM 80795 for electrical power line purposes, granted to the City of Farmington;

(f) Right-of-Way Grants NMNM 107746, NMNM 112113, NMNM 010871, and NMNM 013690 for gas pipeline purposes, granted to Enterprise Field Services;

(g) Oil and Gas Communitization Agreements NMNM 73491, NMNM 87127, NMNM 104908, NMNM 104910, and NMNM 108260, Burlington Resources Oil and Gas Company; and

(h) Oil and Gas Communitization Agreements NMNM 73723 and NMNM 112525, Operator, Roddy Production Company, LLC.

The right-of-way holders will have the option of conversion to easement opportunities. The land conveyance will be subject to the above modifications.

4. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the lands proposed for sale; and the conveyance of any parcel will not be on a contingency basis. To the extent required by law, all such parcels are subject to the requirements of Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. 9620(h)).

5. An appropriate indemnification clause protecting the United States from claims arising out of the purchaser's use, occupancy, or operations on the patented lands. Interested bidders are advised to obtain an Invitation Form Bids (IFB) from the BLM Farmington Field Office at the address above or by calling (505) 599–8900. Interested bidders must follow the instructions in the IFB to participate in the bidding process. Sealed bids must be for not less than the federally approved fair market value. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for 10 percent of the amount of the bid. Bidders who have properly submitted sealed bids will have the opportunity to submit supplemental written bids in a silent auction at the BLM Farmington Field Office on November 15, 2010. Interested bidders wishing to submit a supplemental bid for a parcel must have properly submitted a sealed bid for the parcel and be present at the silent auction. The first supplemental bid for the parcel in the silent auction must be at least $2,000 more than the highest sealed bid accepted by the BLM and each subsequent supplemental bid must be at least $2,000 more than the previous bid. The BLM reserves the right to increase the required bid increment at any time. The highest supplemental bid submitted during the silent auction will be declared the high bid and the high bidder must immediately submit an additional payment to the BLM which, when added to the bid deposit submitted with the bidders sealed bid, equals at least 20 percent of the amount of the bid. If no supplemental bids are submitted for the parcel during the silent auction, the highest sealed bid for the parcel will be declared the high bid and the high bidder will receive written notice. If no supplemental bids are submitted for the parcel during the silent auction and more than one sealed bid is submitted for the same high bid amount, the high bidders will be notified and allowed to submit additional sealed bids. The highest qualifying bid for any parcel will be declared the high bid and the high bidder will receive written notice. The remainder of the full bid price for the parcel must be paid within 180 calendar days of the sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. Personal checks will not be accepted. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. The BLM will return checks submitted by unsuccessful bidders by U.S. mail or in person on the day of the sale.

The BLM may accept or reject any or all offers, or withdraw the land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law or is determined to not be in the public interest. Under Federal law, the public lands may only be conveyed to U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States, a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of New Mexico. Certification of qualifications, including citizenship or corporation or partnership, must be provided to the BLM prior to conveyance.

Additional Information: If not sold, the lands described in this Notice of Realty Action may be identified for sale later without further legal notice and may be offered for sale by sealed bid, internet auction, or oral auction. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect

the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the land will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any review and approvals will be responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. Information concerning the sale including the reservations, sale procedures, and conditions, CERCLA and other environmental documents will be available for review at the BLM Farmington Field Office. The general public and interested parties may submit comments regarding the proposed sale to the attention of the BLM Farmington Field Manager on or before October 25, 2010. Any adverse comments regarding the proposed sale will be reviewed by the BLM New Mexico State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. 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: 43 CFR 2711.1–2.

William Merhege,

Acting Deputy State Director, Resources.

[FR Doc. 2010–22612 Filed 9–9–10; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF0100 L5874000.EU, LXSS041G0000; NMNM 121548]

Notice of Realty Action: Modified Competitive Sealed Bid Sale of Public Lands in Rio Arriba County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer, by modified competitive sealed bid sale, one parcel of land totaling approximately 160 acres in Lindrith, New Mexico. The sale parcel will be subject to the applicable provisions of the Federal Land Policy and Management Act of 1976. The land is not needed for any Federal purpose and would be sold for not less than Fair Market Value (FMV), currently appraised to be $96,000.

DATES: Comments regarding the proposed sale or the Environmental Assessment (EA) will be accepted until October 25, 2010. Sealed bids for the sale must be post-marked and received by the BLM no later than 4:30 p.m., Mountain Standard Time (MST), on November 8, 2010 at the BLM Farmington Field Office.

ADDRESSES: Written comments and sealed bids should be mailed to the BLM Field Manager, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401.

FOR FURTHER INFORMATION CONTACT: Albert Gonzales, e-mail: *Albert_Gonzales@blm.gov* or by phone at (505) 599–6334.

SUPPLEMENTARY INFORMATION: The following land is located northeast of Cuba in Lindrith, New Mexico, and is described as:

New Mexico Principal Meridian

T. 26 N., R. 2 W.,
sec. 17, NE¼.

The area described contains 160 acres, more or less, in Rio Arriba County.

The sale is in conformance with the BLM Farmington Resource Management Plan (RMP) approved on October 5, 1998. The BLM has determined that the proposed action conforms to the land use plan decision, LD–1, in the RMP.

The use of the modified competitive sale method for this sale is consistent with 43 CFR 2711.3–2(a)(1)(i).

To participate in this modified competitive sale, each bidder, including the designated bidders, must submit a $20,000 bid guarantee deposited by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management. Sealed bids for this sale must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, in an amount not less than 20 percent of the total bid amount. The bid guarantee and sealed bid amounts may be submitted in one form of deposit but must be specified. Personal checks will not be accepted. Sealed bid envelopes must be clearly marked on the front lower left corner with "SEALED BID BLM LAND SALE," November 9, 2010, and the identification number of the parcel "BLM SERIAL NUMBER NM–121548." The bid envelope must also contain the completed BLM Certificate of Eligibility form, stating the name, mailing address, and phone number of the entity/person making the bid.

Sealed bids will be opened and recorded to determine the high bidder on November 9, 2010, at 10 a.m. MST, at the BLM Farmington Field Office. The highest qualifying bidder among the qualified bids received for the sale will be declared. This modified competitive sale allows the designated bidders the right to meet the high bid.

The designated bidders or their authorized representative must be present at the bid opening on November 9, 2010 at 10 a.m. MST. Should the designated bidders appoint a representative for this sale, they must submit, in writing, a notarized document identifying the level of capacity given to their authorized representative. This document must be signed by both parties. The designated bidders or their authorized representative will have the opportunity to meet and accept the high bid as the purchase price of the parcel or to refuse that offer. Should the designated bidders or their authorized representative refuse the offer, the high bid received through sealed bid will be declared the successful bid in accordance with regulations at 43 CFR 2711.3–2(c). Acceptance or rejection of any offer to purchase the parcel will be in accordance with the procedures set forth in 43 CFR 2711.3–1 (f) and (g) of this subpart.

All funds submitted with sealed bids will be returned to the unsuccessful bidders upon presentation of photo identification. The successful bidder may elect a refund of their $20,000 bid guarantee or apply the bid guarantee along with the required 20 percent bid deposit toward the purchase price. Failure to submit the bid deposit following a successful bid will result in forfeiture of the bid guarantee under 43 CFR 2711.3–1(d).

The successful bidder will be allowed 180 days from the date of the sale to submit the remainder of the full bid price in the form of a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management. Personal checks will not be accepted. Arrangements for electronic fund transfer to the BLM for the payment of the balance due on or before 180 days from the date of the sale, shall be made a minimum of 2 weeks prior to the payment date. Failure to submit the full bid price before the end of the 180th day

following the sale date will result in the forfeiture of the 20 percent bid deposit to the BLM in accordance with 43 CFR 2711.3–1(d). If there are no acceptable bids, the parcel may remain available for sale on a continuing basis in accordance with the competitive sale procedures described in 43 CFR 2711.3–1 without further legal notice. If the parcel is not sold, it may also be offered for sale in a future Internet auction. Internet auction procedures are available at *http://www.auctionrp.com.* If unsold through the Internet auction, the parcel may be offered for sale in the future without additional legal notice.

Terms and Conditions: All minerals will be reserved to the United States. The conveyance document issued would contain the following numbered reservations, covenants, terms, and conditions:

1. Discretionary leasable and saleable mineral deposits on the land, if any, are reserved to the United States, its permittees, licensees, and lessees together with the right to prospect for, mine, and remove such minerals under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights;

2. A right-of-way thereon for ditches and canals constructed by authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945);

3. The parcel is subject to valid existing rights. The parcel may also be subject to land-use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of the title, or the federally approved FMV, of the parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:45 a.m. to 4:30 p.m. MST, Monday through Friday, at the BLM Farmington Field Office, except during federally recognized holidays. Subject to limitations prescribed by law and regulation, prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including one that would last in perpetuity, if applicable, or to an easement.

4. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees, its employees, agents, contractors, or lessees, or any third party, arising out of, or in connection with, the patentees use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees, its employees, agents, contractors, or lessees, or third parties arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (a) Violations of Federal, State, and local laws and regulations applicable to the real property; (b) judgments, claims or demands of any kind assessed against the United States; (c) costs, expenses, damages of any kind incurred by the United States; (d) other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (e) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (f) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction; and

5. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor have any hazardous substances been disposed of or released on the subject property.

The parcel is subject to reservations for roads, public utilities, and flood control purposes in accordance with the local governing entities' transportation plans. No warranty of any kind, express or implied, is given by the United States as to title, whether, or to what extent, the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of the parcel will not be on a contingency basis.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grant in accordance with 43 CFR 2807.15 and 2886.15. Land use applications may be considered after completion of the sale process for this parcel if the parcel is not sold.

The BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder will be notified, in writing, of their rights and then must apply for the conversion of their current authorization before the patent is issued.

Federal law requires that all bidders must be United States citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the United States. Proof of these requirements must accompany the bid. Unless other satisfactory arrangements are approved in advance by the BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the BLM Farmington Field Office prior to 30 days before the bidder's scheduled closing date. There are no exceptions.

Within 30 days of the sale, the BLM will, in writing, either accept or reject all bids received. Pursuant to 43 CFR 2711.3–1, a bid is the bidder's offer to the BLM to purchase the parcel. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale.

To change the name on the bidder statement, high bidders must notify the BLM Farmington Field Office, in writing, and submit a new bidder statement, which is available at the BLM Farmington Field Office, and must be completed by the intended patentee.

The BLM will not sign any documents related to any Internal Revenue Service (IRS) 1031 exchange transactions. The timing for completion of any IRS Section 1031 exchange is the bidder's responsibility in accordance with IRS regulations. The BLM will not be a party to any IRS Section 1031 exchange.

In order to determine the FMV, certain assumptions may have been made about the attributes and

limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the land will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer. The parcel proposed for sale was analyzed in the BLM Farmington Resource Management Plan and Final Environmental Impact Statement dated March 2003. This was approved as the Resource Management Plan in the Record of Decision signed September 29, 2003, which is available for review at the BLM Farmington Field Office. The parcel identified in this Notice was analyzed in an Environmental Assessment (EA) for the sale.

Information concerning the sale, appraisals, reservations, sale procedures and conditions, CERCLA, maps delineating the individual sale parcel, the FMV of the parcel, EA, and other environmental documents are available for review at the Farmington Field Office, or by contacting Albert Gonzales at (505) 599–6334.

Public comments: The parcel of land will not be offered for sale before 60 days have elapsed after the publication of this notice. For a period until October 25, 2010, interested parties may submit written comments to the BLM Farmington Field Office. Only written comments submitted by postal service or other delivery service will be considered as properly filed. Electronic mail, facsimile, or telephone comments will not be considered as properly filed.

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.

Any adverse comments regarding the proposed sale will be reviewed by the BLM New Mexico State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711)

Debby Lucero,

Acting Deputy State Director, Division of Lands and Resources.

[FR Doc. 2010–22610 Filed 9–9–10; 8:45 am]

BILLING CODE 4310–VB–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of a questionnaire to the Office of Management and Budget for review.

Purpose of information collection: The forms are for use by the Commission in connection with investigation No. 332–519, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy,* instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance. The Commission expects to deliver the results of its investigation to the Senate Committee on Finance by May 2, 2011.

Summary of Proposal

(1) *Number of forms submitted:* 1.
(2) *Title of form:* Intellectual Property Rights Questionnaire.
(3) *Type of request:* New.
(4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2010.
(5) *Description of respondents:* U.S. firms in the services and manufacturing sectors.
(6) *Estimated number of respondents:* 5,675.
(7) *Estimated total number of hours to complete the form per respondent:* 40 hours.
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the forms and supporting documents may be obtained from project leaders Alexander Hammer (*alexander.hammer@usitc.gov* or 202–205–3271) or Katherine Linton (*katherine.linton@usitc.gov* or 202–205–3393). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revision or language changes. Copies of any comments should be provided to Steve McLaughlin, Chief Information Officer, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). Also, general information about the Commission can be obtained from its internet site (*http://www.usitc.gov*).

By order of the Commission.

Issued: September 3, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–22583 Filed 9–9–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Filing of Settlement Agreement Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Notice is hereby given that on August 24, 2010, a proposed Settlement Agreement in *In re Asarco, LLC,* No. 05–21207 (Bankr. S.D. Tex.) was filed with the United States Bankruptcy Court for

the Southern District of Texas. The Settlement Agreement resolves the Late Supplemental Proof of Claim by the United States on behalf of the United States Department of Agriculture, Forest Service, in the Asarco bankruptcy. The Late Supplemental Proof of Claim relates to Asarco's liability under CERCLA at the Kelly Camp Mine Site located within the Colville National Forest in Ferry County, Washington. The Settlement Agreement requires Reorganized Asarco to pay $100,000 to settle this matter.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. 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 Asarco, LLC,* No. 05–21207 (Bankr. S.D. Tex.), Department of Justice Case Number 90–11–3–08633.

During the public comment period, the Settlement Agreement may be examined at the Office of the United States Attorney, Southern District of Texas, 800 North Shoreline Blvd., #500, Corpus Christi, TX 78476–2001. The Settlement 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 Settlement Agreement 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 $2.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief.

[FR Doc. 2010–22604 Filed 9–9–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11:30 a.m., Thursday, September 9, 2010.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed.

MATTERS CONSIDERED: The following matter will be considered during the closed meeting:

Consideration of four original jurisdiction cases pursuant to 28 CFR 2.27 Final recommendation on probationary period for hearing examiner.

AGENCY CONTACT: Patricia W. Moore, Staff Assistant to the Chairman, United States Parole Commission, (301) 492–5933.

DATES: September 3, 2010.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2010–22689 Filed 9–8–10; 11:15 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., September 9, 2010.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes May 6, 2010 Quarterly Business Meeting.
2. Reports from the Chairman, Commissioners and Section Administrators.
3. Consideration of proposed rule regarding rating of crack cocaine offenses.
4. Conditions for sex offenders.

AGENCY CONTACT: Patricia W. Moore, Staff Assistant to the Chairman, United States Parole Commission, (301) 492–5933.

Dated: September 3, 2010.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2010–22690 Filed 9–8–10; 11:15 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authorities and Assignment of Responsibilities

Secretary's Order 5–2010

Subject: Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division.

1. *Purpose.* To delegate authorities and assign responsibilities to the Administrator, Wage and Hour Division (WHD).

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 of 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Directives Affected.* Secretary's Order 9–2009 (Administrator, Wage and Hour Division) is hereby canceled. All other Secretary's Orders and DOL directives (including policies and guidance) which reference Secretary's Orders 9–2009, are amended to refer to this Order.

4. *Background.* The Secretary of Labor ("Secretary") has the authority to issue U Nonimmigrant Status Certifications under Section 1513(b) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(U) and related Department of Homeland Security regulations (*see* 8 CFR 214.14). This Order cancels Secretary's Order 9–2009 and delegates the Secretary's authority to issue U Nonimmigrant Status Certifications to the Administrator, WHD. In addition, this Order addresses certain provisions enacted recently as amendments to the Fair Labor Standards Act in sections 1511 and 1512 of the Patient Protection and Affordable Care Act of 2010, Public Law (Pub. L.) 111–148. These particular FLSA authorities of the Secretary of Labor are delegated to the Assistant Secretary for Employee Benefits Security rather than the Administrator, WHD (see also Secretary's Order 3–2010).

5. *Delegations of Authority and Assignment of Responsibility*

A. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards and labor standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) Except as hereinafter provided, the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for sections 18A and 18B of FLSA (29 U.S.C. 218A and 218B) and the associated FLSA authorities in sections 9 and 11 (20 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under sections 18A and 18B are delegated and assigned to the Assistant Secretary for Employee Benefits Security. Authority and responsibility for section 18C of the FLSA (29 U.S.C. 218C) and the associated FLSA authorities in sections 9 and 11 (20 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under section 18C are delegated and assigned to the Assistant Secretary for Occupational Safety and Health. Authority and responsibility for the Equal Pay Act, Section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.,* and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in Sections 5(i), (m), (n) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i), (m), (n) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1801 *et seq.,* including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.,* including subpoena authority under 29 U.S.C. 2004(b).

(10) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 258, 8 U.S.C. 1288(c)(4)(B)–(F), relating to the enforcement of the attestations required by employers pertaining to the employment of nonimmigrant longshore workers (D visas); Section 212(n)(2), (t)(3), 8 U.S.C. 1182(n)(2), (t)(3); relating to the enforcement of labor condition applications for employment of nonimmigrant professionals (H–1B, H–1B1, and E–3 visas); Section 212(m)(2)(E)(ii) through (v), 8 U.S.C. 1182(m)(2)(E)(ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for users of nonimmigrant registered nurses (H–1C Visas); Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification program (H–2A visas); Section 214(c)(14), 8 U.S.C. 1184(c)(14), relating to assuring employer compliance with the terms and conditions of employment under the temporary alien labor certification program in occupations other than agriculture or registered nursing (H–2B visas); and Section 274A(b)(3), 8 U.S.C. 1324A(b)(3), relating to employment eligibility verification and related recordkeeping.

(11) The Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.* (FMLA), including subpoena authority under 29 U.S.C. 2616.

(12) The Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 *et seq.* (OSH Act), to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) field sanitation, 29 CFR 1928.110; and

(b) temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Administrator, WHD under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(13) Executive Order 13,495 ("Nondisplacement of Qualified Workers Under Service Contracts") of January 30, 2009.

(14) Such additional Federal laws that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(13) of this paragraph, as directed by the Secretary.

B. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

C. *The Wage and Hour Regional Administrators* are hereby redelegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

D. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility to issue U Nonimmigrant Status Certifications under Section 1513(b) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(U) and related Department of Homeland Security regulations (*see* 8 CFR 214.14).

E. *The Administrator, Wage and Hour Division and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (*see* section 7.A.(12) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

F. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 01–2002 (September 24, 2002).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This Order is effective immediately.

Dated: September 2, 2010.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2010–22654 Filed 9–9–10; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority and Assignment of Responsibilities

Secretary's Order 3–2010

Subject: Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration.

1. *Purpose.* To delegate authority and assign responsibilities for the administration of the Department of Labor's responsibilities under the Employee Retirement Income Security Act of 1974, (ERISA), Federal Employees' Retirement System Act of 1986 (FERSA), and certain other statutes.

2. *Authority and Directives Affected.* This Order supersedes Secretary's Order 6–2009 (April 30, 2009).

3. *Background.* ERISA places responsibility in the Department of Labor for the administration of a comprehensive program to protect the interests of participants and beneficiaries of private sector employee benefit plans. This Order delegates the Secretary of Labor's authority and assigns responsibility for ERISA and for specified other laws to the Assistant Secretary for Employee Benefits Security.

In particular, this Order delegates the Secretary's authority and assigns responsibility for the newest among such laws, certain provisions enacted recently as amendments to the Fair Labor Standards Act (FLSA) in sections 1511 and 1512 of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148, 124 Stat. 119 (29 U.S.C. 218A and 218B). The duties delegated to the Assistant Secretary include authority and responsibility for sections 18A and 18B of the FLSA (29 U.S.C. 218A and 218B), the associated FLSA authorities in sections 9 and 11 (20 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under sections 18A and 18B, and to exercise any other authority and responsibilities granted the Secretary to enforce sections 18A and 18B of the FLSA.

4. *Delegation of Authority and Assignment of Responsibilities.*

A. Except as hereinafter provided, the Assistant Secretary for Employee Benefits Security is delegated the authority and assigned the responsibilities of the Secretary of Labor—

(1) Under the following statutes, including any amendments:

(a) The Employee Retirement Income Security Act of 1974, as amended, except for subtitle C of Title III and Title IV (29 U.S.C. 1001–1232);

(b) The Welfare and Pension Plans Disclosure Act of 1958, as amended Public Law 85–836, 72 Stat. 997; Public Law 86–624, 74 Stat. 417; Public Law 87–420, 76 Stat. 35.

(c) The Federal Employees' Retirement System Act of 1986 (5 U.S.C. 8401–8479);

(d) The Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, 110 Stat. 1936;

(e) Section 311(b) the Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, 123 Stat. 65;

(f) Section 3001 of the American Recovery and Reinvestment Act of 2009 Public Law 111–5;

(g) Sections 18A and 18B of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sections 218A and 218B, and the associated FLSA authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under sections 18A and 18B, and any other authority and responsibilities granted the Secretary to enforce sections 18A and 18B of the FLSA; and

(h) As directed by the Secretary, such additional Federal acts similar to or related to those listed in paragraphs (a) through (g), above, that from time to time may assign additional authority or responsibilities to the Department or the Secretary.

To request information the Internal Revenue Service (IRS) possesses for use in connection with the administration of Title I of ERISA of 1974.

B. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all officials of the Department relating to the administration of the statutes listed in paragraph 4.A.(1) of this Order, for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings. The Solicitor of Labor is also authorized to request information the IRS possesses for use in connection with the administration of Title I of ERISA.

C. *The Inspector General* is authorized to request information the IRS possesses for use in connection with the administration of Title I of ERISA.

5. Reservation *of Authority.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in paragraph 4.A.(1) of this Order and responsibilities under Subtitle C of Title III of ERISA are reserved to the Secretary.

B. The Pension Benefit Guaranty Corporation carries out responsibilities under Title IV of ERISA.

C. Except as expressly provided, nothing in this Order limits or modifies the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

6. *Effective Date.* This Order is effective immediately.

Dated: September 2, 2010.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2010–22655 Filed 9–9–10; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority and Assignment of Responsibility

Secretary's Order 4–2010

Subject: Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health.

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Authorities and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.;* 5 U.S.C. 301; 5 U.S.C. 5315; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.;* the Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45; the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357; the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333; the Maritime Safety Act of 1958, 33 U.S.C. 941; the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2); 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980); the Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)–(d); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; the National Transit Systems Security Act, 6 U.S.C. 1142; the Federal Railroad Safety Act, 49 U.S.C. 20109; the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; the Patient Protection and Affordable Care Act amendment to the Fair Labor Standards Act, 29 U.S.C. 218C; and Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203.

B. *Directives Affected.* Secretary's Order 5–2007 is replaced by this Order.

3. *Background.* This Order constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA), superseding Order 5–2007. This Order delegates and assigns responsibility to OSHA for enforcement of (1) Section 18C (protection of employees providing healthcare information) of the Fair Labor Standards Act (29 U.S.C. 218C), as added by Section 1558 of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148; (2) Section 1057 ("Employee Protection," 12 U.S.C. 5567) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203; (3) the National Transit Systems Security Act, 6 U.S.C. 1142; (4) the Federal Railroad Safety Act, 49 U.S.C. 20109; (5) Section 40 of the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; and (6) makes other modifications to reflect the above new responsibilities. This revised Order also reflects recent organizational changes within the Department of Labor and makes other technical changes. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 5–2007, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. *Delegation of Authority and Assignment of Responsibility.*

A. *The Assistant Secretary for Occupational Safety and Health*

(1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health, and whistleblower programs and activities of the Department of Labor, except as provided in paragraph 4.a.(2) below, under the designated provisions of the following laws:

(a) Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*

(b) Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45.

(c) McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357.

(d) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2).

(g) 5 U.S.C. 7902 and any executive order thereunder, including Executive

Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980).

(h) Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105.

(i) Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(j) International Safe Container Act, 46 U.S.C. 80507.

(k) Safe Drinking Water Act, 42 U.S.C. 300j–9(i).

(l) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(m) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)–(d).

(n) Federal Water Pollution Control Act, 33 U.S.C. 1367.

(o) Toxic Substances Control Act, 15 U.S.C. 2622.

(p) Solid Waste Disposal Act, 42 U.S.C. 6971.

(q) Clean Air Act, 42 U.S.C. 7622.

(r) Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121.

(s) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

(t) Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129.

(u) National Transit Systems Security Act, 6 U.S.C. 1142.

(v) Federal Railroad Safety Act, 49 U.S.C. 20109.

(w) Patient Protection and Affordable Care Act amendment to the Fair Labor Standards Act, 29 U.S.C. 218C.

(x) Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act., Public Law No. 111–203.

(y) Section 40 of the Consumer Product Safety Improvement Act, 15 U.S.C. 2087.

(z) Responsibilities of the Secretary of Labor with respect to safety and health, or whistleblower provisions of any other Federal law except those responsibilities which are assigned to another DOL agency.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies having responsibilities in the occupational safety and health area.

B. The Assistant Secretary for Occupational Safety and Health and the *Administrator, Wage and Hour Division* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see paragraph 4.A.(2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

C. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

D. *The Commissioner of Labor Statistics* is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with applicable law and Secretary's orders.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretary for Occupational Safety and Health.

5. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed in paragraph 4.a. above is reserved to the Secretary.

B. No delegation of authority or assignment of responsibility under this order will be deemed to affect the Secretary's authority to continue to exercise or further delegate such authority or responsibility.

C. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 1–2010 (January 15, 2010).

6. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: September 2, 2010.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2010–22656 Filed 9–9–10; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an

opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Telephone Point of Purchase Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before November 9, 2010.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, telephone number 202–691–7628 (this is not a toll free number.) (*See* Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this survey is to develop and maintain a timely list of retail, wholesale, and service establishments where urban consumers shop for specified items. This information is used as the sampling universe for selecting establishments at which prices of specific items are collected and monitored for use in calculating the Consumer Price Index (CPI). The survey has been ongoing since 1980 and also provides expenditure data that allows items that are priced in the CPI to be properly weighted.

II. Current Action

Office of Management and Budget clearance is being sought for the Telephone Point of Purchase Survey (TPOPS).

Since 1997, the survey has been administered quarterly via a computer-assisted-telephone-interview. This survey is flexible and creates the possibility of introducing new products into the CPI in a timely manner. The data collected in this survey are necessary for the continuing construction of a current outlet universe from which locations are selected for the price collection needed for calculating the CPI. Furthermore, the TPOPS provides the weights used in selecting the items that are priced at these establishments. This sample design produces an overall CPI market basket that is more reflective of the prices faced and the establishments visited by urban consumers.

For this clearance, the BLS will be implementing a cell phone frame to address a coverage issue associated with landline RDD surveys. The goal of including a cell phone frame is to contact respondents who reside in households with no landline service, but with cellular phone service. The implementation process will begin with a pre-test beginning in the first quarter of 2011 to assess cell phone frame interviewing and to determine the correct amount of sample to pull for each primary sampling unit or geographic area in the CPI. The cell phone frame will be deployed into production in the third quarter of 2011.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including 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.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Point of Purchase Survey.

OMB Number: 1220–0044.

Affected Public: Individuals or households.

Total Respondents: 24,469.

Frequency: Quarterly.

Total Responses: 63,375.

Average Time per Response: 11 minutes.

Estimated Total Burden Hours: 11,619 hours.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/ Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 3rd day of September, 2010.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–22620 Filed 9–9–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for the Benefits, Timeliness, and Quality Data Collection System, Extension With Revisions

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, 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)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data about the proposed extension of the Benefits Timeliness and Quality (BTQ) data collection system, which is part of the Unemployment Insurance (UI) Performs measurement system (current expiration date is November 30, 2010).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before November 9, 2010.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue, NW., Room C4522, Washington, DC 20210, Attention: Delores Mackall. Telephone number: 202–693–3183 (this is not a toll-free number). Fax: 202–693–3975. E-mail: *Mackall.Delores@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor, under the Social Security Act, Title III, Section 302 (42 U.S.C. 502), funds the necessary cost of proper and efficient administration of each state UI law. The BTQ program collects information and analyzes data. The BTQ data measure the timeliness and quality of states' administrative actions and administrative decisions related to UI benefit payments.

II. Review Focus

The Department of Labor 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.

III. Current Actions

Type of Review: Extension with revisions.

Title: Benefits, Timeliness, and Quality Review.

OMB Number: 1205–0359.

Affected Public: State governments.

Form(s): ETA–9050, ETA–9051, ETA–9052, ETA–9054, ETA–9055, ETA–9056, ETA–9057.

Total Annual Respondents: 53 state agencies.

Annual Frequency: Monthly and Quarterly.

Total Annual Responses: 29,636.

Average Time per Response: 80 minutes.

Estimated Total Annual Burden Hours: 39,521 hours.

MONTHLY UNIVERSE MEASURES: STATE STAFF HOURS PER YEAR

ETA report	Measure	Number of respondents	Reports per year	Total responses	Hours per response	Total hrs/year
9050	First Payment Time Lapse, Core Measure	53	12	636	.5	318
9050	First Payment Time Lapse, Partial/Part Total Claims, Management Information Measure.	53	12	636	.5	318
9050	First Payment Time Lapse, Workshare Claims, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Partial Part/Total, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Workshare, Management Information Measure.	53	12	636	.5	318
9052	Nonmonetary Determinations Time Lapse, Detection Date, Core Measure.	53	12	636	1.0	636
9054	Lower Authority Appeals Time Lapse, Management Information Measure.	53	12	636	.5	318
9055	Lower Authority Appeals Case Aging, Core Measure.	53	12	636	1.0	636
9054	Higher Authority Appeals Time Lapse, Management Information Measure.	53	12	636	.5	318
9055	Higher Authority Appeals Case Aging, Core Measure.	53	12	636	1.0	636
Subtotal						4,452

QUARTERLY SAMPLE REVIEW MEASURES: STATE STAFF HOURS PER YEAR

ETA report	Measure	Number of respondents	Sampled cases reviewed per year	Total cases reviewed per year	Hours per response	Total hrs/year
9056	Nonmonetary Determination Quality, Core Measure.	23 Small States	240	5,520	1	5,520
9056	Nonmonetary Determination Quality, Core Measure.	30 Large States	400	12,000	1	12,000
9057	Lower Authority Appeals Quality, Core Measure.	42 Small States	80	3,360	3.5	11,760

QUARTERLY SAMPLE REVIEW MEASURES: STATE STAFF HOURS PER YEAR—Continued

ETA report	Measure	Number of respondents	Sampled cases reviewed per year	Total cases reviewed per year	Hours per response	Total hrs/year
9057	Lower Authority Appeals Quality, Core Measure.	11 Large States	160	1,760	3.5	6,160
Subtotal						35,440

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Signed at Washington, DC, this 3rd day of September 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–22581 Filed 9–9–10; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

DATE AND TIMES: September 16, 2010, 9 a.m.–5:30 p.m.

PLACE: Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED: Receipt of NCD Strategic planning report and discussion.

CONTACT PERSON FOR MORE INFORMATION: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004, 202–272–2074 (TTY).

Dated: September 2, 2010.

Joan M. Durocher,

Executive Director.

[FR Doc. 2010–22699 Filed 9–8–10; 11:15 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Notice of Information Collection

AGENCY: National Science Foundation (NSF).

ACTION: Notice of information collection.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. As part of its continuing effort to reduce paperwork and respondent burden, NSF 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

DATES: All comments should be submitted within 60 calendar days from the date of this publication. Comments received after 60 days will be considered to the extent practicable.

ADDRESSES: All written comments should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Since 1998, the National Science Foundation (NSF) has supported interdisciplinary training of doctoral students across the nation through the Integrative Graduate Education and Research Traineeship (IGERT) Program. NSF awards IGERT grants to institutions that develop innovative, interdisciplinary doctoral training programs in science, technology, engineering, and mathematics (STEM) disciplines. Unlike traditional graduate research or teaching assistantships, IGERT provides doctoral students with unrestricted funds, including a living stipend plus tuition and fees. NSF intends to conduct an implementation evaluation of the program to learn what program elements are most effective in fostering interdisciplinary collaborations, research, and learning. Specifically, the evaluation will assess the program's perceived progress towards its three goals of fostering interdisciplinary education, recruiting and retaining a diverse population of graduate students, and catalyzing cultural change within institutions to better support interdisciplinary endeavors. Data from this collection will be used by NSF to respond to OMB and congressional inquiries, document best practices for training interdisciplinary scientists, and inform decisions about future project modifications.

II. Method of Collection

Data will be collected via interviews and surveys from faculty members and students who have participated in the five most recent cohorts (2005–2009) of IGERT projects.

III. Data

Title: NSF IGERT: Implementation Evaluation.

OMB Number: 3145–0182.

Expiration Date: March 31, 2011.

Type of Review: Renewal.

Affected Public: Individuals.

Estimated Number of Respondents: 2,915 (2,000 survey only; 115 survey and interview; 800 interview only).

Estimated Number of Responses per Respondent: 1 or 2 (survey only; survey and interview).

Estimated Time Per Response: 20 minutes for survey only; 50 minutes for survey and interview; 30 minutes for interview only.

Estimated Total Annual Burden Hours: 1162.5 hours.

Estimated Total Annual Cost: $300,864.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NSF, including whether the information collected has practical utility; (2) the accuracy of NSF's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: September 6, 2010.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–22589 Filed 9–9–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

AGENCY: Advisory Committee for Geosciences (1755).

DATES: October 6, 2010–October 7, 2010; 8:30 a.m.–1:30 p.m.

Place: Stafford I, Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Melissa Lane, National Science Foundation, Suite 705, 4201 Wilson Blvd., Arlington, Virginia 22230. Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda

October 6, 2010

- Directorate activities and plans
- Division Subcommittee Meetings
- Briefing on GEO MREFC Project
- Meeting with the Director

October 7, 2010

- Topical Subcommittee Meetings
- Divisional and Topical Subcommittee Reports
- Action Items/Planning for Fall Meeting

Dated: September 7, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–22606 Filed 9–9–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Networking and Information Technology Research and Development (NITRD) Program: Draft NITRD 2010 Strategic Plan

AGENCY: The National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD).

ACTION: Notice, request for public comment.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office (NCO) at *nitrd-sp@nitrd.gov* or (703) 292–4873. 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.

DATES: Comments must be received by 5 p.m. EDT on October 11, 2010.

SUMMARY: With this notice, the National Coordination Office for Networking and Information Technology Research and Development (NITRD) requests comments from the public regarding the draft 2010 Strategic Plan for the Federal NITRD Program. The draft Strategic Plan is posted at: *http://www.nitrd.gov/DraftStrategicPlan/Comments* of one page or less in length are requested. This request for information will be active from September 10, 2010 to October 11, 2010.

ADDRESSES: Submit comments via e-mail to: *nitrd-sp@nitrd.gov* Comments submitted in response to this notice may be made available to the public online or by alternative means. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program. The draft NITRD Strategic Plan reflects broad input from Federal agencies as well as from researchers and other stakeholders in academia, industry, national laboratories, and professional/technical organizations. Public inputs were solicited in a detailed August 2008 Request for Information (RFI) and in a February 2009 public forum and Webcast. Several hundred comments were received in response to the RFI, and many of these were posted to the NITRD Web site for further comment. The public forum, which included formal presentations by academic and industry experts addressing key concepts for the draft Strategic Plan, was attended by some 100 members of the public, while another 400 persons participated via the Webcast.

Background: As required by the High-Performance Computing Act of 1991 (Pub. L. 102–194), the Next Generation Internet Research Act of 1998 (Pub. L. 105–305), and the America COMPETES Act of 2007 (Pub. L. 110–69), NITRD currently provides a framework and mechanisms for coordination among 14 Federal agencies that support advanced IT R&D. These agencies report IT research budgets in the NITRD crosscut, and many other agencies with IT interests also participate informally in NITRD activities. The draft 2010 Strategic Plan for the NITRD Program was developed by the NITRD agencies pursuant to a recommendation of the President's Council of Advisors on Science and Technology (PCAST).

Invitation to comment: Inputs of one page or less are welcomed in response to this third and final request for public comment on the Plan. E-mail to: *nitrd-sp@nitrd.gov.*

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on September 1, 2010.

Dated: September 7, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–22597 Filed 9–9–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20836, NRC–2009–0119, License No. 25–21479–01, EA–10–100]

In the Matter of Mattingly Testing Services, Inc. Molt, MT; Order Revoking License (Effective Immediately)

I

Mattingly Testing Services, Inc., (Mattingly or licensee) is the holder of Materials License 25–21479–01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34, last amended on May 28, 2010, to change the facility's permanent storage location and to name a new radiation safety officer, and due to expire on February 28, 2016. The license authorizes Mattingly to possess and use byproduct material for industrial radiography operations in NRC jurisdiction, and in

areas of exclusive Federal jurisdiction within Agreement States. The license currently authorizes storage at licensee facilities in Molt and Billings, Montana. The license further authorizes the possession of natural or depleted uranium, as solid metal, for shielding in radiography equipment. On the same date this Order (EA–10–100) is issued to Mattingly, the NRC is also issuing Mr. Mark Ficek, President of Mattingly, an Order Prohibiting Involvement in NRC–Licensed Activities (IA–10–028).

Currently, both Mattingly (EA–08–271) and its president (IA–08–028) are subject to Confirmatory Orders issued on March 6, 2009, which resulted from alternative dispute resolution (ADR) mediation sessions conducted on February 5, 2009. Those Orders were made immediately effective upon issuance. The ADR mediation session and resultant Confirmatory Orders dispositioned nine violations, five of which were willful, identified during an NRC inspection and an investigation by the NRC's Office of Investigations. The 2008 investigation identified several violations: (1) A failure to provide complete and accurate information to the NRC; (2) a radiographer assistant performing radiographic operations without a dosimeter; (3) a radiographer assistant using a radiographic exposure device without supervision of a radiographer; (4) failure to secure a radiographic exposure device with a minimum of two independent physical controls; (5) failure to remove a radiographic exposure device from service after it had sustained damage to the locking mechanism; (6) failure to notify the NRC after discovery of damage to a radiography device; (7) an individual acting as a radiographer assistant without completing a practical examination on use of the radiography equipment; (8) failure to ensure that all personnel dosimeters were checked for proper response to radiation every 12 months; and, (9) failure to have a functional alarm system to allow the licensee to monitor, detect, assess, and respond to unauthorized access to radioactive material when the radioactive material is not under direct observation by Mattingly staff and stored in a portable darkroom, as required by Increased Controls Order (EA–05–090). The NRC also found that willfulness was involved in violations 1, 3, 5, 7, and 8, above.

The NRC offered ADR to Mattingly and its president in order to disposition the violations listed above. As a result of ADR, the NRC issued separate confirmatory orders to Mattingly and Mr. Ficek. The Confirmatory Order (EA–08–271) to Mattingly required, among other things, that Mattingly retain an expert consultant, to be approved by the NRC, and that the consultant would take specific actions within strict deadlines. The Confirmatory Order required the Mattingly expert consultant to: (1) Evaluate the effectiveness of Mattingly's radiation safety and compliance programs by commencing an assessment of Mattingly's radiation safety program within 30 days of NRC's approval of the consultant; by reviewing Mattingly's training program and recommending improvements; by reviewing Mattingly's operating and emergency procedures and recommending improvements; by providing a report of the consultant's findings and recommended improvements to both the licensee and NRC; by performing an annual audit of Mattingly's radiation safety program through calendar year 2012; and by performing semi-annual field audits of radiography performance at temporary jobsites; and (2) provide training to the Mattingly staff who engage in licensed activities, including: a review of radiation mishaps involving radiography; a review of the consequences of and potential actions that NRC may take against an individual for deliberate violations; a review of NRC requirements and Mattingly's license conditions; a review of Mattingly's operating and emergency procedures; lessons-learned from the circumstances surrounding each of the violations identified by the NRC in its December 15, 2008, letter; reporting requirements of 10 CFR 30.50 and 10 CFR 34.101; and, NRC's employee protection requirements in 10 CFR 30.7. The expert consultant was approved by the NRC on April 3, 2009 (ADAMS Accession No. ML090930661). As a result, the Order required Mattingly to begin the radiation safety procedure assessment and complete the radiation safety training for Mattingly staff by May 3, 2009. The Confirmatory Order (EA–08–271) also required Mattingly, within 30 days of the date of the Order, to submit a license amendment incorporating updated procedures in a number of areas. The deadline for this requirement was April 5, 2009.

II

On June 30, 2009, the NRC inspected the Licensee's facility in Molt, Montana, after the NRC, Region IV received a police report stating that the County Sheriff's office had recovered, from a member of the public, a radiographic exposure device Mattingly had lost. The NRC-initiated investigations and inspections identified several violations of regulatory requirements, four of which involved deliberate misconduct by Mattingtly's president, including providing false information to the NRC. Since the 2009 Confirmatory Orders, the NRC has determined that Mattingly has violated several NRC regulations and orders:

(1) Mattingly's president deliberately put Mattingly in violation of Confirmatory Order (EA–08–271). Specifically, the Confirmatory Order required Mattingly to select an independent consultant to review Mattingly's radiation safety program and to conduct training for Mattingly's staff. The NRC approved the independent consultant on April 3, 2009, which set May 3, 2009, as the date by which the consultant was to commence the assessment of the Mattingly radiation safety program, as well as complete the specified training for Mattingly staff. Testimony provided by the independent consultant to the NRC investigator on June 30, 2009, revealed that the consultant was not aware of the May 3, 2009 deadline. The consultant indicated that the president had directed him to complete his actions by the end of 2009, but he did not at that time have a specific plan to do so, nor was he aware of the deadlines for other actions assigned to the independent consultant in the Confirmatory Order. Moreover, testimony provided by the president and the consultant to the NRC investigator revealed that the president did not give the consultant a copy of the Confirmatory Order that described the required actions and respective deadlines. The president knew the Confirmatory Order's requirements, but rather than sharing the Confirmatory Order with the consultant or another Mattingly official to ensure compliance, he withheld the information and allowed the Confirmatory Order's deadlines to pass, putting Mattingly in violation of the Confirmatory Order (EA–08–271). The NRC showed the consultant the Confirmatory Order for the first time during the NRC investigation. If the NRC had not interdicted at that time, then implementation of required improvements to the Licensee's radiation safety program and safety training programs would have been even further delayed, if completed at all. The assessment of the Mattingly radiation programs was not begun until May 30, 2009, and the initial safety training of the Mattingly staff was not completed until July 19, 2009.

The NRC identified several additional examples of the licensee's failure to adhere to the Order, including: (i) The consultant's report and recommendations for program improvements were provided 65 days

after the consultant completed the required reviews, contrary to the specified requirement of 30 days; (ii) the consultant failed to provide a copy of his calendar year 2009 annual audit results to the NRC, as specified; (iii) the consultant conducted the initial field audit of radiography at temporary jobsites on August 29, 2009, almost 3 months after the May 3, 2009 deadline; and, (iv) the licensee submitted an amendment request on June 30, 2009 instead of May 3, 2009, as required.

(2) From May 13, 2006, through September 9, 2009, Mattingly, as a result of its president's deliberate inaction, failed to establish and maintain a prearranged plan with the local law enforcement agency to respond to any attempt to gain unauthorized access to radioactive materials, as required by Increased Controls Order (EA–05–090). Specifically, Increased Controls Order, Attachment B, Section IC–2(b), requires that the licensee shall have a prearranged plan with a local law enforcement agency for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices, which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. During an NRC inspection of the Mattingly facility in March 2007, the president informed the NRC inspector that he had established a prearranged plan with the Laurel Police Department, when in fact he had not established a prearranged plan with the Laurel Police Department, and in any event, Mattingly's facility was not located in the Laurel Police Department's jurisdiction. Upon further investigation the NRC determined that Mattingly's facility was in the Yellowstone County Sheriff's jurisdiction, and Mattingly had not established a prearranged plan with the Yellowstone County Sheriff's Office. The president's false statement to the NRC inspector—which made clear that the president was aware of the requirement, but had not implemented it—caused the NRC to find that the failure to meet the Increased Controls Order, Appendix B, Section IC–2(b), was deliberate.

(3) On March 6, 2007, Mattingly's president deliberately provided false information to an NRC inspector by stating that he had established a prearranged plan with the local law enforcement agency in accordance with Increased Controls Order (EA–05–090), violating 10 CFR 30.10(a)(2), and putting Mattingly in violation of 10 CFR 30.9, "Completeness and Accuracy of Information." As described above, the president stated to an NRC inspector that the prearranged plan had been established with the Laurel Police Department in Laurel, Montana. The NRC determined that neither the president nor any Mattingly official had contacted the Laurel Police Department to establish a prearranged response plan. The NRC also determined during its 2009 investigation that the Laurel Police Department had no jurisdiction for the Mattingly facility in Molt, Montana. Further, testimony by a representative of the appropriate local law enforcement agency (Yellowstone County Sheriff's Office) revealed that no prearranged plan had been established with them, or had been sought by the president or any other Mattingly officials. The president's false statement to the NRC inspector was a significant contributor to the duration of the Increased Controls Order violation since Mattingly did not implement the local law enforcement plan until September 9, 2009, more than 2 years after the NRC inspector initially questioned the Licensee's actions to establish the prearranged plan, and only after an NRC investigation revealed the violation.

(4) On October 22, 2009, while under oath, Mattingly's president deliberately provided false testimony to the NRC investigator, again violating 10 CFR 30.10(a)(2) and putting Mattingly in violation of 10 CFR 30.9, "Completeness and Accuracy of Information." The president claimed that two witnesses could confirm that he had conversations during a lunch engagement with the Laurel Police Chief regarding the required local law enforcement agency prearranged plan. Testimony provided by witnesses to the lunch engagement, including the Laurel Police Chief, refuted the president's statements. Further, in addition to testimony that the Laurel Police Chief recalled no discussion of a response plan, and that he knew that the Laurel Police Department had no jurisdiction to respond to the Mattingly facility, the Laurel Police Chief offered evidence that the lunch engagement at issue took place on July 13, 2003, some 28 months before the Increased Controls Order was issued to Mattingly. Therefore, the NRC found that the president deliberately provided false testimony while under oath when he attempted to cite a lunch engagement with the Laurel Police Chief in 2003 to demonstrate to the NRC that Mattingly was in compliance with the Increased Controls Order.

(5) On July 4, 16, and August 29–30, 2009, Mattingly failed to implement the Increased Controls Order (EA–05–090), Appendix B, Section IC–2(c), requirement to have a dependable means to transmit information between and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder at all times. Specifically, on the dates noted, a radiographic exposure device was left in one of Mattingly's trucks at a radiographer's residence, while the radiographer left the premises in another vehicle. Mattingly directed the radiographer to drive the truck between the temporary job site and his residence and depended on the radiographer to respond appropriately to any intrusion. While he was away from his residence, however, there was no dependable means in place to comply with Increased Controls Order (EA–05–090), Appendix B, Section IC–2(c).

While this violation involved different circumstances, the inability to assess and respond to unauthorized access to the radioactive materials while stored in the transport vehicle, is similar to one of the violations resolved through the 2009 ADR mediation session.

(6) On June 22, 2009, Mattingly staff failed to properly secure a radiographic exposure device for transport, contrary to 10 CFR 20.1802, 10 CFR 34.35(d), and 10 CFR 71.5. Specifically, Mattingly's RSO placed a radiographic exposure device on the back of the Mattingly truck, but failed to physically secure the device with proper blocking and bracing to prevent loss during transport. The device was left on the tailgate of the vehicle with no means of security.

As a result of the failure to properly secure the radiographic exposure device for transport, the device fell off the vehicle on a public road in Molt, Montana, between the licensee's facility and a job site, and was lost in the public domain. The device was found by a member of the public who picked the device up, placed it in his truck, drove to a neighbor's house, and then contacted a local deputy sheriff . While this violation involved a different security requirement, the failure to physically secure the radiographic exposure device is similar to one of the violations resolved during the 2009 ADR mediation session.

(7) On June 22, 2009, Mattingly's president willfully caused Mattingly to violate the immediate reporting requirement for lost radioactive materials, 10 CFR 20.2201, for the lost device described in violation (6). Specifically, after the device was returned to Mattingly by the local police, the licensee president and the RSO discussed the reporting aspects of the event. The president sent the RSO to a job site and said that he, the president, would research the reporting

requirements for the lost device. The president stated to NRC investigators that he believed there was either a 24-hour or 30-day reporting requirement, but he did not research the requirement within 24 hours to determine the appropriate reporting requirement. If he had performed the research, then he would have known that Mattingly needed to report the lost device to the NRC as soon as it was lost.

The next day, June 23, 2009, the Yellowstone County Sheriff's Office provided the NRC's Region IV office with the police report of the lost device, which was how the NRC became aware of the loss. The Region IV staff was unsuccessful in its attempt to contact Mattingly's RSO on the afternoon of June 23, 2009, and left a message for him to contact Region IV. Mattingly's RSO returned the telephone call after work hours on June 23 and left a message. Region IV staff members spoke with Mattingly's RSO on the morning of June 24, 2009, and informed the RSO that the loss of the device should have been immediately reported on June 22, 2009. Subsequently, the licensee made the lost device event report to the NRC Operations Center on June 24, 2009. While this event involves a different reporting requirement, the failure to notify the NRC of the loss of radioactive material is similar to the reporting requirement violation dispositioned during the 2009 ADR mediation session.

III

Mattingly has violated NRC requirements, including deliberate and willful violations by the Mattingly president and owner who also provided material false information to an NRC inspector and investigators. These violations jeopardized its workers and the public health and safety, and the security of the radioactive materials that the licensee possesses, and represent a significant regulatory concern. The deliberate violations also demonstrate that Mattingly's president and owner is unwilling to comply with the Commission's requirements to protect the public health and safety and provide for the security of the radioactive materials in Mattingly's possession. These deliberate violations resulted in the NRC issuing an individual order to the president prohibiting his involvement in NRC-licensed activities for a period of 7 years.

The numerous failures to implement the requirements of Confirmatory Order (EA–08–271) as specified herein are of concern, since those actions were meant to timely correct a number of safety violations identified at Mattingly. The repetitive nature of several of these violations reveals the ineffectiveness of the corrective actions Mattingly committed to implement. The NRC must have reasonable assurance that its licensees will operate safely and comply with NRC requirements. The deliberate nature of the violations, including the material false statements made by the president, demonstrate that the NRC's past enforcement action was inadequate to ensure that Mattingly would comply with NRC requirements, and that Mattingly is unwilling to comply with NRC requirements.

Consequently, I lack reasonable assurance that Mattingly will provide for the safe use and security of the radioactive materials in its possession or that the public health and safety is adequately protected by continuing activities under the existing license. If, at the time the license was issued, the NRC had known of the licensee's inability or unwillingness to control licensed activities in accordance with the NRC's requirements, or the questionable integrity of the licensee's president, the license would not have been issued. Therefore, I have determined that permitting this licensee to conduct activities under License 25–21479–01 would be contrary to the public health and safety and that this license should be revoked. Mattingly's license authorizes possession of radioactive materials that are considered high-risk, the loss of control of which, whether inadvertent or through a deliberate act, has a potential to result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. Also, because of the risk to the public health and safety and the deliberate and willful violations, I have determined, pursuant to 10 CFR 2.202(a)(5), that the public health and safety requires an immediate suspension of radiographic operations, that the radioactive material in the licensee's possession must be returned to the manufacturer or transferred to another entity authorized to possess the material, and that the licensee shall only provide for the safe, secure storage of the materials and other activities necessary to support safe transfer of said materials pending license revocation.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 34, *it is hereby ordered, effective immediately, that license 25–21479–01 is modified as follows:*

1. All radiographic operations authorized by License 25–21479–01 involving the use of licensed material are hereby suspended pending further action described below, including use of License 25–21479–01 to conduct radiographic operations under reciprocity in any Agreement State. All other requirements of the license remain in effect including the actions required by Confirmatory Order (EA–08–271) and other orders issued to the licensee, including the Increased Controls Order (EA–05–090), as long as the licensee is in possession of NRC-licensed material.

2. The licensee shall provide to Mr. Art Howell, Director, Division of Nuclear Materials Safety, NRC Region IV, Arlington, Texas by the close of business on the date of this Order, a detailed inventory identifying the manufacturer, model, and serial number of each radiographic exposure device, including the source activity for each device, and the current location of each device.

3. All NRC-licensed material in the licensee's possession shall be placed in secure storage at the licensee's Billings, Montana facility as soon as practicable, but no later than 48 hours after Mattingly's receipt of this Order.

4. The licensee shall remove from its possession all NRC-licensed material acquired or possessed under the authority of License 25–21479–01 within 30 days of the date of this Order, either by transferring the material to the manufacturer or to another entity authorized to possess that material.

5. Any sources that have not been leak tested within six months prior to the transfer shall be leak tested by a person authorized to do so, prior to transfer of the source.

6. The licensee shall notify Mr. Art Howell, Director, Division of Nuclear Materials Safety, NRC Region IV, Arlington, Texas, by telephone (817–860–8106) at least 5 business days prior to the date the radioactive materials are to be transferred so that the NRC may, if it elects, observe the transfer of the material.

7. The licensee shall, within 5 days after transfer of the material, certify in writing, under oath or affirmation, to the Regional Administrator, NRC Region IV, (Texas Health Resources Tower, 612 E. Lamar Blvd., Suite 400, Arlington, Texas 76011–4125), that all material has been properly transferred and provide the Regional Administrator copies of transfer records required by 10 CFR 30.51.

It is further ordered that:

8. Following NRC confirmation of the transfer of all NRC-licensed material currently possessed, as discussed above, License 25–21479–01 is revoked.

The Regional Administrator, Region IV, or designee, may, in writing, at any time prior to final agency action sustaining the revocation of License 25–21479–01, relax or rescind any of the above conditions upon demonstration by the licensee, in writing and under oath or affirmation, of good cause.

V

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, the licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001, and include a statement of good cause for the extension.

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the licensee or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC Web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format.

Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if

the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 2nd day of September 2010.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–22627 Filed 9–9–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on October 6, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 6, 2010—8:30 a.m. until 12 p.m.

The subcommittee will discuss the construction, inspection, and licensing activities associated with the staff's review of the Watts Bar Nuclear Plant Unit 2 Operating License application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Tennessee Valley Authority (TVA) and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or E-mail *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 1, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–22618 Filed 9–9–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Joint Subcommittee

The ACRS Subcommittees on Thermal Hydraulics Phenomena; Advanced Boiling Water Reactor (ABWR); and Materials, Metallurgy, and Reactor Fuels will hold a joint meeting on October 4, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that will be closed to protect information that is proprietary to Westinghouse and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Monday, October 4, 2010—8:30 a.m. until 5 p.m.

The joint Subcommittee will review several fuel-related licensing topical reports prepared by Westinghouse. These topical reports would apply to the ABWR design and may also apply to BWRs at expanded operating domains. The joint Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse, and other interested persons regarding this matter. The joint Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or E-mail *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only

during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 2, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–22619 Filed 9–9–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning And Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 6, 2010, in Room T2B–3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 6, 2010, 12 p.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Cayetano Santos (Telephone 301–415–7270 or E-mail *Cayetano.Santos@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 1, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–22625 Filed 9–9–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20836, License No. 25–21479–01, NRC–2009–0120, A–10–028]

In the Matter of Mark M. Ficek; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

Mr. Mark M. Ficek is the President, owner, and former radiation safety officer (RSO) of Mattingly Testing Services, Inc. (Mattingly or Licensee). Mattingly is the holder of Materials License 25–21479–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34, last amended on May 28, 2010, to change the facility's permanent storage location and name a new radiation safety officer, and due to expire on February 28, 2016. The license authorizes Mattingly to possess and use byproduct material for industrial radiography operations in NRC jurisdiction and in areas of exclusive Federal jurisdiction within Agreement States. The license currently authorizes storage at licensee facilities in Molt and Billings, Montana. The license further authorizes the possession of natural or depleted uranium, as solid metal, for shielding in radiography equipment. On the same date this Order (IA–10–028) is issued to Mr. Ficek, the NRC is also issuing Mattingly an Order Revoking License (Effective Immediately) (EA–10–100).

Currently, both Mr. Ficek (IA–08–055) and Mattingly (EA–08–271) are subject to Confirmatory Orders issued on March 6, 2009, which resulted from alternative dispute resolution (ADR) mediation sessions conducted on February 5, 2009. Those Orders were made immediately effective upon issuance. The ADR mediation session and resultant Confirmatory Orders dispositioned nine violations, five of which were willful, identified during an NRC inspection and an investigation by the NRC's Office of Investigations. The 2008 investigation identified several violations: (1) A failure to provide complete and accurate information to the NRC; (2) a radiographer assistant performing radiographic operations without a dosimeter; (3) a radiographer assistant using a radiographic exposure device without supervision of a radiographer; (4) failure to secure a radiographic exposure device with a minimum of two independent physical controls; (5) failure to remove a radiographic exposure device from service after it had sustained damage to the locking mechanism; (6) failure to notify the NRC after discovery of damage to a radiographic exposure device; (7) an individual acting as a radiographer assistant without completing a practical examination on the use of the radiography equipment; (8) failure to ensure that all personnel dosimeters were checked for proper response to radiation every 12 months; and (9) failure to have a functional alarm system to allow the licensee to monitor, detect, assess, and respond to unauthorized access to radioactive material when the radioactive material is not under direct observation by Mattingly staff and stored in a portable

darkroom, as required by Increased Controls Order (EA–05–090). The NRC also found that willfulness was involved in violations 1, 3, 5, 7, and 8, above.

The NRC determined that the willful violations listed above were caused by the willful or deliberate actions of the Mattingly president and then RSO, Mr. Mark Ficek. ADR was offered to both Mattingly and Mr. Ficek in order to disposition the nine violations listed above. As a result of ADR with Mr. Ficek, a Confirmatory Order (IA–08–055) was issued that prohibited Mr. Ficek from engaging in NRC-licensed activities for a period of 2 years.

As a result of ADR with the Licensee, a Confirmatory Order (EA–08–271) was issued that required, among other things, that Mattingly retain an expert consultant, to be approved by the NRC, and that the consultant would take specific actions within strict deadlines. Given the number and varied violations described above, the consultant's actions were to include reviewing and assessing Mattingly's entire radiation safety program, providing radiation safety training to the Mattingly staff who conduct radiography, and conducting field audits of the staff to identify areas needing additional corrective action. The expert consultant was approved by the NRC on April 3, 2009 (ADAMS Accession No. ML090930661). As a result, the radiation safety procedures assessment was to commence and the radiation safety training for the Mattingly staff was to be completed by May 3, 2009.

II

On June 30, 2009, the NRC inspected the Licensee's facility in Molt, Montana, after the NRC, Region IV received a police report stating that the County Sheriff's office had recovered, from a member of the public, a radiography exposure device Mattingly had lost. The NRC-initiated investigations and inspections identified several violations of regulatory requirements, four of which involve deliberate misconduct by Mr. Ficek, including providing false information to the NRC. As such, Mr. Ficek was found to be in violation of 10 CFR 30.10, "Deliberate Misconduct," subparts (a)(1) and (a)(2). Specifically, 10 CFR 30.10(a)(1) and (a)(2) require that any licensee or employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation or order issued by the Commission; or deliberately submit to the NRC information the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. Since the 2009 Confirmatory Orders, the NRC has determined that Mr. Ficek violated 10 CFR 30.10 on four occasions:

(1) Mr. Ficek deliberately put Mattingly in violation of Confirmatory Order (EA–08–271) when he committed to Mattingly meeting strict deadlines in the Order, knew what those deadlines were, put himself in charge of ensuring compliance with the Order, but let the Order's deadlines pass knowing that he was causing Mattingly to violate the Order. Specifically, the Confirmatory Order required Mattingly to select an independent consultant to review Mattingly's radiation safety program and to conduct training for Mattingly's staff. The NRC approved the independent consultant on April 3, 2009, which set May 3, 2009, as the date by which the consultant was to commence the assessment of the Mattingly radiation safety program, as well as complete the specified training for Mattingly staff. Testimony provided by the independent consultant to the NRC investigator on June 30, 2009, revealed that the consultant was not aware of the May 3, 2009, deadline. The consultant indicated that Mr. Ficek had directed him to complete his actions by the end of 2009, but he did not at that time have a specific plan to do so, nor was he aware of the deadlines for other actions assigned to the independent consultant in the Confirmatory Order. Moreover, testimony provided by Mr. Ficek and the consultant to the NRC investigator revealed that Mr. Ficek did not give the consultant a copy of the Confirmatory Order that described the required actions and respective deadlines. Mr. Ficek knew the Confirmatory Order's requirements, but rather than sharing the Confirmatory Order with the consultant or another Mattingly official to ensure compliance, he withheld the information and allowed the Confirmatory Order's deadlines to pass, putting Mattingly in violation of the Confirmatory Order (EA–08–271). The NRC showed the consultant the Confirmatory Order for the first time during the NRC investigation. Had the NRC not interdicted at that time, implementation of required improvements to the Licensee's radiation safety program and safety training programs would have been even further delayed, if completed at all. The assessment of the Mattingly radiation programs was not begun until May 30, 2009, and the initial safety training of the Mattingly staff was not completed until July 19, 2009. Finally, Mr. Ficek caused Mattingly to not provide a license amendment to the NRC by May 3, 2009, which put Mattingly in violation of Confirmatory Order (EA–08–271). The license amendment was subsequently submitted on June 30, 2009.

(2) From May 13, 2006, through September 9, 2009, Mattingly, as a result of Mr. Ficek's deliberate inaction, failed to establish and maintain a prearranged plan with the local law enforcement agency to respond to any attempt to gain unauthorized access to radioactive materials, as required by Increased Controls Order (EA–05–090). Specifically, Increased Controls Order, Attachment B, Section IC–2(b), requires that the licensee shall have a prearranged plan with a local law enforcement agency for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices, which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. During an NRC inspection of the Mattingly facility in March 2007, Mr. Ficek informed the NRC inspector that he had established a prearranged plan with the Laurel Police Department, when in fact he had not established a prearranged plan with the Laurel Police Department. Upon further investigation the NRC determined that Mattingly's facility was not located in the Laurel Police Department's jurisdiction, but instead was located in the Yellowstone County Sheriff's jurisdiction, and that Mattingly had not established a prearranged plan with the Yellowstone County Sheriff's Office. Mr. Ficek's false statement to the NRC inspector—which made clear that Mr. Ficek was aware of the requirement, but had not implemented it—caused the NRC to find that the failure to meet the Increased Controls Order, Appendix B, Section IC–2(b), was deliberate.

(3) On March 6, 2007, Mr. Ficek deliberately provided false information to an NRC inspector by stating that he had established a prearranged plan with the local law enforcement agency in accordance with Increased Controls Order (EA–05–090), violating 10 CFR 30.10(a)(2), and putting Mattingly in violation of 10 CFR 30.9, "Completeness and Accuracy of Information." As described above, Mr. Ficek stated to an NRC inspector that the prearranged plan had been established with the Laurel Police Department in Laurel, Montana. The NRC determined that neither Mr. Ficek nor any Mattingly official had contacted the Laurel Police Department to establish a prearranged response plan. The NRC also determined during its 2009 investigation that the Laurel Police Department had no jurisdiction for the Mattingly facility in Molt,

Montana. Further, testimony by a representative of the appropriate local law enforcement agency (Yellowstone County Sheriff's Office) revealed that no prearranged plan had been established with them, or was sought by Mr. Ficek or any other Mattingly officials. Mr. Ficek's false statement to the NRC inspector was a significant contributor to the duration of the Increased Controls Order violation since Mattingly did not implement the local law enforcement plan until September 9, 2009, more than 2 years after the NRC inspector initially questioned the Licensee's actions to establish the prearranged plan, and only after an NRC investigation revealed the violation.

(4) On October 22, 2009, while under oath, Mr. Ficek deliberately provided false testimony to the NRC investigator, again violating 10 CFR 30.10(a)(2) and putting Mattingly in violation of 10 CFR 30.9, "Completeness and Accuracy of Information." Mr. Ficek claimed that two witnesses could confirm that he had conversations during a lunch engagement with the Laurel Police Chief regarding the required local law enforcement agency prearranged plan. Testimony provided by witnesses to the lunch engagement, including the Laurel Police Chief, refuted Mr. Ficek's statements. Further, in addition to testimony that the Laurel Police Chief recalled no discussion of a response plan, and that the Laurel Police Chief knew that the Laurel Police Department had no jurisdiction to respond to the Mattingly facility, the Laurel Police Chief offered evidence indicating that the lunch engagement at issue took place on July 13, 2003, some 28 months before the Increased Controls Order was issued to Mattingly. Therefore, the NRC found that Mr. Ficek deliberately provided false testimony while under oath when he attempted to cite a lunch engagement with the Laurel Police Chief in 2003 to demonstrate to the NRC that Mattingly was in compliance with the Increased Controls Order.

In addition to the above violations of the NRC deliberate misconduct rule, the NRC also found that Mr. Ficek violated provisions of his Confirmatory Order (IA–08–055) on several occasions by continuing to engage in NRC-licensed activities while he was prohibited from doing so. Section V.1 of Confirmatory Order (IA–08–055) specifies that Mr. Ficek is prohibited for 2 years from the date of the Order (March 6, 2009) from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities conducted pursuant to the authority granted by 10 CFR 150.20.

First, Mr. Ficek continued to engage in Mattingly's day-to-day licensed activities. A number of Mattingly's employees informed the NRC investigators that they continued to consult Mr. Ficek for advice about radiation safety when the RSO could not help them. Mr. Ficek also stated that he remained involved in purchasing radiography devices, determining when to ship them back to the manufacturer, and which devices to use on which jobs. All of these activities violated Mr. Ficek's Confirmatory Order (IA–08–055).

Another example of Mr. Ficek engaging in licensed activities included his supervision of the independent consultant Mattingly was required to hire to improve its radiation safety program and provide training. The Confirmatory Orders to Mattingly (EA–08–271) and Mr. Ficek (IA–08–055) were issued on the same date. Because Mr. Ficek was prohibited from engaging in licensed activity, he was required to avoid work that involved Mattingly's compliance with NRC requirements. Nonetheless, Mr. Ficek placed himself in charge of ensuring compliance with Mattingly's Confirmatory Order (EA–08–271) without sharing the Mattingly Order with Mattingly's RSO or the hired consultant, and without telling either of those individuals that he was prohibited from NRC-licensed activities. Mr. Ficek hired the independent consultant, directed the consultant's activities, and ultimately, deliberately placed Mattingly in violation of the Confirmatory Order. Mr. Ficek's supervision of the consultant had a direct impact on Mattingly's radiation safety program and training program for the safe use of the radiographic exposure devices.

A third example of Mr. Ficek's continuing NRC-licensed activity involved his response to the lost radiographic exposure device that gave rise to the July 2009 NRC inspection. The NRC found that immediately after the police response to the Mattingly facility on June 22, 2009, during which the recovered lost radiographic exposure device was returned to Mattingly, Mr. Ficek directed the RSO to go to a temporary job location to conduct radiography operations while Mr. Ficek took on the RSO's duties to determine the NRC reporting requirements for the lost device. Mr. Ficek then failed to research the requirements, but two days later wrote and signed the NRC-required report, including Mattingly's corrective actions, after the NRC contacted the RSO. Because Mr. Ficek had not informed the RSO that he was prohibited from NRC-licensed activities, the RSO was not aware that Mr. Ficek could not conduct RSO duties. Mr. Ficek's direction to the RSO to proceed to conduct radiography while he, Mr. Ficek, would research the NRC reporting requirements and develop the lost device report to the NRC violated his Confirmatory Order.

Finally, Mr. Ficek filed a radioactive material reciprocity request with the NRC Agreement State, North Dakota, on June 15, 2009, presenting the NRC license and approved procedures to the Agreement State as bases for seeking reciprocity approval for conduct of radiographic operations within North Dakota. Mr. Ficek signed the application representing Mattingly. While Mr. Ficek is not prohibited from working in an Agreement State during his period of prohibition from NRC-licensed activities, he cannot present himself to Agreement States as an NRC license representative when he is prohibited from NRC-licensed activities.

III

Based on the above, the NRC found that Mr. Mark M. Ficek, the President of Mattingly Testing Services, Inc., has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) that caused the Licensee to be in violation of Confirmatory Order (EA–08–271) and NRC Increased Controls Order (EA–05–090). Also, the NRC found that Mr. Mark M. Ficek has deliberately provided to an NRC inspector and investigator information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10(a)(2). Further, the NRC found that Mr. Mark M. Ficek continued to engage in NRC-licensed activities after he was prohibited from such activities, in violation of Confirmatory Order (IA–08–055).

Given the current violations, Mr. Ficek's previous deliberate misconduct, including repeatedly providing incomplete and inaccurate information to the NRC, and a number of non-willful violations, the NRC lacks reasonable assurance that the Licensee can safely conduct licensed activities under License 25–21479–01, and so, in a related action, the NRC is issuing an order to the Licensee revoking the NRC license. The NRC must be able to rely on Mattingly, its officers, and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects.

Mr. Ficek's action in causing the Licensee to violate two orders and his

misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements to protect the public health and safety and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Mark M. Ficek were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health and safety interest require that Mr. Mark M. Ficek be prohibited from any involvement in NRC-licensed activities for a period of 7 years from the date of this Order. Additionally, for a period of 3-years after the 7-year period of prohibition, Mr. Ficek is required to notify the NRC of his first employment in NRC-licensed activities or his becoming involved in NRC-licensed activities at least 10 days before becoming involved in NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202(a)(5), I find that the deliberate and repetitive nature of Mr. Ficek's conduct is such that the public health and safety interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. Mr. Mark M. Ficek is prohibited for 7 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State Licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Ficek is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this Order to the employer.

3. After the 7-year period of prohibition has expired, and for a 3-year period thereafter, Mr. Ficek shall, at least 10 days prior to beginning employment involving NRC-licensed activities or becoming involved in NRC-licensed activities, as defined in paragraph IV.1. above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Ficek shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Ficek of good cause. Upon issuance of this Order (Effective Immediately), the Order Prohibiting Involvement in NRC–Licensed Activities, IA–08–055, dated March 6, 2009, is rescinded.

V

In accordance with 10 CFR 2.202, Mr. Ficek must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, Mr. Ficek and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a hearing is requested by Mr. Ficek or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Ficek, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Mr. Ficek requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated at Rockville, Maryland, this 2nd day of September 2010.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2010–22638 Filed 9–9–10; 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 6h–1, SEC File No. 270–497, OMB Control No. 3235–0555.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 6h–1 (17 CFR 240.6h–1) under the Securities Exchange Act of 1934, as amended ("Act") (15 U.S.C. 78a *et seq.*).

Section 6(h) of the Act (15 U.S.C. 78f(h)) requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require that: (i) Trading in such products not be readily susceptible to price manipulation; and (ii) the market on which the security futures product trades has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 implements these statutory requirements and requires that (1) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and (2) the exchanges and associations trading security futures products halt trading in any security futures product for as long as trading in the underlying security, or trading in 50% of the underlying securities, is halted on the listing market.

It is estimated that approximately 18 respondents, consisting of 14 national securities exchanges and 4 national securities exchanges notice-registered pursuant to Section 6(g) of the Act (15 U.S.C. 78f(g)), will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 180 hours. At an average cost per hour of approximately $316, the resultant total cost of compliance for the respondents is $56,880 per year (18 respondents × 10 hours/respondent × $316/hour = $56,880).

Compliance with Rule 6h–1 is mandatory. Any listing standards established pursuant to Rule 6h–1

would be filed with the Commission as proposed rule changes pursuant to Section 19(b) of the Act, and would be published in the **Federal Register**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: September 7, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22602 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–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 303; SEC File No. 270–450; OMB Control No. 3235–0505.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 303 (17 CFR 242.303) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Regulation ATS sets forth a regulatory regime for "alternative trading systems" ("ATSs"), which are entities that carry out exchange functions but which are not required to register as national securities exchanges under the Act. In lieu of exchange registration, an ATS can instead opt to register with the Commission as a broker-dealer and, as a condition to not having to register as an exchange, must instead comply with Regulation ATS. Rule 303 of Regulation ATS (17 CFR 242.303) describes the record preservation requirements for ATSs. Rule 303 also describes how such records must be maintained, what entities may perform this function, and how long records must be preserved.

Under Rule 303, ATSs are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries, and time-sequenced order information. Rule 303 also requires ATSs to preserve any notices provided to subscribers, including, but not limited to, notices regarding the ATSs operations and subscriber access. For an ATS subject to the fair access requirements described in Rule 301(b)(5)(ii) of Regulation ATS, Rule 303 further requires the ATS to preserve at least one copy of its standards for access to trading, all documents relevant to the ATS's decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in the course of complying with Rule 301(b)(5) of Regulation ATS. For an ATS subject to the capacity, integrity, and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS, Rule 303 requires an ATS to preserve all documents made or received by the ATS related to its compliance, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results and other similar records. As provided in Rule 303(a)(1), ATSs are required to keep all of these records, as applicable, for a period of at least three years, the first two in an easily accessible place. In addition, Rule 303 requires ATSs to preserve records of partnership articles, articles of incorporation or charter, minute books, stock certificate books, copies of reports filed pursuant to Rule 301(b)(2), and records made pursuant to Rule 301(b)(5) for the life of the ATS.

The information contained in the records required to be preserved by Rule 303 will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and the self-regulatory organizations ("SROs") to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by the Rule, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to register as broker-dealers and comply with the requirements of Regulation ATS. There are currently 81 respondents. To comply with the record preservation requirements of Rule 303, these respondents will spend approximately 1,215 hours per year (81 respondents at 15 burden hours/respondent). At an average cost per burden hour of $106, the resultant total related cost of compliance for these respondents is $128,790 per year (1,215 burden hours multiplied by $106/hour).

Compliance with Rule 303 is mandatory. The information required by Rule 303 is available only for the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: September 3, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22563 Filed 9–9–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29409; File No. 813–359]

Tudor Employee Investment Fund LLC and Tudor Investment Corporation; Notice of Application

September 3, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9 and sections 36 through 53, and the rules and regulations under those sections. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

SUMMARY: *Summary of Application:* Applicants request an order to exempt certain limited liability companies and other investment vehicles formed for the benefit of eligible employees of Tudor Investment Corporation ("Tudor") and its affiliates from certain provisions of the Act. Each limited liability company and other investment vehicle will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

Applicants: Tudor Employee Investment Fund LLC ("Investment Fund") and Tudor.

DATES: *Filing Dates:* The application was filed on December 6, 2005, and amended on August 22, 2007, June 9, 2008, June 26, 2009, June 25, 2010 and September 1, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 28, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 1275 King Street, Greenwich, CT 06831.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Tudor, a Delaware corporation, is registered with the Commodity Futures Trading Commission ("CFTC") as a commodity pool operator and commodity trading advisor, and is a member of the U.S. National Futures Association in such capacities. Applicants represent that Tudor is exempt from registration as an investment adviser with the Commission under the Investment Advisers Act of 1940 (the "Advisers Act"). Tudor and its "affiliates," as defined in rule 12b–2 under the Securities Exchange Act of 1934 ("Exchange Act"), are referred to collectively as the "Tudor Group" and each entity within the Tudor Group is referred to individually as a "Tudor Group Entity."

2. Tudor has established the Investment Fund as a Delaware limited liability company and may in the future establish additional pooled investment vehicles identical in all material respects to the Investment Fund (other than investment objectives and strategies and form of organization) (the "Subsequent Funds" and collectively with the Investment Fund, the "Funds," and each, a "Fund") for the benefit of current or former key employees, officers, directors and current consultants of the Tudor Group and certain entities and individuals affiliated with employees of the Tudor Group who invest in a Fund ("Fund Investors"). The Funds are designed primarily to create capital building opportunities that are competitive with those at other investment management firms and to facilitate the recruitment and retention of high caliber professionals. Tudor will control each Fund within the meaning of the Act.

3. Each Fund will operate as a non-diversified closed-end management investment company. Each Fund will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act. Each Fund will be established to enable Eligible Investors, as defined below, through their investment in a Fund to achieve long-term capital appreciation through investment in affiliated and non-affiliated private investment funds (each an "Underlying Fund"), certain of which are advised by a Tudor Group Entity.[1] The Underlying Funds in which a Fund invests will be either investment companies excluded from registration under the Act or funds not primarily engaged in the business of investing, reinvesting, or trading securities, *e.g.,* commodity pools. The investment objectives and policies for each Fund may vary from Fund to Fund. Participation in the Funds is voluntary.

4. A Tudor Group Entity will serve as the manager ("Manager") of each Fund.[2] The same or a different Tudor Group Entity will serve as the investment adviser (each an "Investment Adviser") of each Fund. The Investment Adviser will register as an investment adviser under the Advisers Act, if required under applicable law.

5. The Tudor Group, the Manager and any other person acting for or on behalf of a Fund shall act in the best interest of the Fund and its Fund Investors. Whenever the Tudor Group, the Manager or any other person acting for or on behalf of the Funds is required or permitted to make a decision, take or approve an action, or omit to do any of the foregoing in such person's discretion, then that person shall exercise such discretion in accordance with reasonableness and good faith and any fiduciary duties owed to the Fund and its Fund Investors. The organizational documents for, and any other contractual arrangement regarding, the Funds will not contain any provision which protects or purports to protect the Tudor Group, the Manager or their delegates against any liability to a Fund or its Fund Investors to which such person would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence in the performance of such person's duties, or by reason of such person's reckless disregard of such person's obligations and duties under

[1] Applicants are not requesting any exemption from any provision of the Act or any rule thereunder that may govern a Fund's eligibility to invest in an Underlying Fund relying on section 3(c)(1) or 3(c)(7) of the Act or any Underlying Fund's status under the Act.

[2] A "Manager" is either the general partner of any Fund organized as a limited partnership or the managing member of any Fund organized as a limited liability company.

such contract or organizational documents.

6. Interests in the Funds ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 ("Securities Act") or Regulation D under the Securities Act ("Regulation D"), and will be offered and sold only to Eligible Investors. An "Eligible Investor" is defined as (a) any Tudor Group Entity that meets the standards set forth below and (b) an officer, director, or employee of the Tudor Group who has been employed by a Tudor Group Entity for at least one year and "Consultants" [3] of the Tudor Group (collectively, "Tudor Employees"), each of which meets the standards, as applicable, set forth below. Each Eligible Investor must have, in the reasonable belief of the Manager, the knowledge, sophistication and experience in business and financial matters to be capable of evaluating the merits and risks of investing in a Fund and be able to bear the economic risk of such investment, and be able to afford a complete loss of the investment.

7. To be a Tudor Employee, an individual must be (a) an accredited investor under rule 501(a)(5) or 501(a)(6) of Regulation D under the Securities Act and (b) a "qualified eligible person" under rule 4.7 promulgated by the CFTC. A Tudor Employee is a "qualified eligible person" under CFTC rule 4.7(a)(2)(vii) if he or she is a "knowledgeable employee," as defined in rule 3c–5 under the Act, of a Tudor Group Entity. Any Tudor Group Entity including the Manager and the Investment Adviser will be required to be accredited investors under Regulation D under the Securities Act to be an Eligible Investor.

8. The investment objectives and strategies for each Fund will be set forth in offering documents relating to the Interests offered by the Fund. Prior to being invited to participate in a Fund, each Eligible Investor will receive a copy of the offering documents and the operating agreement (or other organizational document) of the Fund or an offering memorandum, which will set forth all the terms of participation in the Fund. The Managers will send an annual report to each Fund Investor not later than 120 days after the close of the fiscal year, which will contain financial statements of the Fund that have been audited by independent accountants. For purposes of this requirement "audit" shall have the meaning defined in rule 1–02(d) of Regulation S–X. In addition, Fund Investors will receive at least annually all information necessary to enable the Fund Investors to prepare their Federal and State income tax returns.

9. Interests in the Funds will be non-transferable by a Fund Investor except with the express consent of the Manager. No person will be admitted as a Fund Investor unless the person is an Eligible Investor, except that a legal representative of the estate of a deceased Fund Investor may hold that Fund Investor's Interest in order to settle the Fund Investor's estate or administer its property. No fee of any kind will be charged in connection with the sale of Interests.

10. Upon termination of employment with a Tudor Group Entity, an Eligible Investor, other than a Consultant, who has been employed by the Tudor Group for at least three years will remain eligible to invest in a Fund or continue to hold Interests in a Fund, as applicable, at the discretion of the Manager of that Fund, for a period of one year for each full year of employment (subject to a maximum of ten years), and thereafter such Interests will be subject to a mandatory redemption. Interests held by a Consultant whose retainer has been terminated or expired will be subject to mandatory redemption, and unlike other Eligible Investors, Consultants may not invest in a Fund or continue to hold Interests in a Fund based on their length of service to the Tudor Group. Consultants no longer on retainer with a Tudor Group Entity will no longer be Eligible Investors. The repurchase price for Interests will be based on net asset value pursuant to the Fund's organization and offering documents.

11. A Fund may leverage its investments in any of the Underlying Funds by entering into borrowing arrangements with third parties, including a Tudor Group Entity, in order to gain greater exposure to the Underlying Funds. Each such Fund loan will be made at an interest rate no less favorable than that which could be obtained on an arm's length basis. A Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any loan made to a Fund will be non-recourse to the Fund Investors.

12. A Fund will not acquire any security issued by a registered investment company if, immediately after the acquisition, the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

13. Neither the Manager nor any Investment Adviser will receive any management fees from a Fund. An Investment Adviser may receive compensation for acting as an investment adviser to an Underlying Fund, but will waive any such compensation it receives directly related to a Fund's investment in such Underlying Funds.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers, together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, if, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9 and sections 36 through 53 of the Act, and the rules and regulations under the Act. With respect to sections 17 and 30 of the Act, and the rules and regulations thereunder, and rule 38a–1 under the Act, the exemption is limited as set forth in the application.

[3] A "Consultant" is a person or entity who is on retainer with a Tudor Group Entity at the time Interests are offered to the Consultant to provide services and professional expertise to a Tudor Group Entity on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with the Tudor Group and its employees.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) A Tudor Group Entity or a Third Party Fund [4] (or any affiliated person of a Third Party Fund), acting as principal, to engage in any transaction directly or indirectly with any Fund or any entity controlled by the Fund; (b) a Fund to invest in or engage in any transaction with any entity, acting as principal (i) in which the Fund, any company controlled by the Fund or any Tudor Group Entity or a Third Party Fund has invested or will invest or (ii) with which the Fund, any company controlled by the Fund, or a Tudor Group Entity or Third Party Fund is or will otherwise become affiliated or (c) a partner or other investor in any entity in which a Fund invests, acting as principal, to engage in transactions directly or indirectly with a Fund or any company controlled by a Fund.

4. Applicants submit that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Fund Investors in each Fund will be informed of the possible extent of the Fund's dealings with Tudor Group Entities or Third Party Funds and of the potential conflicts of interest that may exist. Applicants also state that, as professionals engaged in the investment management business, the Fund Investors will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and the Tudor Group will serve to reduce any risk of abuse in transactions involving a Fund and a Tudor Group Entity.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from participating in any joint arrangement unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of such persons, to participate in, or effect any transaction in connection with, any joint arrangement in which the Fund or an entity controlled by the Fund is a participant.

[4] An investment fund or separate account organized for the benefit of investors who are not affiliated with a Tudor Group Entity and over which a Tudor Group Entity exercises investment discretion (the "Third Party Funds").

6. Applicants assert that compliance with section 17(d) would cause a Fund to forego investment opportunities simply because a Fund Investor, the Manager, or any other affiliated person of the Fund (or any affiliate of the affiliated person) had made a similar investment. Applicants also submit that the types of investment opportunities considered by a Fund often require each investor to make funds available in an amount that may be substantially greater than what a Fund may make available on its own. Applicants contend that, as a result, the only way in which a Fund may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Co-investments with Third Party Funds will not be subject to condition 3 below. Applicants note that, if a Tudor Group Entity invests its own capital in Third Party Fund investments, investments by the Tudor Group Entity will be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Funds, and that the Third Party Fund not be burdened or otherwise affected by activities of the Funds. In addition, applicants assert that the relationship of a Fund to a Third Party Fund is fundamentally different from a Fund's relationship to Tudor Group Entities. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Funds from any overreaching by any Tudor Group Entity in the employer/employee context, whereas the same concerns are not present with respect to the Funds and a Third Party Fund.

8. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 under the Act allows an investment company to act as self-custodian. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of its Investment Adviser; (b) for purposes of paragraph (d) of the rule, (i) employees of the Investment Adviser will be deemed to be employees of the Fund, (ii) officers or managers of the Investment Adviser of a Fund will be deemed to be officers of the Fund, and (iii) the Investment Adviser of a Fund or its executive committee will be deemed to be the board of directors of the Fund and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two high level officers of the Investment Adviser. With respect to the Funds, Applicants expect that many of their investments will be evidenced only by partnership or operating agreements, subscription agreements or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that for such a Fund these instruments are most suitably kept in the Investment Adviser's files, where they can be referred to as necessary.

9. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. The rule requires that the board of directors of an investment company satisfy the fund governance standards defined in rule 0–1(a)(7) (the "Fund Governance Standards"). Applicants request an exemption from section 17(g) and rule 17g–1 to permit the Manager to take such actions and make determinations set forth in the rule. Applicants state that, because the Manager will be an interested person of each Fund, a Fund could not comply with rule 17g–1 without the requested relief. Specifically, each Fund will comply with rule 17g–1 by having the Manager take such actions and make such approvals as are set forth in rule 17g–1. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and paragraph (h) of rule 17g–1 relating to the appointment of a person to make the filings and provide the notices required by paragraph (g) and paragraph (j)(3) of rule 17g–1 relating to compliance with the Fund Government Standards. Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Manager will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agrees that all material will be subject to examination by the Commission and its staff. The Manager will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have

boards of directors. Each Fund will comply with all other requirements of rule 17g–1. In light of the purpose of the Funds and the community of interest among the Funds and between the Funds and the Managers, the applicants believe that little purpose would be served by the requirement even if it were feasible.

10. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds. In light of the purpose of the Funds and the community of interest among the Funds and between the Funds and the Managers, the applicants believe that little purpose would be served by this requirement even if it were feasible.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e) of the Act, and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request also an exemption from section 30(h) of the Act to the extent necessary to exempt the Managers of each Fund, and any other person who may be deemed to be a member of an advisory board of a Fund, from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in a Fund. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

12. Rule 38a–1 requires investment companies to adopt, implement and periodically review written policies reasonably designed to prevent violation of the Federal securities laws and to appoint a chief compliance officer. Each Fund will comply with rule 38a–1(a), (c) and (d), except that (a) because the Funds do not have boards of directors, the Manager of each Fund will fulfill the responsibilities assigned to a Fund's board of directors under the rule, and (b) because a Manager would be considered an interested person of the Fund, approval by a majority of disinterested directors required by rule 38a–1 will not be obtained. In addition, the Funds will comply with the requirement in Rule 38a–1(a)(4)(iv) that the chief compliance officer meet with the independent directors by having the chief compliance officer meet with the Manager.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction involving a Fund otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Fund is a party (each, a "Section 17 Transaction") will be effected only if its Manager, in consultation with its Investment Adviser, determines that:

(a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors and do not involve overreaching of such Fund or its Fund Investors on the part of any person concerned; and

(b) The Section 17 Transaction is consistent with the interests of the Fund Investors, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the Manager of each Fund will record and preserve a description of all Section 17 Transactions, the Manager's and the Investment Adviser's findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least six years thereafter, and will be subject to examination by the Commission and its staff.[5]

2. The Manager of each Fund, in consultation with the Investment Adviser of each Fund, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, before the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Fund, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The Investment Adviser of a Fund will not invest the funds of such Fund in any investment in which an "Affiliated Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer and where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the Investment Adviser sufficient, but not less than one day's, notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Fund has the opportunity to dispose of the Fund's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Affiliated Co-Investor. The term "Affiliated Co-Investor" with respect to a Fund means any person who is: (a) An "affiliated person," as such term is defined in section 2(a)(3) of the Act, of the Fund (other than a Third Party Fund); (b) a Tudor Group Entity; (c) an officer, director or employee of the Tudor Group; or (d) an entity (other than a Third Party Fund) in which a Tudor Group Entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such immediate family member; or (c) when the investment is comprised of securities that are (i) listed on any exchange registered under section 6 of the Exchange Act; (ii) NMS stocks pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder; (iii) government securities as defined in section 2(a)(16) of the Act or other securities that meet the definition of "Eligible Security" in rule

[5] Each Fund will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

2a–7 under the Act; or (iv) listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Fund and its Manager will maintain and preserve, for the life of each Fund and at least six years thereafter, all accounts, books, and other documents constituting the record forming the basis for the audited financial statements that are to be provided to the Fund Investors, and each annual report of such Fund required to be sent to the Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff.[6]

5. The Manager will send to each Fund Investor who had an Interest in the Fund, at any time during the fiscal year then ended, Fund financial statements that have been audited by that Fund's independent accountants. At the end of each fiscal year, the Manager will make a valuation or have a valuation made of all of the assets of the Fund as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, within 120 days after the end of each fiscal year of the Fund, the Manager of a Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended setting forth tax information necessary for the preparation by the Fund Investor of his or her Federal and State income tax returns and a report of the investment activities of the Fund during that year.

6. Whenever a Fund makes a purchase from or sale to an entity that is affiliated with the Fund by reason of a Tudor Group director, officer, or employee (a) serving as an officer, director, general partner or investment adviser of the entity or (b) having a 5% or more investment in the entity, that individual will not participate in the determination by the Fund of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

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[6] Each Fund will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29410; File No. 812–13661]

Transamerica Asset Management, Inc. et al.; Notice of Application

September 3, 2010

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

Summary of the Application: The requested order would (a) permit certain series of registered open-end management investment companies to acquire shares of other registered open-end management investment companies or unit investment trusts ("UITs") registered under the Act that are within or outside of the same group of investment companies as the acquiring investment companies, and (b) permit certain series of registered open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Transamerica Asset Management, Inc. (the "Adviser"), Transamerica Funds ("TF"), Transamerica Partners Funds Group ("TPFG"), Transamerica Partners Funds Group II ("TPFGII"), Transamerica Partners Portfolios ("TPP") and Transamerica Series Trust ("TST") (collectively, TF, TPFG, TPFGII, TPP, and TST, the "Trusts").

Filing Dates: The application was filed on May 28, 2009 and amended on November 20, 2009 and August 17, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 27, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Adviser, 570 Carillon Parkway, St Petersburg, Florida 33716.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. The Trusts are open-end management investment companies registered under the Act. Each Trust is comprised of separate series (the "Funds") that pursue distinctive investment objectives and strategies.[1] TF and TST are statutory trusts organized under the laws of Delaware. TPFG and TPFGII are business trusts organized under the laws of Massachusetts. TPP is organized as a New York trust. TPFG and TPFGII include Funds that operate as feeder trusts in a master-feeder structure in reliance on section 12(d)(1)(E) of the Act, with TPP as their common corresponding master trust.[2] TST includes Funds that are offered solely to insurance company separate accounts ("Separate Accounts") that fund variable annuity and variable life contracts issued by insurance companies. The Separate Accounts may be registered under the Act ("Registered Separate Accounts") or unregistered under the Act ("Unregistered Separate Accounts"). The Adviser, a Florida corporation, is

[1] Applicants request that the order extend to any future series of the Trusts and any other existing or future registered open-end management investment company and any series thereof that is part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and that is, or may in the future be advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (included in the term "Funds."). All existing entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

[2] A Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same group of investment companies (as defined in section 12(d)(1)(G)(ii)) of the Act as its corresponding master fund.

registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The Adviser serves as investment adviser to each of the Funds.

2. Applicants request relief to permit (a) certain Funds (each, a "Fund of Funds") to acquire shares of (i) other Funds ("Affiliated Underlying Funds") and (ii) registered open-end management investment companies (the "Unaffiliated Funds") and UITs ("Unaffiliated Trusts," and together with the Unaffiliated Funds, the "Unaffiliated Underlying Funds") [3] that are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (collectively, the Affiliated Underlying Funds and the Unaffiliated Underlying Funds are "Underlying Funds"); (b) the Affiliated Underlying Funds, or their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 ("Broker") to sell shares of the Affiliated Underlying Funds to the Fund of Funds; and (c) the Unaffiliated Funds, or their principal underwriters and any Broker to sell shares of the Unaffiliated Funds to the Funds of Funds. Applicants also request an order under sections 6(c) and 17(b) of the Act to permit Underlying Funds that are affiliated persons of Fund of Funds to sell their shares to and redeem their shares from the Fund of Funds.

3. Applicants also request an exemption under section 6(c) of the Act to permit any Fund that may invest in Affiliated Underlying Funds in reliance on section 12(d)(1)(G) of the Act ("Same Group Fund of Funds") and that is eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").

4. Consistent with its fiduciary obligations under the Act, each Same Group Fund of Funds' board of trustees or directors will review the advisory fees charged by the Same Group Fund of Funds' investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Fund of Funds may invest.

Applicants' Legal Analysis

Investments in Underlying Funds by Fund of Funds

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of any other investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to the extent necessary to permit the Funds of Funds to acquire shares of the Underlying Funds in excess of the limits set forth in section 12(d)(1)(A) of the Act and to permit the Affiliated Underlying Funds and Unaffiliated Funds, their principal underwriters and any Broker to sell shares to the Funds of Funds in excess of the limits set forth in sections 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds or its affiliated persons over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Underlying Funds, since they are part of the same group of investment companies. To limit the control that a Fund of Funds or its affiliated persons may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting: (a) Any investment adviser within the meaning of section 2(a)(20)(A) of the Act to a Fund of Funds ("Fund of Funds' Adviser"), any person controlling, controlled by or under common control with the Fund of Funds' Adviser and any investment company or issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Fund of Funds' Adviser or any person controlling, controlled by or under common control with the Fund of Funds' Adviser (collectively, the "Group"), and (b) any investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds ("Fund of Funds' Subadviser"), any person controlling, controlled by or under common control with the Fund of Funds' Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds' Subadviser or any person controlling, controlled by or under common control with the Fund of Funds' Subadviser (collectively, the "Subadviser Group") from controlling (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that condition 2 precludes a Fund of Funds, a Fund of Funds' Adviser, any Fund of Funds' Subadviser, promoter or principal underwriter of a Fund of Funds, and any person controlling, controlled by or under common control with any of those entities (each, a "Fund of Funds Affiliate") from taking advantage of an Unaffiliated Underlying Fund, with respect to transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or the Unaffiliated Underlying Fund's investment adviser(s), sponsor, promoter, principal underwriter or any person controlling, controlled by or under common control with any of these entities (each, an "Unaffiliated Fund Affiliate"). Condition 5 precludes a Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or

[3] Certain of the Unaffiliated Underlying Funds may be registered under the Act as either UITs or open-end management investment companies and have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices (each, an "ETF").

sponsor to an Unaffiliated Trust) from causing an Unaffiliated Underlying Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, member of an advisory board, Fund of Fund's Adviser, Fund of Funds' Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, investment adviser, Fund of Funds' Subadviser, member of an advisory board, or employee is an affiliated person (each, an "Underwriting Affiliate," except that any person whose relationship to the Unaffiliated Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an "Affiliated Underwriting."

6. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), condition 8 requires that the Fund of Funds and Unaffiliated Fund execute an agreement stating, without limitation, that their boards of directors or trustees ("Boards") and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order ("Participation Agreement"). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[4]

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the directors or trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Board Members"), will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that the Fund of Funds' Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Underlying Fund by the Fund of Funds' Adviser, or an affiliated person of the Fund of Funds' Adviser, other than any advisory fees paid to the Fund of Funds' Adviser or an affiliated person of the Fund of Funds' Adviser by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rule 2830"),[5] if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to funds of funds as set forth in NASD Conduct Rule 2830.

9. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a Registered Separate Account funding variable insurance contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the Separate Account, Fund of Funds, and Underlying Fund levels, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and its affiliated persons or affiliated persons of such persons. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds may be deemed to be under common control of the Fund of Funds' Adviser and therefore affiliated persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds may be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise

[4] An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Funds.

[5] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule to NASD Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

[6] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Funds of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the requirements for relief under sections 17(b) and 6(c) of the Act as the terms are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[7] Applicants also state that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Other Investments by Same Group Fund of Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Same Group Fund of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Fund of Funds to invest in Other Investments. Applicants assert that permitting the Same Group Fund of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

A. Investments in Underlying Funds by Funds of Funds

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadviser Group will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group or the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. This condition will not apply to the Subadviser Group with respect to the Unaffiliated Underlying Fund for which the Fund of Funds' Subadviser or a person controlling, controlled by, or under common control with the Fund of Funds' Subadviser acts as the investment adviser within the meaning section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Fund) or as the sponsor (in the case of an Unaffiliated Trust). A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Unaffiliated Underlying Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (b) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Board Members, will adopt procedures reasonably designed to assure that the Funds of Funds' Adviser and any Fund of Funds' Subadviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an

[7] Applicants note that a Fund of Funds generally would purchase and sell shares of an Unaffiliated Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Unaffiliated Underlying Fund at net asset value. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person, or an affiliated person of an affiliated person of the Fund of Funds, in exchange for a basket of specified securities as described in the application for the exemptive order upon which the ETF relies, applicants also request relief from section 17(a) for those transactions.

Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Fund, including a majority of the Independent Board Members, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Fund or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Underlying Fund to purchase a security in an Affiliated Underwriting.

6. The Board of an Unaffiliated Fund, including a majority of the Independent Board Members, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The Board of the Unaffiliated Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Unaffiliated Fund's Board were made.

8. Prior to an investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to reliance on the requested order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Board Members, will find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Funds of Funds' Adviser will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received by the Fund of Funds' Adviser or an affiliated person of the Fund of Funds' Adviser from an Unaffiliated Underlying Fund, other than any advisory fees paid to the Fund of Funds' Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund. Any Fund of Funds' Subadviser will waive fees otherwise payable to the Fund of Funds' Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Unaffiliated Underlying Fund by the Fund of Funds' Subadviser, or an affiliated person of the Fund of Funds' Subadviser, other than any advisory fees paid to the Fund of Funds' Subadviser or its affiliated person by an Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Fund of Funds' Subadviser. In the event that the Fund of Funds' Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of

the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

B. Other Investments by Same Group Fund of Funds

Applicants agree that the relief to permit the Same Group Fund of Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Same Group Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62823, File No. 4–51]

Joint Industry Plan; Order Approving Amendment To Add EDGA Exchange, Inc. and EDGX Exchange, Inc. as Participants to National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS

September 1, 2010.

I. Introduction

On March 30, 2010, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) submitted to the Securities and Exchange Commission (“SEC” or “Commission”) in accordance with Section 11A of the Securities Exchange Act of 1934 (“Act”) [1] and Rule 608 of Regulation NMS,[2] a proposed amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS (“Joint-SRO Plan” or “Plan”).[3] Under the proposed amendment, EGDA and EDGX would be added as participants to the Joint-SRO Plan. Notice of filing and an order granting temporary effectiveness of the proposal were published in the **Federal Register** on April 9, 2010.[4] The Commission did not receive any comments on the proposed amendment. This order approves the amendment on a permanent basis.

II. Discussion

The Joint-SRO Plan establishes procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The current participants to the Joint-SRO Plan are the American Stock Exchange LLC (n/k/a NYSE Amex, Inc.), BATS Exchange, Inc., Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.), Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange℠), International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.), New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.). The proposed amendment would add EDGA and EDGX as participants to the Joint-SRO Plan.

Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section 11(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval. Each of EDGA and EDGX has submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants.

The Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment, which permits EDGA and EDGX to become participants to the Joint-SRO Plan, is consistent with the requirements of Section 11A of the Act,[5] and Rule 608 of Regulation NMS.[6] The Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include EDGA and EDGX as participants in the Joint-SRO Plan should contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow EDGA and EDGX to become participants in the Joint-SRO Plan. The Commission finds, therefore, that approving amendment to the Joint-SRO Plan is appropriate and consistent with Section 11A of the Act.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A(a)(3)(B) of the Act [8] and Rule 608 of Regulation NMS,[9] that the amendment to the Joint-SRO Plan to add EDGA and EDGX as participants to the Joint-SRO Plan is approved and EDGA and EDGX are authorized to each act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22552 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1–5 under the Act (n/k/a Rule 605 of Regulation NMS). *See* Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

[4] *See* Securities Exchange Act Release No. 61824 (April 1, 2010), 75 FR 18246 (April 9, 2010).

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] 15 U.S.C. 78k–1.

[8] 15 U.S.C. 78k–1(a)(3)(B).

[9] 17 CFR 242.608.

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") will hold public roundtable discussions on Tuesday, September 14, 2010 at the CFTC's headquarters at Three Lafayette Centre, Lobby Level Hearing Room (Room 1000), 1155 21st Street, NW., Washington, DC 20581 and on Wednesday, September 15, 2010 at the SEC's headquarters at 100 F Street, NE., Washington, DC 20549 in the Auditorium, (Room L–002).

The meeting on Tuesday will begin at 8:45 a.m. and the meeting on Wednesday will begin at 9 a.m., with both meetings being open to the public, with seating on a first-come, first-served basis. Visitors will be subject to security checks.

This Sunshine Act notice is being issued because a majority of the Commission may attend the meetings.

Commissioner Aguilar, as duty officer, determined that no earlier notice thereof was possible.

The agenda for the meeting on September 14, 2010 includes a panel discussion concerning data for swaps and security-based swaps, swap data repositories, security-based swap data repositories, and real-time public reporting in the context of certain authority that Sections 727, 728, and 763 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") granted the Agencies respectively.

The agenda for the meeting on September 15, 2010 includes a panel discussion concerning swap execution facilities and security-based swap execution facilities in the context of certain authority that Sections 733 and 763 of Act granted the Agencies.

For further information, please contact the CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's office of Public Affairs at (202) 551–4120.

Dated: September 8, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–22751 Filed 9–8–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62833; File No. SR–NYSEArca–2010–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Equities Orders From Archipelago Securities LLC

September 2, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 31, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of equities orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Arca affiliated ETP Holder. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex").[4] The Exchange, through NYSE Arca Equities, has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of the NYSE and NYSE Amex.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities is subject to a pilot period ending September 30, 2010.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 6 months, through March 31, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

[3] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005)(SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving SR–NYSEArca–2008–90).

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities Exchange Act Release No. 59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90); *see also,* Securities Exchange Act Release No. 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (order approving SR–NYSEArca–2008–130).

[6] *See* Securities Exchange Act Release No. 61813 (March 31, 2010), 75 FR 17459 (April 6, 2010) (Notice of immediate effectiveness of SR–NYSEArca–2010–19).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2010–82 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22562 Filed 9–9–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62847; File No. SR–CBOE–2010–077]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change, as Modified by Amendment No. 1, To List Series With Up to 12 Expiration Months for Broad-Based Security Index Options Upon Which the Exchange Calculates a Volatility Index

September 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 2, 2010, the Exchange filed Amendment No. 1, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 24.9(a)(2), *Terms of Index Option Contracts,* to allow the Exchange to list up to twelve expiration months for options that overlie broad-based security indexes for which options are used by the Exchange to calculate a volatility index. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

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[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment 1 replaces the original filing in its entirety. The purpose of Amendment 1 is to provide additional reasoning for the proposed rule text change and to make a technical change to Rule 24.9(a)(2) by deleting an unnecessary word from the text of the rule.

The purpose of this rule filing is to amend Rule 24.9(a)(2), *Terms of Index Options,* to allow the Exchange to list up to twelve expiration months for broad-based security index options upon which the Exchange calculates a volatility index. Currently, Rule 24.9(a)(2) permits the Exchange to list only seven expiration months in any index options upon which the Exchange calculates a constant three-month volatility index.

Since 2009, volatility trading has experienced significant growth in terms of both trading volume and in the variety of products offered. For example, through the first six months in 2010, CBOE Volatility Index ("VIX") options averaged close to 250,000 contracts traded per day, a 150% increase compared to the same period in 2009. VIX futures volume increased 440%, averaging 13,500 contracts per day compared to 2,500 contracts per day during the same period in 2009.

Similarly, since 2009, three exchange-traded notes ("ETNs") linked to the performance of VIX futures have been issued, two of which overlie listed options.[3] In addition, Jefferies & Co. recently announced plans to issue an exchange-traded fund ("ETF")[4] that holds VIX futures or an economically equivalent position and Bank of America Merrill Lynch recently announced plans to issue an ETN based on forward implied volatility of S&P 500 Index options. Additionally, the Exchange is aware of other issuers that are engaged in similar volatility product initiatives.

The Exchange was previously granted approval to list a seventh expiration in broad-based index classes on which the Exchange calculates a 3-month volatility index.[5] In order to satisfy growing demand for a wider variety of volatility investment strategies, the Exchange is seeking to increase, from seven to twelve, the number of expiration months for broad-based security index options upon which the Exchange calculates a volatility index.

Rule 24.9(a)(2) currently permits the Exchange to list up to seven expiration months at any one time for any broad-based security index option contracts, including reduced-value and jumbo option contracts, (*e.g.,* DJX, NDX, RUT and SPX) upon which the Exchange calculates a constant three-month volatility index. When the Exchange proposed the allowance of a seventh expiration month for broad-based security index option contracts on which CBOE calculates a constant three-month volatility index, the Commission noted that the change "will result in a more consistent and predictable calculation in which the option series that bracket three months to expiration will always expire one month apart * * *"[6] In this current proposal, the Exchange is seeking to create flexibility that would enable it to create volatility indexes of varying lengths in response to demand for a wider variety of volatility investment strategies. As a result, the Exchange is not proposing to tie the number of expiration months permitted to a specific volatility calculation period and is proposing to delete the phrase "constant three-month" from the existing text of Rule 24.9(a)(2).

The Exchange believes that the additional expirations, which will be listed in monthly intervals over a one-year time frame, will provide the Exchange with the flexibility to create indexes that represent unique volatility exposures, and enable the Exchange to respond quickly to investor demand for new volatility-based products.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the ability to list up to twelve expiration months for broad-based security index options upon which the Exchange calculates a volatility index.

2. Statutory Basis

Because the increase in the number of expiration months is limited to options overlying broad based security indexes upon which the Exchange calculates a volatility index and because the series could be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[3] ETNs are referred to "Index-Linked Securities" in CBOE's Rules. *See* Interpretation and Policy .13 to Rule 5.3. The ETNs linked to the performance of VIX futures are the (1) iPath S&P 500 VIX Short-Term Futures ETN ("VXX"), (2) iPath S&P 500 VIX Mid-Term Futures ETN ("VXZ"), and (3) Barclays ETN+ Inverse S&P 500 VIX Short-Term Futures ETN ("XXV").

[4] ETFs are referred to as "Units" in CBOE's Rules. *See* Interpretation and Policy .06 to Rule 5.3.

[5] *See* Securities Exchange Act Release No. 56821 (November 20, 2007), 72 FR 66210 (November 27, 2007) (SR–CBOE–2007–082).

[6] *See id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–077. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–077 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22599 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62846; File No. SR–EDGX–2010–12]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

September 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) to (i) add a price guarantee to footnote 1 of its fee schedule; and (ii) make other technical amendments to its fee schedule.

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make several amendments to its fee schedule. First, it proposes to add a price guarantee to footnote 1 of the schedule. This guarantee would state that "Any Member meeting the following criteria: (i) Adding 10,000,000 shares or more of liquidity to EDGX, (ii) where such added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month; and (iii) but for the liquidity added on EDGX, such Member would have qualified for a better rebate with respect to liquidity added on another exchange or ECN that the Member previously qualified for in the three calendar months prior to meeting the above-described criteria in (i) and (ii), shall be reimbursed the difference between the rebate received and the rebate potentially received, so long as source documentation evidencing the above is provided to the Exchange within fifteen (15) calendar days from the end of the relevant month. A Member can only receive reimbursement with respect to two consecutive calendar months. With respect to the second calendar month's reimbursement, the relevant period in determining whether criteria (iii) is satisfied is the period three calendar months prior to the first of the two consecutive calendar months the Member meets the above-described criteria in (i) and (ii)."

The Exchange believes that the price guarantee, as described above, is equitable in that it is available to all Members migrating volumes to the Exchange. Furthermore, the price guarantee limits the increase in a Members' execution costs associating with failing to meet the volume thresholds of other exchanges and ECNs while a Member is in the process of migrating volumes from one exchange to another. The Exchange believes that the difficulty in transitioning volume has incentivized Members to leave volume on certain exchanges and ECNs rather than incurring the costs of migrating volumes to the Exchange. By facilitating

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

the migration of volumes in the short term through this guarantee, the Exchange minimizes the cost of Members pursuing the most economic execution cost model. The resulting migration of Members' volumes to the Exchange will reduce the fixed costs associated with the Exchange supporting its overall volumes and reduce costs on a per share basis. This will, in turn, facilitate the Exchange's ability to maintain lower transactional costs for all Members.

Secondly, the Exchange proposes to make a technical amendment to the schedule. The Exchange proposes to delete references in footnote 1 that describe how certain volume thresholds were pro-rated for the month of July 2010 as these descriptions are no longer relevant.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on September 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. Specifically, the Exchange believes that the price guarantee, as described above, facilitates the migration of volumes to the Exchange by subsidizing the cost of migrating volumes to the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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 Regarding 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[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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–EDGX–2010–12 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–EDGX–2010–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGX–2010–12 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22598 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62845; File No. SR–EDGA–2010–12]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

September 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2010, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) by making an amendment to its fee schedule.

All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete references in footnotes 1 and 2 that describe how certain volume thresholds were pro-rated for the month of July 2010 as these descriptions are no longer relevant.

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on September 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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 Regarding 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 [6] and Rule 19b–4(f)(2) [7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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–EDGA–2010–12 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–EDGA–2010–12. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–EDGA–2010–12 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22596 Filed 9–9–10; 8:45 am]

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[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b-4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62831; File No. SR–NYSEAmex–2010–91]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes From Archipelago Securities LLC

September 2, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 31, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of orders from Archipelago Securities LLC ("Arca Securities"), an NYSE Amex affiliated member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of the New York Stock Exchange ("NYSE") and NYSE Arca, Inc. ("NYSE Arca").[4] The Exchange has also been previously approved to receive inbound routes of orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and the NYSE.[5] The Exchange's authority to receive inbound routes of orders by Arca Securities is subject to a pilot period ending September 30, 2010.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through March 31, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Arca, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

[3] *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities Exchange Act Release No. 59473 (February 27, 2009) 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[4] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76). *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005)(SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca-2008–90).

[5] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving SR–Amex–2008–62). *See also,* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving SR–AMEX–2008–63).

[6] *See* Securities Exchange Act Release No. 61815 (March 31, 2010), 75 FR 17817 (April 7, 2010) (Notice of immediate effectiveness of SR–NYSEAmex–2010–32).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–91 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22556 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62822; File No. SR–NSX–2010–11]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.13 Regarding Maximum Permissible Response Time for Users of Order Delivery

September 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2010, National Stock Exchange, Inc. ("NSX®" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX is proposing to amend NSX Rule 11.13(b)(2) concerning the time within which ETP Holders submitting displayed orders utilizing the Order Delivery mode of order interaction must respond to an inbound order before the ETP Holder's displayed is cancelled.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Rule 11.13(b)(2) concerning the time within which an ETP Holders submitting displayed orders utilizing the Order Delivery mode of order interaction ("Order Delivery")[5] must respond to an inbound order before NSX BLADE® cancels the ETP Holder's order. Under the proposed rule change, if no response to an inbound order is received within 300 milliseconds, the ETP Holder's order will be cancelled.[6]

Currently, Rule 11.13(b)(2) provides that an ETP Holder's displayed order in Order Delivery will be cancelled "if no response to an inbound order is received within ½ of a second." Under the instant rule change, the Exchange proposes to replace reference to "1/2 of a second" with "300 milliseconds," which timeframe the Exchange considers appropriate at the present time and in conformity with industry standards. Utilization of the proposed 300 millisecond response time requirement represents no change to current Exchange practice.[7]

Effective Date

The Exchange requests that the instant rule change be approved by the Securities and Exchange Commission (the "Commission") immediately upon filing, and in any case not more than thirty days after the date of filing of this rule change, or such earlier date as the Commission determines, because the

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[6] In addition, Rule 11.13(b)(2) provides that, to be eligible for Order Delivery service, an ETP Holder "must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond immediately." Interpretation and Policy .01 provides that the Exchange "currently considers 100 milliseconds" to be the maximum permissible response time to an inbound order. The current rule filing does not propose to change this standard.

[7] The Exchange is currently conducting a study regarding the time standards referenced in Rule 11.13, and will submit a rule change proposing modifications to those standards as necessary and appropriate.

instant rule change is non-controversial and presents no novel issues.

2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change advances these objectives by establishing a clear and objective timeframe within which users of Order Delivery submitting displayed orders must respond to incoming orders before their orders are cancelled.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the Exchange has indicated that its proposal will provide a clear and objective timeframe, within which users of Order Delivery submitting displayed orders must respond to incoming orders before their orders are cancelled. The Commission believes that the Exchange's proposal to reduce from ½ of a second to 300 milliseconds the timeframe for a user's response to inbound orders on the Exchange's Order Delivery system will update NSX's rule to reflect its current practice and represents the first step in NSX's efforts to propose a more appropriate standard that is more in line with current industry standards. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.[14]

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–NSX–2010–11 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–NSX–2010–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NSX–2010–11 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22551 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62832; File No. SR–NYSE–2010–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Certain Equities Orders From Archipelago Securities LLC

September 2, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 31, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the Exchange's prior approvals to receive inbound routes of certain equities orders from Archipelago Securities LLC ("Arca Securities"), an NYSE affiliated member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.[3] Arca Securities is also the approved outbound order routing facility of NYSE Arca, Inc. ("NYSE Arca") and NYSE Amex LLC ("NYSE Amex").[4] The Exchange has also been previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and NYSE Amex.[5] The Exchange's authority to receive inbound routes of equities orders by Arca Securities is subject to a pilot period ending September 30, 2010.[6] The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through March 31, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE Arca and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).[9]

[3] *See* Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR–NYSE–2007–29); *see also,* Securities and [sic] Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76).

[4] *See* Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR–NYSEArca–2006–13); *see also,* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR–PCX–2005–90); *see also,* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25); *see also,* Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca–2008–90). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR–NYSEALTR–2008–07); *see also,* Securities Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (order approving SR–NYSEALTR–2009–18).

[5] *See* Securities and [sic] Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR–NYSE–2008–76); *see* Securities Exchange Act Release No. 59011 (November 24, 2008), 73 FR 73360 (December 2, 2008) (order approving SR–NYSE–2008–122); *see also* Securities Exchange Act Release No. 60255 (July 7, 2009), 74 FR 34065 (July 14, 2009) (order approving SR–NYSE–2009–58).

[6] *See* Securities Exchange Act Release No. 61814 (March 31, 2010), 75 FR 17814 (April 7, 2010) (Notice of immediate effectiveness of SR–NYSE–2010–27).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

[9] The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of such proposed rule change the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–64 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–64 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–22557 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62853; File No. 4–610]

State of the Municipal Securities Market Field Hearings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of field hearings.

SUMMARY: On May 7, 2010, the Chairman of the Securities and Exchange Commission Mary L. Schapiro, announced that Commissioner Elisse B. Walter would lead an effort to gather facts, opinions and analyses about the municipal securities market by holding a series of field hearings across the country. A broad array of municipal market participants representing diverse viewpoints will be invited to participate in the field hearings by sharing their perspectives on important topics relating to the municipal securities market.

DATES: The initial field hearing will be held on September 21, 2010 in San Francisco, California and will be open to the public. The field hearing will begin at 9 a.m. Over the next several months, the Commission will hold four additional public field hearings in cities across the country. Information regarding the dates and times of future field hearings will be available on the Commission's Web site at *http://www.sec.gov.*

ADDRESSES: The September 21, 2010 field hearing will be held at the Port of San Francisco, Pier 1, The Embarcadero, San Francisco, CA 94111. Information regarding the locations of future field hearings will be available on the Commission's Web site at *http://www.sec.gov.* Comments relating to the state of the municipal securities market field hearings may be filed electronically by e-mail to *munifieldhearings@sec.gov* or through the comment form available at: *http://www.sec.gov/rules/other.shtml.* Transcripts of the field hearings and all submitted comments will also be available on the Commission's Web site at *http://www.sec.gov.* All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Alicia F. Goldin, Office of Commissioner Elisse B. Walter, at (202) 551–5618, Lesli Sheppard, Office of Commissioner Elisse B. Walter, at (202) 551–2806 or Kayla Gillan, Office of the Chairman, at (202) 551–2600.

By the Commission.

Dated: September 7, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–22628 Filed 9–9–10; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0046]

Employment Network Report Card

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Webinar and National Teleconference Call listening sessions—announcing two opportunities for SSA to hear public comments on Employment Network quality assurance, including a ticket consumer Employment Network Report Card.

SUMMARY: We are soliciting the views of the public, beneficiaries, advocates, Employment Networks (EN), and other professionals on a key part of our quality assurance and performance measurement system for the Ticket to Work (TTW) program. An EN is a private or public entity that provides employment support and/or vocational rehabilitation services to Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disabled beneficiaries who choose to participate in the TTW program.

We are seeking to expand and improve the mechanism used to monitor and evaluate EN performance under the TTW program. We plan to accomplish this goal by combining a user-friendly EN Report Card, which contains customer satisfaction feedback, with the current administrative data that EN's submit annually. The EN Report Card will be useful to beneficiaries in making informed choices regarding their selection of ENs under the TTW program. We will use the findings to inform ENs about the service expectations of TTW beneficiaries, the level of satisfaction of beneficiaries who

have assigned tickets to the EN, and the ways that ENs may improve their performance under the program.

DATES: There will be two listening sessions—a Webinar and a National Teleconference Call in September 2010. On Monday, September 27, 2010, from 1 p.m. to 2:30 p.m., we will invite Employment Networks, advocates, and other interested TTW program partners to participate in a Webinar. On Tuesday, September 28, 2010, from 1 p.m. to 2:30 p.m., we will invite our beneficiaries, the public, and those who cannot make the first date to participate in the National Teleconference Call.

FOR FURTHER INFORMATION CONTACT: Bashiru Kamara, Office of Employment Support Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–9128, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Webinar and National Teleconference Call is to provide a forum for us to hear the public's perspective on our planned means of monitoring and evaluating EN performance under the TTW program, including customer satisfaction with ENs. Since the publication of the revised TTW program regulations in July 2008, we have seen significant increases in the number of ENs who have Tickets assigned and are receiving payment for helping beneficiaries go to work. We have increased outreach efforts to disability beneficiaries in the TTW program. More beneficiaries are participating in the TTW program and successfully progressing in their employment goals.

On an annual basis, one of the Ticket Program Managers, MAXIMUS, is responsible for collecting from ENs administrative data on each EN's performance, using a format called the Annual Performance and Outcome Report (APOR). This report is currently the primary EN evaluation tool. To expand on this effort, we will be conducting annual customer satisfaction surveys regarding the performance of ENs. The mechanism we will use to report the combined results of the customer satisfaction surveys and the APOR data is called the EN Report Card. In 2008, we tested the EN Report Card in New York with two focus groups composed of disability beneficiaries and their representatives. We then piloted it in customer satisfaction surveys with the clients of two ENs last year. We will be rolling out the EN Report Card in California first and then nationally.

We will include the results of the EN Report Card on the Beneficiary Access and Support Services Web site that will be a feature of the new Program Manager contract. The Web site will also include a monitored user comments section where beneficiaries will be able to post comments about their experiences with ENs. We also will make the results of the Report Card available to the ENs.

We invite participation in the Webinar and National Teleconference Call from persons who have an interest in the rules we use to administer the TTW program, applicants and beneficiaries, members of the public, advocates, and organizations that represent parties interested in the TTW program.

This is not a request for written comments; comments will be accepted as part of the Webinar and National Teleconference Call. We will not respond directly to comments you send in response to this Notice. After we have considered all comments and suggestions made during the Webinar and National Teleconference Call, as well as what we have learned from our program experience administering the TTW program, we will determine whether and how we should adjust the EN Report Card.

Dated: September 3, 2010.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–22611 Filed 9–9–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7159]

Determination Under Section 1010(a) of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212)

Pursuant to section 1010(a) of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212) and the authority vested in me by Delegation of Authority 245–1, I hereby determine that the Government of Mexico is continuing to:

(A) Improve the transparency and accountability of Federal police forces and to work with State and municipal authorities to improve the transparency and accountability of State and municipal police forces through mechanisms including police complaints commissions with authority and independence to receive complaints and carry out effective investigations;

(B) Conduct regular consultations with Mexican human rights organizations and other relevant Mexican civil society organizations on recommendations for the implementation of the Merida Initiative in accordance with Mexican and international law;

(C) Ensure that civilian prosecutors and judicial authorities are investigating and prosecuting, in accordance with Mexican and international law, members of the Federal police and military forces who have been credibly alleged to have violated internationally recognized human rights, and the Federal police and military forces are fully cooperating with the investigations; and

(D) Enforce the prohibition, in accordance with Mexican and international law, on the use of testimony obtained through torture or other ill-treatment.

This determination shall be reported to Congress and published in the **Federal Register**.

Dated: September 2, 2010.

James B. Steinberg,

Deputy Secretary of State.

[FR Doc. 2010–22647 Filed 9–9–10; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, October 06, 2010, starting at 9 a.m. Eastern Daylight Time. Arrangements for oral presentations must be made by September 22, 2010.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room 234, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3168, FAX (202) 267–5075, or e-mail at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–

463; 5 U.S.C. app. 2), notice is given of an ARAC meeting to be held October 06, 2010.

The agenda for the meeting is as follows:

• Opening Remarks, Review Agenda and Minutes.
• FAA Report.
• ARAC Executive Committee Report.
• Transport Canada Report.
• Airworthiness Assurance Harmonization Working Group (HWG) Report.
• Avionics HWG Report.
• Materials Flammability Working Group Formation.
• Any Other Business.
• Action Items Review.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than September 22, 2010. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

The FAA will arrange for teleconference service for individuals wishing to join in by teleconference if we receive notice by September 22, 2010. For persons participating by telephone, please contact Ralen Gao by email or phone for the teleconference call-in number and passcode. Anyone calling from outside the Arlington, VA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by September 22, 2010, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 3, 2010.

Dennis R. Pratte, II,

Acting Director, Office of Rulemaking.

[FR Doc. 2010–22631 Filed 9–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–40]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before September 30, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0765 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Katherine Haley, (202) 493–5708, Office of Rulemaking (ARM–203), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR11.85.

Issued in Washington, DC, on September 7, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

[Docket No.: FAA–2010–0765]

Petitioner: Airbus S.A.S.

Section of 14 CFR Affected: 14 CFR 26.33 (d),(e),(f) and (h).

Description of Relief Sought: Temporary exemption from compliance with timely issuance of service bulletins and instructions for continued airworthiness. These documents will be ready for release to airplane operators approximately one year after their part 26 compliance deadline.

[FR Doc. 2010–22595 Filed 9–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Program for Capital Grants for Rail Line Relocation and Improvement Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability.

SUMMARY: Under this Notice, the FRA encourages eligible applicants to submit applications for grants to fund eligible rail line relocation and improvement projects. This Notice of Funds Availability (NOFA) does not apply to the 27 projects specifically enumerated in the Consolidated Appropriations Act, 2010 (Pub. L. 111–117 (December 16, 2009)) or the 23 projects specifically enumerated in the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 (March 11, 2009)).

DATES: Applications for funding under this solicitation are due no later than 5 p.m. EDT, October 29, 2010 and must

be submitted via Grants.gov. *See* Section 3 for additional information regarding the application process. FRA reserves the right to modify this deadline.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice and the grants program, please contact John Winkle via e-mail at *John.Winkle@dot.gov,* or by mail: U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 Att'n: John Winkle.

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Section 1: Financial Assistance Description

1.1 Authority

The authority for the Program can be found in 49 U.S.C. 20154 and at 49 CFR Part 262.

1.2 Program Description and Legislative History

To assist State and local governments, Congress in the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA–LU) (Public Law 109–59, August 10, 2005) authorized the Program for Capital Grants for Rail Line Relocation and Improvement Projects (Program). Section 9002 of SAFETEA–LU amended chapter 201 of Title 49 of the United States Code by adding § 20154, which authorized, but did not appropriate, $350,000,000 per year for each of the fiscal years 2006 through 2009 for the purpose of funding the Program (Catalog of Federal Domestic Assistance (CFDA) Program Number 20.320). SAFETEA–LU also directed FRA to promulgate a regulation that establishes the Program. That final rule was published on July 11, 2008 and can be found at 73 FR 39875 (49 CFR Part 262).

In Fiscal Year (FY) 2009, Congress appropriated $25,000,000 and directed that $17,100,000 be awarded to 23 specific projects, with $7,900,000 left over for discretionary grants. Subsequently, in FY 2010, Congress appropriated $34,532,000 for the Program, and directed that $24,519,200 go to 27 specifically enumerated projects. The remaining $10,012,800 will be combined with the $589,700 remaining from the FY 2008 competition, $2,000,000 that was awarded to one of the FY 2008 projects but which the project sponsors ultimately turned down, and the $7,900,000 in FY 2009 discretionary funding. As a result, FRA has a total of $20,502,500 available for the FY 2010 competition. This NOFA does not apply to the 23 specific projects identified in FY 2009 or the 27 specific projects identified in FY 2010.

1.3 Funding Approach

The Omnibus Appropriations Act, 2009, provided $7,900,000 for discretionary grants. Likewise, the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010, provided $10,012,800. As discussed above, FRA is combining these amounts with $589,700 remaining from the FY 2008 competition and $2,000,000 that was awarded under the FY 2008 competition to a project that ultimately was declined by the project sponsors, and will award up to $20,502,500 in discretionary grants. The funding provided under these grants will be made available to grantees on a reimbursement basis. As in FY 2008, FRA expects that the available funding will support multiple project applications. FRA may choose to award a grant or grants within the available funds in any amount.

An approved applicant, or other non-Federal party, must pay at least 10 percent of the costs of any project funded by a grant awarded through the Program. Applicants should indicate whether funding made available through grants provided under this Program, together with committed funding from other sources, including the required match, will be sufficient to complete the overall project or a discrete portion of the project. FRA expects to award grants to multiple eligible participants.

Section 2: Eligibility Information

Applications for rail line relocation and improvement projects will be required to meet minimum requirements related to applicant eligibility, project eligibility, and the fulfillment of other prerequisites. To the extent that an application's substance exceeds the minimum eligibility requirements described below, such qualifications will be considered in evaluating the merits of an application.

2.1 Eligible Applicant Types

Only States, political subdivisions of States, and the District of Columbia are eligible for grants under the Program (*see* 49 CFR 262.3 and 262.7). FRA considers political subdivisions of States to be entities such as cities, counties, townships, boroughs, and villages. If an applicant is not one of these traditional political subdivisions, then the applicant must prove to FRA's satisfaction that, *under the applicable State law,* the applicant is a political subdivision of the State.

In making this determination, FRA will look primarily to the intent of the State legislature when creating the entity. Thus, FRA will likely find persuasive enabling legislation establishing the entity if the legislation states clearly that the entity is a political subdivision of the State. Similarly, FRA will also consider State appellate court opinions where the court finds that the entity is a political subdivision of the State. Opinions from the State Attorney General also may be used to bolster the above authorities. If nothing conclusively states that the entity is a political subdivision of the State, FRA will review all submitted information and attempt to determine legislative intent. If applicant eligibility is a potential issue, the applicant is encouraged to contact FRA before submitting an application and FRA will make an eligibility determination.

2.2 Cost Sharing and Matching

An approved applicant, or other non-Federal party, must pay at least 10 percent of the costs of any project funded by a grant awarded through the Program. Applicants must specify the match amount in their application.

2.3 Eligible Projects

In accordance with SAFETEA–LU, eligible projects are construction projects undertaken for the improvement of the route or structure of a rail line that either: (1) Are carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or (2) involve a lateral or vertical relocation of any portion of the rail line (*see* 49 CFR 262.7).

FRA wants to emphasize that in order for the project to be eligible, *the rail line must be the element that is moved or improved.* Grade separation projects that involve raising or lowering the road, for example are not eligible. Similarly, quiet zone and stand-alone grade crossing improvement projects are not eligible. Likewise, station improvement projects where there is little or no related track work are not eligible. As explained in the Final Rule, if station or grade crossing improvements are part of

an otherwise eligible rail line relocation or improvement project, then the costs associated with the grade crossing or station work may be eligible (*see* 73 FR 39879). The majority of the work must involve relocating or improving a rail line. Finally, if an applicant is undertaking a larger project that would be eligible, but is applying to FRA for funding for a small portion that is not eligible (*e.g.,* an applicant is undertaking a large rail improvement involving upgrading grade crossing equipment and applies to FRA for funds to cover the grade crossing improvements), the fact that the larger project would be eligible does not mean that FRA can fund the smaller, ineligible project. If project eligibility is a potential issue, applicants are encouraged to contact FRA before submitting an application and FRA will make an eligibility determination.

Pre-construction activities, such as preliminary engineering and design work and project-level environmental compliance, are considered part of the overall construction project (*see* 49 CFR 262.3(6)). Because section 9002 of SAFETEA–LU directs that only construction costs are eligible costs, *activities such as planning studies and feasibility analyses are not eligible costs.*

Section 3: Application and Submission Information

3.1 Applying Online

Applications for these funds must be submitted through Grants.gov by 5 p.m. EDT on October 29, 2010. Applicants are strongly encouraged to apply early to ensure that all materials are received before this deadline.

To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit an application can be found at Grants.gov.

Registering with Grants.gov is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

In order to apply for funding under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. *Acquire a DUNS Number.* A Data Universal Numbering System (DUNS) number is required for Grants.gov registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub recipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of the application deadline. Information about CCR registration procedures can be accessed at *http://www.ccr.gov.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Applicants must complete an AOR profile on Grants.gov and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at *http://www.grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for your AOR from the E–Business Point of Contact (E–Biz POC).* The Applicant's E–Biz POC must log in to Grants.gov to confirm a representative as an AOR. Please note that there can be more than one AOR at an organization.

5. *Search for the Funding Opportunity on Grants.gov.* The Catalog of Federal Domestic Assistance (CFDA) number for this opportunity is 20.320. It is titled "Rail Line Relocation and Improvement."

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24 to 48 hours after submitting an electronic application, an applicant should receive an e-mail validation message from Grants.gov. The validation message will explain whether the application has been received and validated or rejected, with an explanation. Applicants are urged to submit an application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

If you experience difficulties at any point during this process, please call the Grants.gov Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays).

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may imbed picture files, such as .jpg, .gif, and .bmp, in document files, please do not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

3.2 Address To Request/Submit Application Package

To request a hard copy of the application package, please contact John Winkle, Office of Railroad Policy and Development (RPD–11), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Room W38–311, Washington, DC 20590. Phone: (202) 493–6360; Fax: (202) 493–6333; E-mail: *John.Winkle@DOT.gov.*

Any additional required attachments that an applicant is unable to submit via Grants.gov, such as oversized engineering drawings, may be submitted to the above address. Applicants should submit one original and two (2) copies of the material. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

3.3 Content of Application

3.3.1 On-Line Application

The on-line application must be completed and submitted using Grants.gov after Central Contractor

Registry (CCR) registration is confirmed. The on-line application includes the following required forms and submissions:

Construction Projects:

• Standard Form 424, Application for Federal Assistance
• Standard Form 424C, Budget Information—Construction
• Standard Form 424D, Assurances—Construction Programs
• FRA's Additional Assurance and Certifications, available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf*
• Project Narrative/Statement of Work (described in 3.4.1 below)
• Detailed Budget (described in 3.4.2 below)
• NEPA Documentation, as applicable

Non-Construction Projects:

• Standard Form 424, Application for Federal Assistance
• Standard Form 424A, Budget Information—Non-Construction Programs
• Standard Form 424B, Assurances—Non-Construction Programs
• FRA's Additional Assurance and Certifications, available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf*
• Project Narrative/Statement of Work (described in 3.4.1 below)
• Detailed Budget (described in 3.4.2 below)

Any additional required attachments (for application materials that an applicant is unable to submit via Grants.gov), such as oversized engineering drawings, applicants may submit an original and two (2) copies to the Federal Railroad Administration, Attention: John Winkle, Office of Railroad Policy and Development (RPD–11), Room W38–311, 1200 New Jersey Avenue, SE., Washington, DC 20590.

3.4 Detailed Application Requirements

3.4.1 Project Narrative/Statement of Work

The following points describe the minimum content which will be required in the project narrative/statement of work elements of grant applications. These requirements may be satisfied through a narrative statement submitted by the applicant, supported by spreadsheet documents, tables, drawings, and other materials, as appropriate. FRA recommends that applicants read this section carefully and submit all required information. *If an application does not address each of these requirements to FRA's satisfaction, the application will be considered incomplete and will not be scored.* Applicants should send an e-mail message to *paxrail@dot.gov* confirming that an application was submitted. Each grant application must:

1. Designate a point of contact for the applicant and provide his or her name and contact information, including phone number, mailing address and e-mail address. The point of contact must be an employee of an eligible applicant (*i.e.,* a State employee, or an employee of a political subdivision of a State, or an employee of the District of Columbia).

2. Include a detailed project description with an explanation of how the project is an eligible project.

3. Include a thorough discussion of how the project meets all of the selection criteria. Applicants should note that FRA evaluates applications based upon the selection criteria. If an application does not sufficiently address the selection criteria, FRA will have little or no basis on which to evaluate the application; thus, it will likely not be a competitive application. The selection criteria are described in detail in Section 4.1, below.

4. Explain how the applicant is an eligible applicant. For a full discussion of how an applicant can meet this burden, *see* Eligible Participants, above.

5. Provide a detailed scope of work for the proposed project and include the anticipated project schedule. Describe the proposed project's physical location (as applicable), and include any drawings, plans, or schematics that have been prepared relating to the proposed project. If the funding from the Program is only going to be a component of the overall funding for the project, describe the complete project and specify which component will involve FRA funding. Applications should include feasibility determinations and cost estimates, if completed. FRA will more favorably consider applications that include these types of studies, as they demonstrate that an applicant has a definite understanding of the scope and cost of the project. In submitting applications, applicants should be mindful that the Program, as created by Congress and, as further described in the Final Rule, is focused upon construction projects (*see* 49 CFR §§ 262.3 and 262.7). If FRA approves a project for funding, allowable costs (*i.e.,* costs that can qualify for reimbursement from Federal funds or as part of the required non-Federal match) will have to directly support project construction. Section 262.3 identifies the types of activities that are associated with "construction" and thus are potentially allowable. In terms of project development, FRA will consider as potentially allowable any costs associated with the preparation of architectural and engineering plans, project cost estimates, and project-specific construction-related costs (including costs associated with securing environmental clearance as described in § 262.15 of the Final Rule). As discussed above under "Eligible Projects," FRA will not consider as potentially allowable any costs associated with planning studies and similar analyses. For approved projects, construction-related expenditures may qualify as allowable, even if they are incurred in advance of the execution of the grant agreement between the applicant and FRA, provided they otherwise satisfy eligibility standards.

6. Describe proposed project implementation and project management arrangements. Include descriptions of expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting.

7. Describe the anticipated public and private benefits associated with the proposed project and the applicant's assessment of how those benefits outweigh the costs of the proposed project (*see* 49 CFR 262.11(b)). Identify any financial contributions or commitments the applicant has secured from private entities that are expected to benefit from the project. Although FRA will weigh all of the selection criteria, potential applicants should be aware that FRA is seeking the maximum public benefit from these limited funds. Moreover, in directing FRA to establish the Program, Congress instructed FRA to consider the feasibility of seeking financial contributions or commitments from private entities involved with projects in proportion to the expected benefits that would accrue to those entities. As FRA explained in the preamble to the Final Rule, however, FRA will apply all the selection criteria and will not disfavor one application over another because of the amount requested.

8. Describe anticipated environmental or historic preservation impacts associated with the proposed project, any environmental or historic preservation analyses that have been prepared, and progress toward completing any environmental documentation or clearance required for the proposed project under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), section 4(f) of the DOT Act, the Clean Water Act, or other applicable Federal or State laws. Refer to 49 CFR § 262.15 for further guidance.

Generally, grant recipients may not expend any of the funds provided in an award on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the NEPA, the NHPA (16 U.S.C. 470(f)), and related laws and regulations have been completed and FRA has provided the grant recipient with a written notice authorizing them to proceed.

In instances where NEPA approval has not been secured at the time of grant award, grant recipients are required to assist FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 CFR part 1500 *et seq.*), FRA's "Procedures for Considering Environmental Impacts" (45 FR 40854, June 16, 1980, as revised May 26, 1999, 64 FR 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under an award, grant recipients may be required to conduct certain environmental analyses and to prepare and submit to FRA draft documents required under NEPA, NHPA, and related statutes and regulations.

No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials shall be used by grant recipients without the prior written concurrence of FRA. Grant recipients shall assist FRA in complying with these requirements of 49 U.S.C. 303(c).

Applicants are advised to consult with the FRA's Office of Railroad Policy and Development before initiating any NEPA, NHPA or Section 4(f) environmental or historic preservation reviews.

9. Format: Excluding spreadsheets, drawings, and tables, the Project Narrative/Statement of Work for grant applications may not exceed 35 pages in length. FRA will not consider any application that includes a narrative that exceeds 35 pages. With the exclusion of oversized engineering drawings (which may be submitted in hard copy to the FRA at the address above), all application materials should be submitted as attachments through Grants.Gov. Spreadsheets consisting of budget or financial information should be submitted via Grants.Gov as Microsoft Excel (or compatible) documents.

3.4.2 Detailed Budget

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable and necessary for the project.

For a construction project, at a minimum, the budget should separate total cost of the project into the following categories, if applicable: (1) Administrative and legal expenses; (2) Land, structures, rights-of-way, and appraisals; (3) Relocation expenses and payments; (4) Architectural and engineering fees; (5) Project inspection fees; (6) Site work; (7) Demolition and removal; (8) Construction labor, supervision, and management; (9) Materials, by type (*e.g.* ties, rail, signals, switches); (10) Miscellaneous; and (11) Contingencies.

For a non-construction project, at a minimum, the budget should separate total cost of the project into the following categories, if applicable: (1) Personnel; (2) Fringe Benefits; (3) Travel; (4) Equipment; (5) Supplies; (6) Consultants/Contracts; (7) Other; and (8) Indirect Costs.

See Appendix 3 of this solicitation for more information on project budgets.

3.4.3 Submission Dates and Times

Complete applications must be submitted to Grants.gov (as specified in Section 3.1) no later than 5 p.m. EDT, October 29, 2010. Grants.gov will send the applicant an automated e-mail confirming receipt of the application. Supporting documentation that cannot be submitted electronically may be sent by courier service with a waybill receipt stamped no later than 5 p.m. EDT, October 29, 2010. FRA will e-mail the applicant to confirm receipt of supporting documentation sent by courier service.

Subject to demonstration of unanticipated extenuating circumstances, FRA may, but is not obligated to, consider application materials submitted after the deadlines prescribed above.

FRA reserves the right to contact applicants with any concerns, questions, or comments related to applications.

3.4.4 Intergovernmental Review

Executive Order 12372 requires applicants from State and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the State. Applicants must contact their State SPOC to determine if the program has been selected for State review. Executive Order 12372 can be referenced at *http://www.fws.gov/policy/library/rgeo12372.pdf.* The names and addresses of the SPOCs are listed on OMB's home page available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Section 4: Application Review Information

4.1 Selection Criteria

FRA will consider the following selection factors in evaluating applications for grants under this program (*see* 49 CFR 262.9):

1. The capability of the applicant to fund the project without Federal grant funding;
2. The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;
3. The effects of the rail line, relocated, or improved as proposed, on the freight rail and passenger rail operations on the line;
4. Equitable treatment of the various regions of the United States;
5. Any other factors FRA determines to be relevant in assessing the effectiveness and/or efficiency of the grant application, including the cost-effectiveness of the proposed project in terms of benefits achieved in relation to the funds expended. In the preamble to the Final Rule, FRA provided an extensive, but not exhaustive, list of possible data items that could be used to support a cost-effectiveness determination. That list can be found at 73 FR 39875.

Section 5: Award Administration Information

5.1 Award Notices

Should FRA select a project for funding, notification of application approval is made through the GrantSolutions (GS) system. Selectees should follow the directions in the notification and log into GS to access the award document. The authorized grantee official should carefully read the award and terms/conditions documents. The grantee must either *accept* or *decline* the award in GS.

The period of performance for this grant program is dependent on the project. However, any unobligated funds will be deobligated at the end of the 90 day close-out period, provided for in Appendix 2.4. Extensions to the period

of performance will be considered only through written requests to FRA with specific and compelling justifications why an extension is required.

5.2 Administrative and National Policy Requirements

The grantee and any subgrantee shall comply with all applicable laws and regulations. For a non-exclusive list of regulations commonly applicable to FRA grants refer to Appendix 1.

5.3 General Requirements

Grant recipients must comply with reporting requirements. All post-award information pertaining to reporting, auditing, monitoring, and the close-out process is detailed in Appendix 2.

Appendix 1: Administrative and National Policy Requirements

Appendix 1.1 Standard Financial Requirements

Administrative Requirements

• 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

• 49 CFR Part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110)

Cost Principles

• 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)

• 2 CFR Part 220, Cost Principles for Educational Institutions (OMB Circular A–21)

• 2 CFR Part 230, Cost Principles for Non-Profit Organizations (OMB A–122)

• Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations

Audit Requirements

• OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations

Appendix 1.2 Administrative and National Policy Requirements

Grant recipients must follow all administrative and national policy requirements including: procurement standards, compliance with Federal civil rights laws and regulations, disadvantaged business enterprises (DBE), debarment and suspension, drug-free workplace, FRA's and OMB's Assurances and Certifications, Americans with Disabilities Act (ADA), Buy America, environmental protection, National Environmental Policy Act (NEPA), and environmental justice.

Appendix 1.3 Freedom of Information Act (FOIA)

As a Federal agency, FRA is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), which generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. Grant applications and related materials submitted by applicants pursuant to this guidance will become agency records, and thus are subject to the FOIA and to public release through individual FOIA requests. FRA also recognizes that certain information submitted in support of an application for funding in accordance with this guidance could be exempt from public release under FOIA as a result of the application of one of the FOIA exemptions, most particularly Exemption 4, which protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)). In the context of this grant program, commercial or financial information obtained from a person could be confidential if disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained (*see National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974)). Entities seeking exempt treatment must provide a detailed statement supporting and justifying the request and should follow FRA's existing procedures for requesting confidential treatment in the railroad safety context found at 49 CFR 209.11. As noted in the Department's FOIA implementing regulation (49 CFR part 7), the burden is on the entity requesting confidential treatment to identify all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed (*see* 49 CFR 7.17). The final decision as to whether the information meets the standards of Exemption 4 rests with FRA.

Appendix 2: Additional Information on Award Administration and Grant Conditions

Appendix 2.1 Reporting Requirements

Reporting requirements must be met throughout the life of the grant (refer to the program guidance and the special/general provisions found in the award package for a full explanation of these requirements).

• Progress Reports—Progress reports are to be submitted quarterly. These reports must relate the state of completion of items in the Statement of Work to expenditures of the relevant budget elements. The grant recipient must furnish the quarterly progress report to the FRA on or before the 30th calendar day of the month following the end of the quarter being reported. Grantees must submit reports for the periods: January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. Each quarterly report must set forth concise statements concerning activities relevant to the project, and should include, but not be limited to, the following: (a) An account of significant progress (findings, events, trends, etc.) made during the reporting period; (b) a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the grant within the time and fiscal constraints as set forth in the agreement, together with recommended solutions or corrective action plans (with dates) to such problems, or identification of specific action that is required by the FRA, or a statement that no problems were encountered; and (c) an outline of work and activities planned for the next reporting period.

• Quarterly Federal Financial Report (SF–425)—The Grantee must submit a quarterly Federal financial report electronically in the GrantSolutions system, on or before the thirtieth (30th) calendar day of the month following the end of the quarter being reported (*e.g.,* for quarter ending March 31, the SF–425 is due no later than April 30). A report must be submitted for every quarter of the period of performance, including partial calendar quarters, as well as for periods where no grant activity occurs. The Grantee must use SF–425, Federal Financial Report, in accordance with the instructions accompanying the form, to report all transactions, including Federal cash, Federal expenditures and unobligated balance, recipient share, and program income.

• Interim Report(s)—If required, interim reports will be due at intervals specified in the Statement of Work and must be submitted to FRA.

• Final Report(s)—Within 90 days of the Project completion date or termination by FRA, the Grantee must submit a Summary Project Report in the GrantSolutions system. This report should detail the results and benefits of the Grantee's improvement efforts.

• Reports, Presentations and Other Deliverables—Whether for technical examination, administrative review, or publication, all submittals shall be of a professional quality and suitable for their intended purpose. Due dates for submittals shall be based on the specified intervals or days from the effective date of the agreement.

Appendix 2.2 Audit Requirements

Grant recipients that expend $500,000 or more of Federal funds during their fiscal year, combined from all sources, are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/ybk01.htm,* and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Currently, audit reports must be submitted to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, FRA and the Comptroller General of the United States must have access to any books, documents, and records of grant recipients for audit and examination purposes. The grant recipient will also give FRA or the Comptroller, through any authorized representative, access to, and the right to examine all records, books, papers or documents related to the grant. Grant recipients must require that sub-grantees comply with the audit requirements set forth in OMB Circular A–133. Grant recipients are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Appendix 2.3 Monitoring Requirements

Grant recipients will be monitored periodically by FRA to ensure that the project goals, objectives, performance requirements, timelines, milestones, budgets, and other related program criteria are being met. FRA will conduct monitoring activities through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The recipient is responsible for monitoring award activities, including sub-awards and sub-grantees, to provide reasonable assurance that the award is being administered in compliance with Federal requirements. Financial monitoring responsibilities include the accounting of recipients and expenditures, cash management, maintaining of adequate financial records, and refunding expenditures disallowed by audits.

Appendix 2.4 Closeout Process

Project closeout occurs when all required project work and all administrative procedures described in 49 CFR section 262.19, as applicable, have been completed, and when FRA notifies the grant recipient and forwards the final Federal assistance payment, or when FRA acknowledges the grant recipient's remittance of the proper refund. Project closeout should not invalidate any continuing obligations imposed on the Grantee by an award or by the FRA's final notification or acknowledgment. Within 90 days of the Project completion date or termination by FRA, grantees agree to submit a final Federal Financial Report (SF–425), a certification or summary of project expenses, a final report, and third party audit reports, as applicable.

Appendix 3: Additional Information on Applicant Budgets

The information contained in this appendix is intended to assist applicants with developing the SOW budget and OMB Standard Forms 424A: Budget Information—Non-Construction Programs and 424C: Budget Information—Construction Programs, as described in Section 3.3.1.

Appendix 3.1 Non-Construction Project Budgets

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable, and necessary for the project. At a minimum, the budget should separate total cost of the project into the following categories and provide a basis of computation for each cost:

- Personnel: List each position by title and name of employee, if available, and show the annual salary rate and the percentage of time to be devoted to the project. Compensation paid for employees engaged in grant activities must be consistent with that paid for similar work within the applicant organization.
- Fringe Benefits: Fringe benefits should be based on actual known costs or an established formula. Fringe benefits are for personnel listed in the "Personnel" budget category and only for the percentage of time devoted to the project.
- Travel: Itemize travel expenses of project personnel by purpose (training, interviews, and meetings). Show the basis of computation (*e.g.,* X people to Y-day training at $A airfare, $B lodging, $C subsistence).
- Equipment: List non-expendable items that are to be purchased. Nonexpendable equipment is tangible property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. (**Note:** Organization's own capitalization policy may be used for items costing less than $5,000.) Expendable items should be included either in the "Supplies" category or in the "Other" category. Applicants should analyze the cost benefits of purchasing versus leasing equipment, especially high cost items and those subject to rapid technical advances. Rented or leased equipment should be listed in the "Contractual" category. Explain how the equipment is necessary for the success of the project. Attach a narrative describing the procurement method to be used.
- Supplies: List items by type (office supplies, postage, training materials, copying paper, and expendable equipment items costing less than $5,000) and show the basis for computation. (Note: Organization's own capitalization policy may be used for items costing less than $5,000). Generally, supplies include any materials that are expendable or consumed during the course of the project.
- Consultants/Contracts: Indicate whether applicant's written procurement policy (*see* 49 CFR 18.36) or the Federal Acquisition Regulations (FAR) are followed. *Consultant Fees:* For each consultant enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and the estimated time on the project. *Consultant Expenses:* List all expenses to be paid from the grant to the individual consultants in addition to their fees (travel, meals, and lodging). *Contracts:* Provide a description of the product or service to be procured by contract and an estimate of the cost. Applicants are encouraged to promote free and open competition in awarding contracts. A separate justification must be provided for sole source contracts in excess of $100,000.
- Other: List items (rent, reproduction, telephone, janitorial or security services) by major type and the basis of the computation. For example, provide the square footage and the cost per square foot for rent, or provide the monthly rental cost and how many months to rent.
- Indirect Costs: Indirect costs are allowed only if the applicant has a Federally-approved indirect cost rate. A copy of the rate approval (a fully executed, negotiated agreement) must be attached. If the applicant does not have an approved rate, one can be requested by contacting the applicant's cognizant Federal agency, which will review all documentation and approve a rate for the applicant organization.

Appendix 3.2 Construction Project Budgets

Applicants must present a detailed budget for the proposed project that includes both Federal funds and matching funds. Items of cost included in the budget must be reasonable, allocable, and necessary for the project. At a minimum, the budget should separate total cost of the project into the following categories and provide a basis of computation for each cost:

- Administrative and Legal Expenses: List the estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land which is allowable for Federal participation and certain services in support of construction of the project. This may include:
  - Hours/Rate and total cost of local government staff
  - Hours/Rate and total cost of outside counsel fees
  - Hours/Rate and total cost of consultants
- Land, structures, rights-of-way, appraisals, and related items: List the estimate site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements). If possible, include details of number of acres, acre cost, square-footage, and square footage cost.
- Relocation expenses and payments: List the estimated costs relation to relocation advisory assistance, replacement of housing, relocation payments to displaced persons and businesses, etc. This may include:
  - The gross salaries and wages of employees for the grantee who will be directly engaged in performing demolition or removal of structures from developed land
- Architectural and engineering fees: List the estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).
- Other architectural and engineering fees: List the estimated engineering costs, such as surveys, tests, soil borings, etc.
- Project inspection fees: List the estimated engineering inspection costs. This may include:
  - Rate of project inspector
  - Construction monitoring
  - Audit or construction programs
- Site Work: List the estimated costs of site preparation and restoration which are not included in the basic construction contract. This may include:
  - Clearing
  - Erosion control
  - Reseeding
- Demolition and removal: List the estimated costs related to demolition activities.
- Construction: List the estimated cost of the construction contract. This may include costs for:
  - Labor costs, *e.g.,* associated with site preparation and installation of grade crossings, highway warning signs, etc.
  - Equipment rental/purchase, *e.g.,* an excavator or bulldozer
  - Materials, *e.g.,* Rail anchors, retaining walls, etc.
- Equipment: List the estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

• Miscellaneous: List the estimated miscellaneous costs.
• Contingencies: List the estimated contingency costs.

Issued in Washington, DC on September 7, 2010.

Mark Yachmetz,

Associate Administrator.

[FR Doc. 2010–22652 Filed 9–9–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Dallas/Fort Worth International Airport, DFW Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request of release for permanent easement of airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the request for permanent easement at the Dallas/Fort Worth International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76137–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeff Fegan, Chief Executive Office, at the following address: Dallas/Fort Worth International Airport, Executive Office, P.O. Box 619428, DFW Airport, Texas 75261.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–651, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0650, Telephone: (817) 222–5659, e-mail: *Rodney.Clark@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Dallas/Fort Worth International Airport under the provisions of the AIR 21.

On August 23, 2010, the FAA determined that the request for permanent easement at Dallas/Fort Worth International Airport, submitted by the Airport, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than October 23, 2010.

The following is a brief overview of the request:

The Dallas/Fort Worth International Airport requests the release for permanent easement of 0.501 acres of non-aeronautical airport property. The land was acquired by the Cities of Dallas and Fort Worth for use as an airport. The funds generated by the release will be used to improve the Airport's roadway system.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Dallas/Fort Worth International Airport, telephone number (972) 973–5200.

Issued in Fort Worth, Texas, on August 31, 2010.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 2010–22542 Filed 9–9–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Air Park South Airport (2K2), Ozark, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request To Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Air Park South Airport (2K2) under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Nicoletta S. Oliver, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Gary A. Cyr, Sr., A.A.E., Director of Aviation, Springfield-Branson National Airport, 5000 West Kearney, Suite 15, Springfield, MO 65803, (417) 869–0300.

FOR FURTHER INFORMATION CONTACT: Nicoletta S. Oliver, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–6100, 901 Locust, Kansas City, MO 64106, (816) 329–2642, *nicoletta.oliver@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 235 acres of property known as the Air Park South Airport (2K2) under the provisions of 49 U.S.C. 47107(h)(2). On September 25, 2007, the Director of Aviation at the Springfield-Branson National Airport notified the FAA that because of the Sponsor's inability to acquire land necessary to safely and effectively operate the airport, he requested full release of the affected property from Federal obligations. On March 16, 2010, the FAA determined that the request to release property at Air Park South Airport (2K2) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Air Park South Airport (2K2) is proposing the release of the entire airport property and associated facilities. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow Federally acquired airport property to be used for non-aviation purposes. The sale and permanent abandonment of the subject property will result in the lands of the Air Park South Airport (2K2) being changed from aeronautical to nonaeronautical use and release the lands from the conditions of the AlP Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Springfield-Branson National Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the

application, notice and other documents determined by the FAA to be related to the application in person at the Springfield-Branson National Airport.

Issued in Kansas City, MO, on September 1, 2010.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2010–22541 Filed 9–9–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120399–10 [RIN 1545–BJ61] (T.D. 9491)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing Interim Final Regulations, REG–120399–10–Affordable Care Act Notice of Patient Protection.

DATES: Written comments should be received on or before November 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger, (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov.*

Title: REG–120399–10–Affordable Care Act Notice of Patient Protection.

OMB Number: 1545–2181.

Regulation Project Number: REG–120399–10 [RIN 1545–BJ61] (T.D. 9491).

Abstract: Section 2719A of the Public Health Service Act (PHS Act), incorporated into Code section 9815 by section 1563(f) of the Patient Protection and Affordable Care Act, Public Law 111–148, requires that a group health plan or a health insurance issuer requiring or allowing for the designation of a primary care provider provide notice to participants of the right to designate a primary care provider (including a pediatrician for a child) and of the right to obtain access to obstetrical or gynecological services without referral from a primary care provider.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 170,000.

Estimated Total Annual Burden Hours: 33,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 30, 2010.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2010–22632 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120399–10 (T.D. 9491)]

RIN 1545–BJ61

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing Interim Final Regulations, Affordable Care Act Notice of Rescission.

DATES: Written comments should be received on or before November 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger, (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the internet, at *Joel.P.Goldberger@irs.gov.*

Title: Affordable Care Act Notice of Rescission.

OMB Number: 1545–2180.

Regulation Project Number: REG–120399–10 [RIN 1545–BJ61] (T.D. 9491).

Abstract: This document contains interim final regulations implementing the rules for group health plans and health insurance coverage in the group and individual markets under provisions of the Affordable Care Act regarding preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, prohibition on discrimination in favor of highly compensated individuals, and patient protections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 800.

Estimated Total Annual Burden Hours: 25 Hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 27, 2010.

Gerald Shields,

Supervisory Tax Analyst.

[FR Doc. 2010–22633 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–120399–10 (T.D. 9491)]

RIN 1545–BJ61

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing Interim Final Regulations, Patient Protection and Affordable Care Act Enrollment Opportunity Notice Relating to Lifetime Limits.

DATES: Written comments should be received on or before November 9, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Joel Goldberger, (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the internet, at *Joel.P.Goldberger@irs.gov.*

Title: Patient Protection and Affordable Care Act Enrollment Opportunity Notice Relating to Lifetime Limits.

OMB Number: 1545–2179.

Regulation Project Number: REG–120399–10 [RIN 1545–BJ61]

Abstract: 26 CFR 54.9815–2711T requires plans and issuers to provide an individual whose coverage ended due to reaching a lifetime limit on the dollar value of all benefits notice that the lifetime limit no longer applies and with an opportunity to enroll (including notice of an opportunity to enroll) that continues for at least 30 days.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 29,000.

Estimated Total Annual Burden Hours: 1300 Hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 27, 2010.

Gerald Shields,

Supervisory Tax Analyst.

[FR Doc. 2010–22635 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–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, October 19, 2010.

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 an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, October 19, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited

conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22570 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project 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 held Wednesday, October 13, 2010.

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 Notice Improvement Project Committee will be held Wednesday, October 13, 2010, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22576 Filed 9–9–10; 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 Wednesday, October 6, 2010.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

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 6 Taxpayer Advocacy Panel will be held Wednesday, October 6, 2010, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information, please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22555 Filed 9–9–10; 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 comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 12, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Robb 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, October 12, 2010, at 11 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22559 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project

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 held Thursday, October 14, 2010.

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 an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be held Thursday, October 14, 2010, at 1 pm, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22572 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project 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 held Thursday, October 28, 2010.

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 Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be held Thursday, October 28, 2010, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22571 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center 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 held Tuesday, October 26, 2010.

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 an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, October 26, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22569 Filed 9–9–10; 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: Notice of meeting.

SUMMARY: An open meeting of the Area 3 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 Monday, October 18, 2010.

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 a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, October 18, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write 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: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22566 Filed 9–9–10; 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 meeting.

SUMMARY: An open meeting of the Area 4 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, October 19, 2010.

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 4 Taxpayer Advocacy Panel will be held Tuesday, October 19, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22565 Filed 9–9–10; 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 comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 20, 2010.

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, October 20, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22558 Filed 9–9–10; 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 Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax 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, October 12, 2010.

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 a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, October 12, 2010, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22579 Filed 9–9–10; 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 Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project 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, October 27, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

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 Project Committee will be held Wednesday, October 27, 2010, at 1:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information, please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or

contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22577 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint 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, October 26, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

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 Joint Committee will be held Tuesday, October 26, 2010, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22573 Filed 9–9–10; 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, October 20, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978

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, October 20, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write 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: September 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–22568 Filed 9–9–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
September 10, 2010

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 3, 4, et al.

Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 5, 10, 140, 145, 147, 160, and 166

RIN 3038–AC61

Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting a comprehensive regulatory scheme to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Wall Street Reform Act") [1] and the CFTC Reauthorization Act of 2008 ("CRA") [2] with respect to off-exchange transactions in foreign currency with members of the retail public (*i.e.,* "retail forex transactions"). The new regulations and amendments to existing regulations published today establish requirements for, among other things, registration, disclosure, recordkeeping, financial reporting, minimum capital, and other operational standards.

DATES: *Effective Date:* October 18, 2010.

FOR FURTHER INFORMATION CONTACT: For information regarding financial and related reporting requirements, contact: Thomas Smith, Chief Accountant and Deputy Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5495; facsimile number: 202–418–5547; and electronic mail: *tsmith@cftc.gov*. Jennifer Bauer, Special Counsel, Division of Clearing and Intermediary Oversight, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5472; facsimile number: 202–418–5547; and electronic mail: *jbauer@cftc.gov*.

For all other information contact: William Penner, Deputy Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5450; facsimile number: 202–418–5547; and electronic mail: *wpenner@cftc.gov*. Christopher Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number (202) 418–5450; facsimile number: 202–418–5547; and electronic mail: *ccummings@cftc.gov*. Peter Sanchez, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number (202) 418–5450; facsimile number: 202–418–5547; and electronic mail: *psanchez@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 20, 2010, the Commission published in the **Federal Register** proposed new regulations and amendments to existing regulations in response to the CRA (the "Proposing Release").[3] The Proposing Release set forth in detail the historical background of the regulation of retail forex transactions, and the events, legislative and otherwise, that led up to the enactment of the CRA.[4] The Commission explained that its proposed regulations were drawn up with the aim of applying the same principles that have guided the regulation of on-exchange instruments, while taking into account the real differences between the trading of futures contracts on designated contract markets ("DCMs") that are cleared through Commission-registered derivatives clearing organizations ("DCOs") on the one hand, and off-exchange transactions between forex firms and retail customers on the other hand.[5]

The proposed rule changes were of two general sorts. The first group included amendments to existing regulations to accommodate regulation of retail forex transactions and the new registration categories created under the CRA. The second group comprised a new part 5 of the Commission's regulations, encompassing, to the extent practicable, the regulations pertaining specifically to persons engaging in retail forex transactions. For example, many of the operational or registration requirements in part 1 or part 3, respectively, of the Commission's regulations referring to futures commission merchants ("FCMs") would, as a result of the CRA, now apply also to retail foreign exchange dealers ("RFEDs"). Some of the disclosure, reporting and recordkeeping requirements in part 4 had to be modified to apply to operators of pooled investment vehicles and advisors that engage in retail forex transactions, as called for under the CRA. Other parts of the Commission's regulations required their own adaptations in order to extend customer protection, privacy and procedural requirements to retail forex transactions.

The Commission also noted in its Proposing Release that in addition to the regulations expressly called for by the CRA, it was proposing certain additional requirements prompted both by the essential differences between on-exchange transactions and retail forex transactions, and by the history of fraudulent practices in the retail forex market.[6] The proposed regulatory changes were discussed, section by section.[7]

Following the publication of the Proposing Release, the Wall Street Reform Act was enacted which, in relevant part, requires that specified Federal regulatory agencies, including the CFTC, promulgate rules regarding retail forex transactions. Consistent with the CRA, the Wall Street Reform Act directs that such rules prescribe appropriate requirements with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and such other standards or requirements as the Federal regulatory agencies determine to be necessary.[8]

Thus, pursuant to the broad authority granted by the Wall Street Reform Act and the CRA, the Commission is implementing requirements for, among other things: Registration, disclosure, recordkeeping, financial reporting, minimum capital, and other operational standards, based on existing CFTC regulations for commodity interest transactions and commodity interest intermediaries, and on existing National Futures Association ("NFA") rules with respect to retail forex transactions offered by NFA's members. With certain exceptions, the Commission is adopting the rule changes delineated in the Proposing Release as proposed.

Except for certain otherwise-regulated financial intermediaries excluded by the CRA from the Commission's jurisdiction, persons offering to be or acting as counterparties to retail forex transactions, but not primarily or substantially engaged in the exchange-traded futures business, are required to register with the CFTC as RFEDs. Registered FCMs that are "primarily or substantially" (as defined in the new regulations) engaged in the activities set forth in the definition in the Commodity

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (2010).

[2] Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2189–2204 (2008).

[3] Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 3282 (Jan. 20, 2010).

[4] *See* 75 FR 3282, 3283–3285.

[5] *See* 75 FR 3282, 3285.

[6] *See* 75 FR 3282, 3286.

[7] *See* 75 FR 3282, 3286–3293.

[8] *See* Wall Street Reform Act, Sec. 742.

Exchange Act (the "Act") of an FCM[9] are permitted to engage in retail forex transactions without also registering as RFEDs. Also, the $20 million minimum net capital standard established in the CRA for registering as an RFED or offering retail forex transactions as an FCM is incorporated in the new regulations.

The new regulations also require certain entities other than RFEDs and FCMs that intermediate retail forex transactions to register with the Commission as introducing brokers ("IBs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs") or associated persons ("APs") of such entities, as appropriate, and to be subject to the Act and regulations applicable to that registrant category.

Finally, pursuant to the authority conferred by the CRA,[10] and to address cases where the Commission's jurisdiction has been challenged, the Commission is adopting the proposed regulatory provisions applicable to certain leveraged, off-exchange retail forex transactions commonly known as "Zelener contracts."[11]

II. The Comments on the Proposing Release

The Commission received in excess of 9,100 comments[12] from a range of commenters, including individuals who trade forex, intermediaries, registered FCMs currently serving as counterparties in retail forex transactions, trade associations or coalitions of industry participants, one committee of a county lawyers' association, a registered futures association, and numerous law firms representing institutional clients. Many commenters offered specific recommendations for clarification or modification of particular rules; other commenters objected generally to particular proposed rules. Overall, the bulk of the comments concerned four of the proposed rules:

- Proposed Regulation 5.9, which would impose a 10 to 1 leverage limitation on retail forex transactions. ("Security Deposit Proposal" or "Leverage Proposal")
- Proposed Regulation 5.18(h), which would require each IB that solicits or accepts off-exchange retail forex orders to enter into a guarantee agreement with the FCM or RFED to which the IB introduces the forex transactions. ("Guaranteed IB Proposal")
- Proposed Regulation 5.18(j), which would require all retail forex counterparties to calculate, on a quarterly basis, the percentage of non-discretionary accounts that were profitable, to include the results of this calculation for the preceding four quarters in required disclosures to customers, and to maintain and make available upon request records reflecting such calculations for five years. ("Disclosure Proposal")
- Proposed Regulation 5.7, which would establish a minimum capital requirement for FCMs and RFEDs ("Capital Proposal")

The comments regarding these proposed rules and the Commission's response are discussed immediately below. The Commission's response to comments concerning other aspects of the proposed rules follows later.

Given the volume of comments received, the Commission cannot respond to each and every comment or objection. However, the Commission has carefully reviewed and considered each letter and, in the sections that follow, has endeavored to address both the primary themes running throughout multiple letters and significant points raised by individual commenters.

Security Deposit Proposal. In general terms, proposed Regulation 5.9 would have required FCMs and RFEDs engaging in retail forex transactions to collect from each retail forex customer a minimum security deposit equal to 10 percent of the notional value of each retail forex transaction. This proposal is often referred to in the comment letters as a 10% or 10:1 leverage requirement (*i.e.,* for every $10 of notional value, $1 is required as a security deposit).

The Commission received a significant number of comment letters regarding the Security Deposit Proposal with a substantial majority of the commenters objecting to the proposed level of 10%. Many of the letters submitted with regard to this issue appeared to be submitted by individual traders, were identical or nearly identical, and objected generally to the proposal. Within the large group of comments by such traders, whether in "form" letter objections or otherwise, the most common objections were that the leverage proposal would drive business off-shore, would lead to the loss of jobs in the U.S., was unnecessarily restrictive and would inhibit small traders' ability to trade profitably, or that the percentage required as a security deposit was arbitrary, capricious and anti-competitive.

Other commenters noted that by increasing the security deposit level, retail forex customers are exposed to greater levels of market and credit risk. Many of these commenters believe that the amplification that is provided by increased leverage is necessary for clients to earn a profit from their positions. Still other commenters urged that NFA's current levels be retained and asserted that the Commission had already approved these levels by allowing NFA's proposed rule regarding leverage to become effective.

Finally, one commenter encouraged the Commission to (1) recognize the different market risks and volatility posed by different currencies, (2) adopt requirements reflective of those differences just as contract markets do in establishing their margin levels, and (3) endorse or adopt some mechanism to allow for periodic review and adjustment of the requirements if necessary.

The Commission's proposed leverage restriction was conservative and was proposed in an effort to provide maximum customer protection. The Commission does not, however, believe it was arbitrary or contrary to previously approved NFA rules.[13] Moreover, the Commission does not believe that most retail foreign exchange customers select a counterparty based solely on the maximum allowable leverage, otherwise these investors would have already migrated to foreign markets, some of which have no limitation on leverage. Nevertheless, after considering the concerns expressed and arguments made in the comments, the Commission has determined to adopt a revised security deposit requirement for FCMs engaging in retail forex transactions and for RFEDs.

In developing the revised Regulation 5.9, the Commission once again

[9] 7 U.S.C. 1a(20) (2006).

[10] *See* 7 U.S.C. 2(c)(2)(C)(iv).

[11] *See* 75 FR 3282, 3284–3285.

[12] The Comment letters referred to in this release are available through the Commission's Web site: *http://www.cftc.gov/LawRegulation/PublicComments/10-001.html.*

[13] As noted above, several commenters maintained that the proposed Regulation 5.9 was inconsistent with security deposit levels set by NFA and approved by the Commission. In February 2009, NFA proposed and the Commission approved amendments to Section 12 of NFA's Financial Requirements. (*See* Letter from Thomas W. Sexton to David A. Stawick, dated February 23, 2009, regarding Forex Security Deposits—Proposed Amendments to NFA Financial Requirements Section 12 and Interpretive Notice Regarding Forex Transactions, available on NFA's website at nfa.futures.org.) NFA's amendments left in place requirements of a 1% security deposit for major currencies and a 4% deposit for all other currencies, but eliminated an exemption from these requirements for well-capitalized firms. As NFA noted in its proposed amendments, exempted firms had offered leverage of 200:1, 400:1 and even 700:1. NFA's February 2009 amendments effectively reduced the amount of leverage available to retail forex customers. The Commission approved the amendments, in accordance with the standards set in Section 17(j) of the Act.

reviewed futures exchange margin levels, NFA's current security deposit requirements, and comparable requirements found in other jurisdictions. Final Regulation 5.9 permits the registered futures association ("RFA") of which the FCM or RFED is a member to determine specific security deposit levels within parameters set forth by the Commission in the regulation.[14] The Commission has provided minimum security deposit amounts of 2 percent of the notional value for major currency pairs and 5 percent of the notional value for all other retail forex transactions. The Commission will periodically review the parameters it has set in light of market conditions and adjust them as necessary. Similarly, each RFA (*i.e.,* NFA) will be required to designate which currencies are "major currencies," and must review, no less frequently than annually, major currency designations and security deposit requirements, and must adjust the designations and requirements as necessary in light of changes in the volatility of currencies and other economic and market factors. It is the Commission's view that revised Regulation 5.9 will provide a mechanism for setting security deposit levels that is both anchored in, and adaptable to, market conditions.

Disclosure of Profitable vs. *Non-Profitable Accounts.* As proposed, Regulation 5.5(e) required that the risk disclosure statement provided to every retail forex customer include disclosure of the number of non-discretionary accounts maintained by the FCM or RFED that were profitable and those that were not, during the four most recent calendar quarters. Commenters called the provision anti-competitive and doubted that measurement of profitable accounts could be done in a way that would permit comparison. Proposed Regulation 5.18(i) required that each retail forex counterparty prepare and maintain on a quarterly basis a calculation of the percentage of non-discretionary retail forex accounts open for any period of time during the quarter that earned a profit, and the percentage of such accounts that experienced a loss.

Some commenters asserted that the Commission did not provide adequate guidance or a standard methodology for calculating "winners" and "losers." Commenters stated that the proposal was ambiguous and that the reported percentages may not be comparable across the industry. In addition, commenters thought that there was too much subjectivity in determining "winners" and "losers" and that, therefore, the resulting disclosure would not be helpful for customers. Other commenters stated that by requiring retail forex firms to disclose the percentage of profitable accounts quarterly, the Commission would be unfairly singling out retail forex dealers, as this information is not required on the futures side or for broker-dealers.

As noted in the Proposing Release, there are significant differences between trading futures contracts on an exchange and entering into off-exchange transactions between forex firms and retail customers.[15] The Commission believes that as a result of the inherent conflicts embedded in the operations of the retail over-the-counter forex industry, such disclosure is necessary. To illustrate potential conflicts of interests in the off-exchange retail forex industry, the Commission in its Proposing Release pointed out that the retail forex counterparty: (i) Is the counterparty to the customer, which sets up a "zero-sum game" between the customer and the retail forex dealer; (ii) provides quotes to their customers, which may not be the best quote at the time and may not even be a competitive quote; and (iii) enters into a principal-to-principal transaction with the non-discretionary retail forex accountholder. At each stage of the transaction, the retail forex counterparty has an inherent conflict with its non-discretionary retail forex accountholders. By contrast, in exchange-traded futures markets, accountholders do not encounter the same level of conflicts that retail forex customers face, and, therefore, a requirement to disclose the percentage of non-discretionary retail accounts that were profitable and not profitable is appropriate in retail forex markets, while it may not be elsewhere. As a result of the industry structure and operational conflicts, the Commission believes that this disclosure is necessary to protect the non-discretionary retail forex accountholder.

So while the Commission continues to believe in the value and effectiveness of such disclosures, it is adopting Regulation 5.5(e) and Regulation 5.18(i) with certain amendments, in order to address concerns regarding the implementation of the rule. As proposed, the calculation for determining whether a retail forex account was profitable or not during a quarter would be net of fees, commissions, any other expenses, trading results, customer funds deposited, and customer funds withdrawn. The regulation as adopted provides further guidance in response to commenters' concerns. The final rule clarifies that a retail forex account will be considered either "profitable" or "not profitable," with "not profitable" including accounts that break-even.

The Commission is also clarifying the required time periods for which the required calculations in Regulation 5.5(e)(1) and 5.5(e)(2) must be made and records maintained and made available. Regulation 5.5(e)(1) requires that information regarding profitable and not profitable accounts for the four most recent quarters be included in disclosure documents; Regulation 5.5(e)(2) requires that similar quarterly information be maintained for five years and provided to requesting customers or potential customers. As to the 5.5(e)(1) information, once these regulations are effective, FCMs and RFEDs must provide the required information for the past four quarters. FCMs and RFEDs also must update this information going forward on a quarterly basis and disclose the most current four quarters in disclosure documents provided to potential customers.

Regulation 5.5(e)(2) requires an RFED or FCM to provide to a customer or potential customer the same account information as set out in Regulation 5.5(e)(1) for the most recent five-year period during which the RFED or FCM maintained non-discretionary retail forex customer accounts, but only at the request of the customer or potential customer. The Commission intends that this requirement to keep and make available five years worth of profitable and non-profitable account information be prospective; following the adoption of these rules, FCMs and RFEDs are required to keep and maintain such data going forward on a quarterly basis until such time as they have amassed five years worth of information, at which point they will have to keep and make available the information for the five most recent years. Furthermore, prior to amassing five years of performance information, an FCM or RFED is obligated to provide, upon request by a customer or prospective customer, the historical quarterly performance information for as many quarters as the FCM or RFED has available.

In addition, to provide clarity regarding the type of accounts that must be used in making the calculation of profitable and unprofitable accounts, FCMs and RFEDS must use those retail forex accounts, as defined in Regulation 5.1(i), that are non-discretionary accounts; *Provided,* that the retail forex account is not a proprietary account, as

[14] NFA is currently the only futures association registered with the Commission.

[15] *See* 75 FR 3282, 3285.

defined in Regulation 5.18(i)(3). The Commission believes that excluding proprietary accounts will help minimize the possibility of skewed results stemming from differing methods of calculation. The Commission is also requiring that the data be calculated on a calendar year basis for all counterparties.

Guarantee Requirement for IBs Who Introduce Retail Forex Business. The Commission proposed in Regulation 5.18(h) to require that any person within the definition of an IB under Regulation 5.1(f)(1) (or applicant for registration as such, or successor to the business of such) enter into a guarantee agreement with an FCM or an RFED. The IB would be permitted to enter such an agreement with only one FCM or RFED. The rationale behind this requirement was to make FCMs and RFEDs exercise care with regard to entities with which they do business by making them jointly and severally liable for all obligations of the IB under the Act and Commission Regulations with respect to the solicitation of retail forex transactions. This would, in turn, discourage them from associating with IBs without regard to the sales practices employed by those IBs.

Commenters called the banning of independent IBs in the retail forex business harsh and said it could lead to less customer choice and poorer service. Others said that requiring a guarantee agreement was anticompetitive and unnecessary, as most enforcement activity concerns unregistered industry participants, and that guarantee agreements have been a substitute for minimum capital for as long as the IB registration category has existed.

After considering the comments, the Commission has determined to permit IBs who register in order to transact retail forex business (like IBs who register to transact futures and commodity options business), to choose between entering into a guarantee agreement with an FCM or RFED, and maintaining the existing IB minimum net capital requirement. Accordingly, IBs, whether they register to do retail forex business, futures business, or both, must comply with the provisions in the Commission's regulations that apply to IBs; *Provided,* that any IB that operates pursuant to a guarantee agreement meeting the requirements of Regulation 1.10(j) need not meet the minimum net capital requirements set forth in Regulations 1.10, 1.12 and 1.17.

Net Capital Requirements for FCMs and RFEDs. As proposed, Regulation 5.7 implements the $20 million minimum net capital requirement for FCMs engaging in retail forex transactions and for RFEDs (as set forth in the CRA), and to the extent that the FCM's or RFED's total retail forex obligation to its customers exceeds $10 million, the regulation requires an additional five percent of that excess. Several comments urged the Commission to revise proposed Regulation 5.7 to include an exemption from the additional net capital requirement when the FCM or RFED uses "straight-through processing." [16] Referring to the costs imposed by additional capital requirements, the commenters argued that such costs, in addition to the limits imposed by several of the other proposed regulatory requirements, would cause much of the retail forex business to be transferred to offshore jurisdictions without (or with substantially reduced) regulatory protections.[17]

The Commission considered but did not adopt NFA's straight-through processing exemption in its proposal, specifically because the proposed additional capital requirement was intended to provide a capital requirement that directly relates to the size of a firm's liability to retail forex customers. Some firms offering retail forex transactions have liabilities to their retail customers exceeding $10 million. Straight-through processing, although mitigating market exposure for a firm, does not reduce in any way the total liability to retail forex customers who are direct counterparties to the firm and therefore exposed to the credit risk of such firm. Therefore, the Commission is adopting the capital provisions in Section 5.7 as originally proposed.

Separately, a comment letter was received significantly after the comment period was closed objecting to the net capital charges applicable to retail foreign currency options set forth in proposed Regulation 5.7(b)(2)(v)(B). The Commission has determined to adopt that provision as proposed, and to clarify that for both FCMs and RFEDs unlisted retail forex options are subject to the existing net capital charges that are applicable to an FCM for any other unlisted foreign currency option that is entered into with any eligible contract participant (which treatment is also consistent with the treatment of all unlisted options, including foreign currency options, for securities broker-dealers).

Requirement To Appoint a Chief Compliance Officer. Proposed Regulation 5.18(j) calls for each retail forex counterparty (defined to include a retail foreign exchange dealer, an FCM or an affiliated person of an FCM) to designate a Chief Compliance Officer. In proposing this requirement, the Commission sought to promote customer protection by focusing responsibility for an entity's regulatory compliance. This requirement was criticized on the basis that potential personal liability for a Chief Compliance Office would discourage individuals from assuming that position, and because no comparable requirement exists for firms engaging in on-exchange transactions.

The Commission continues to believe that, given the history of fraudulent and improper behavior in the retail forex business, requiring a Chief Compliance Officer is a reasonable way to ensure that retail forex counterparties observe the highest professional standards and take their compliance obligations seriously. Accordingly, this requirement is retained in final Regulation 5.18.

Prohibition of Guarantees Against Customer Loss. Proposed Regulation 5.16 would prohibit, among other things, the making of guarantees against loss to retail foreign exchange customers by FCMs, RFEDs and IBs. One currently registered FCM commented that firms should be allowed to guarantee that clients will not lose more than their account balance because technology allows for automatic liquidation of positions if the account balance falls below margin requirements.

The Commission notes that not all retail forex counterparties have comparable capabilities to deal with events such as extremely volatile markets. Moreover, proposed regulation 5.16 is based on Commission Regulation 1.56, which prohibits FCMs and IBs engaged in futures and commodity option transactions from making similar guarantees. At the time the Commission proposed Regulation 1.56, it specifically noted that the use of limited-risk and guarantee-against-loss agreements had "often been associated with patterns of allegedly unlawful conduct by FCMs or other registrants or with the financial instability of such persons." [18] The Commission does not view these dual concerns—rooted in consumer protection and the financial stability of firms—as any less compelling today and

[16] NFA's Financial Requirement Section 11 currently contains such an exemption from an additional capital requirement for member firms using straight-through-processing for all customer transactions.

[17] This argument is diminished by the recent enactment of the Wall Street Reform Act, which clearly indicates the intent of Congress that retail forex transactions in the United States either be comprehensively regulated or be prohibited outright. *See* Wall Street Reform Act, Sec. 742.

[18] *See* 46 Fed. Reg. 62841 (Dec. 29, 1981).

has determined to issue the regulation as proposed.

Specific Authorization for Trades. Two commenters expressed a concern regarding proposed Regulation 5.17, which requires RFEDs, FCMs, IBs, and their APs to have specific authorization by the customer before effecting a retail forex transaction. The concerns centered on the use of automated systems that generate orders based on the trader's specifications. According to the commenters, both IBs and forex counterparties may run such software on their servers for traders.

Neither commenter provided a great deal of detail regarding the mechanics of such automated trading programs, and the Commission cannot offer its view of any particular program. However, the Commission believes that if such programs are nothing more than automated order entry platforms, and all relevant trading parameters are set and controlled by the customer—including, for example, the designation of the currency pair to be traded, the amount of currency to be bought or sold, the price at which orders should be placed, and the amount of money to be committed to trading—then trades generated by such programs would originate from the customer and no additional authorization would be required. However, Commission staff will monitor the use of such programs. Any features that would appear to constitute discretion, strategy or advice on the behalf of the sponsoring entity would require a different analysis and, in addition to potentially triggering application of Regulation 5.17, may have additional registration implications.

Requirement To Close Out Offsetting Positions. One commenter objected to the Commission's proposed amendment to Regulation 1.46, which would require RFEDs and FCMs engaging in off-exchange retail forex transactions to close out offsetting long and short positions in a retail forex customer's account, regardless of whether a customer instructs otherwise. Citing the prevalence of spread trades in futures trading, the commenter maintained that there is no economic distinction between commodity futures and forex transactions with respect to offsetting long and short positions.

The Commission continues to believe that maintaining open long and short positions in a retail forex customer's account removes the opportunity for the customer to profit on the transaction, increases the fees paid by the customer, and invites abuse. Nothing submitted by any commenter has demonstrated otherwise. Moreover, spread trades executed on-exchange typically involve the purchase of one futures delivery month against the sale of another futures delivery month of the same commodity, or the purchase of one delivery month of one commodity against the sale of that same delivery month of a different commodity. Because retail forex contracts are not listed by delivery month, spread trades of this sort are not possible in retail forex accounts, and open long and short contracts in the same currency pair are truly offsetting. Accordingly, the Commission has determined to adopt Regulation 1.46 as proposed.

Re-quoting. Two comments were received regarding Regulation 5.18(f), which would, among other things, prohibit retail forex counterparties from providing a customer a new bid (or asked) price that is higher (or lower) than a previous price without providing a new asked (or bid) price that is higher (or lower) as well. One commenter maintained that the proposed rule would not take into account that in the forex market, spreads can increase dramatically, which might cause the new bid price to be higher and the new ask price to be lower.

While a fast-moving market may affect the spread, the Commission's proposed rule is intended to apply to those situations where a customer is quoted one bid/asked price, and rather than fill the order, the FCM or RFED provides a second quote. In this situation, the Commission believes that if the forex dealer re-quotes the price, then at a minimum, the spread should remain the same.

A second commenter suggested that the Commission clarify that all "re-quote" practices are required to be objective and evenhanded and that a counterparty that re-quotes a price must do so regardless of the direction the market moves. Further, the commenter suggested that the Commission require counterparties to disclose to customers how orders that reach the platform at a price no longer available are handled.

The Commission believes the intent of proposed Regulation 5.18 is clear. It requires that, when re-quoting prices, forex counterparties are obligated to do so in a symmetrical fashion, so that the re-quoted prices do not represent an increase in the spread from the initially quoted prices, regardless of the direction the market moves. As to the objectiveness of the re-quote, the Commission believes that the requirement that both bid and asked prices be re-quoted symmetrically will encourage objectivity. Moreover, proposed Regulations 5.18(b)(3) and 5.18(b)(iv) require, respectively, that forex counterparties establish and enforce internal rules, procedures and controls to "[f]airly and objectively establish settlement prices for retail forex transactions" and to maintain records reflecting "any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which the customer orders are executed * * *." The Commission believes that this should provide adequate incentive for firms to deal fairly and objectively with their customers with regard to re-quoting.

Finally, as to the suggested disclosure, as proposed, Regulation 5.5 would require FCMs, RFEDs and IBs engaged in retail forex transactions to distribute to retail forex customers a written disclosure statement containing, among other things, the following statement:

> Your ability to close your transactions or offset positions is limited to what your dealer will offer to you, as there is no other market for these transactions. Your dealer may offer any prices it wishes, and it may offer prices derived from outside sources or not in its discretion. Your dealer may establish its prices by offering spreads from third party prices, but it is under no obligation to do so or to continue to do so. Your dealer may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obligations your dealer has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by your dealer may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

While the proposed disclosure language does not require a statement regarding how re-quoted prices are handled, it does inform the customer that it is within the discretion of the forex dealer to set prices (provided they otherwise comply with the requirements of Regulation 5.18). For this reason, and those cited above, the Commission has determined to issue Regulation 5.18(f) as proposed.

CFTC Authority To Regulate Zelener Contracts. One commenter, a law firm, argued that the CRA did not grant the Commission the authority to regulate, other than for fraud, FCMs that are primarily or substantially engaged in trading futures contracts on registered exchanges to the extent they also offer off-exchange *Zelener,* or "futures look-alike" forex, contracts.[19] To the extent legislative history suggests that similarly situated RFEDs and FCMs should be subject to the same regulations, the

[19] *See* 7 U.S.C. 2(c)(2)(C)(ii) and 2(c)(2)(C)(iii) regarding the scope of the Commission's authority to write rules with regard to leveraged or margined foreign currency contracts offered to non-ECPs.

commenter maintains that this language is restricted to requirements relating to the financial soundness of the forex dealer and nothing else.

The CRA contains several provisions that touch on the scope of the Commission's jurisdiction over retail off-exchange foreign currency contracts, whether futures or look-alike, leveraged contracts. Retail off-exchange forex futures and options transactions are subject to numerous provisions of the Act including sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d), 6c, 6d, 8(a), 13(a), 13(b), if they are offered or entered into by an FCM, an RFED, or an affiliate of an FCM that is not one of the otherwise regulated entities specified in the Act.[20] The same provisions apply to look-alike forex transactions.[21] The CRA clearly gives the Commission full rulemaking authority over the agreements, contracts or transactions in retail forex where "reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the] Act." [22] On the other hand, however, while the CRA explicitly grants the Commission rulemaking authority over off-exchange retail futures and options transactions where such transactions are offered or entered into by FCMs, their affiliates or RFEDs,[23] its rulemaking authority with regard to look-alike transactions does not explicitly include FCMs. Thus, the commenter concludes that language in Sections 2(c)(2)(C)(ii) and 2(c)(2)(C)(iii) limits the Commission's authority in this area where FCMs are concerned.

The Commission disagrees. Section 8a(5) of the Act gives the Commission the broadest possible authority to "make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act[.]" [24] Under this authority, the Commission has promulgated rules covering the full scope of FCM activities generally. Furthermore, the recent Wall Street Reform and Consumer Protection Act of 2010 specifically defines FCMs as any "individual, association, partnership, corporation, or trust * * * that * * * is * * * acting as a counterparty in any agreement, contract or transaction described in Section 2(c)(2)(C)(i)" of the Act,[25] making it clear that the offering of "look-alike" transactions falls within the scope of regulated FCM activity. Accordingly, the Commission sees no deficiencies in its authority to fully regulate FCMs engaged in "look-alike" forex contracts.[26]

Definition of Retail Forex Transactions. One commenter pointed out that the definition of "retail forex transactions" found in proposed Regulation 5.1(m) refers to "any account, agreement, contract or transaction" described in Section 2(c)(2)(B) or 2(c)(2)(C) of the Act and notes that the use of the word "account" in this context is confusing.

Broad language in Section 2(c)(2)(B)(i) of the Act provides the Commission with jurisdiction over "an agreement, contract or transaction in foreign currency" that is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than one traded on a securities exchange). Elsewhere in Section 2(c), the statute states that certain of its provisions apply to "agreements, contracts or transactions * * * and accounts or pooled investment vehicles * * *." [27] In order to accurately reflect the full scope of authority granted it under the Act, the Commission included the word "accounts" within the definition of "retail forex transactions." The Commission does not view this as in any way inconsistent with language in Section 2(c), as amended by the CRA, and has determined to adopt the regulation as proposed.

Anticompetitiveness. In addition to similar comments specifically referencing proposed Regulation 5.9 (security deposits) and 5.18(h) (guaranteed IBs)—which are addressed above—the Commission received numerous comments arguing that various other sections of the proposed rules were "anticompetitive" insofar as there is no comparable requirement relative to those engaged in futures transactions on designated contract markets. As the Commission pointed out in its Proposing Release, it has, whenever possible, drawn upon the principles that have guided it in the regulation of on-exchange instruments. However, the Commission also noted that there are essential differences between the trading futures contracts on designated contract markets that are cleared through designated clearing organizations, on the one hand, and off-exchange transactions between forex firms and retail customers, on the other.[28]

Given the principal-to-principal nature of retail forex transactions and the inherent conflicts of interest in the relationship between the retail customer and the dealer/counterparty, the lack of transparency in the pricing and execution of such transactions, and the volume of fraud the Commission has seen arising from such transactions, the Commission has determined to promulgate some regulations that are unique to, and tailored to, retail forex transactions. By way of example, the Commission's proposed regulations included requirements that forex registrants maintain records of customer complaints; that counterparties disclose, with the Risk Disclosure Statement, the percentage of profitable nondiscretionary forex customer accounts; and that forex counterparties designate a chief compliance officer to be responsible for development and implementation of customer protection policies and procedures. To the extent the final rules published today do not track precisely with rules applicable to on-exchange futures trading, the Commission believes that the differences reflect meaningful differences in the market structure of retail forex transactions and that the rules issued today are no more restrictive or burdensome than necessary to address these differences.

Scope of Commission's Authority and Application of Other Rules. Several commenters lodged criticisms or made observations that go to the scope of the Commission's authority, as provided in the Act and CRA, or otherwise. For example, several commenters maintained that the Commission should require segregation of customer funds by counterparties in order to provide some protection in the event of a counterparty insolvency. The Commission's segregation requirements with regard to futures flow from Section 4d of the Act [29] which, generally speaking, requires that customer property for trading commodity contracts be kept apart, or segregated, from the FCM's own funds. However, as noted in the

[20] *See* 7 U.S.C. 2(c)(2)(B)(iii).

[21] *See* 7 U.S.C. 2(c)(2)(C)(ii)(I).

[22] *See* 7 U.S.C. 2(c)(2)(B)(iv)(III); 2(c)(2)(B)(v); 2(c)(2)(C)(ii)(III); 2(c)(2)(C)(iii)(III).

[23] *See* 7 U.S.C. 2(c)(2)(B)(v).

[24] *See* 7 U.S.C. 12a(5) (2006).

[25] *See* Wall Street Reform Act, Sec. 721(a)(13).

[26] The Commission also disagrees with the argument that CRA Conference Report language is inapposite. The Conference Report states that "[t]o the extent their risk profiles are similar, the managers intend for FCMs and RFEDs to be *regulated substantially equivalently* in terms of their *off-exchange retail foreign currency business.* The managers do not intend for the Commission to provide either FCMs or RFEDs with a more favorable *regulatory environment* over the other or to create two significantly different *regulatory regimes* for similar business models—to the extent the financial risks posed by such operations are similar." *See* H.R. Rep. No. 110–627 at 980 (Conf. Rep.) (emphasis added).

[27] *See,* for example, 7 U.S.C. 2(c)(2)(B)(iii).

[28] 75 FR 3282, 3285–86.

[29] 7 U.S.C. 6(c) (2006).

Commission's proposing release,[30] a segregated funds regime cannot be replicated in the context of off-exchange retail forex trading. Unlike segregation of customer funds deposited for futures trading, under the relevant provisions of the Bankruptcy Code,[31] such amounts held in connection with retail forex trading would not receive any preferential treatment to unsecured creditors in bankruptcy.

Similarly, some commenters took issue with the definitions of certain intermediaries and the capital requirements, found in the Proposing Release. Here again, the Commission is bound by statutory language that defines the scope of its authority.[32] While the Commission appreciates the concerns expressed by these commenters and the time they have taken to express them, it can do no more than its statutory authority permits.

III. Related Matters

A. Regulatory Flexibility Act

FCMs and CPOs: The Regulatory Flexibility Act ("RFA")[33] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[34] The Commission has already established certain definitions of "small entities" to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[35] In that statement, the Commission concluded that neither FCMs nor registered CPOs should be considered to be small entities for purposes of the RFA. With respect to FCMs, the Commission's determination was based in part upon their obligation to meet the capital requirement established by the Commission and the purposes of protecting financial integrity.[36]

As for CPOs, the Commission determined that registered CPOs are not small entities based upon its existing regulatory standard for exempting certain small CPOs from the requirement to register under the Act.[37] (A CPO need not register with the Commission if the gross capital contributions for all pools under its management do not exceed $400,000 and there are not more than fifteen participants in any one of those pools.[38])

Thus, with respect to FCMs and registered CPOs, the Commission believes that these final rules will not have a significant economic impact on a substantial number of small entities.

CTAs: The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some CTAs should be considered to be small entities, and if so, to then analyze the economic impact on them of any such rule.[39] CTAs wishing to advise retail forex customers may include both currently registered CTAs and previously unregistered persons who now will be required to register. As to the first group, there should be no significant new economic impact. As to the second group, registration will require the submission of application forms, fingerprinting of principals, and payment of registration fees. To the extent that CTAs can be considered to be small entities, the Commission does not consider either the proposed registration fee or the proposed fingerprinting requirement for newly registered CTAs to have significant economic impact.[40]

IBs: In 1983, the Commission proposed that for purposes of the RFA and future rulemakings, it would not consider introducing brokers to be "small entities" for essentially the same reasons that FCMs had previously been determined not to be small entities.[41] This was based, in part, on the fact that IBs, like FCMs, are required to maintain a specified level of adjusted net capital. In the Proposing Release, retail forex IBs would not have been subject to a capital requirement; rather, they would have had to operate pursuant to a guarantee agreement. Under the final rules, retail forex IBs will be treated no differently than futures IBs. Accordingly, and in keeping with past Commission determinations, the Commission believes that the final rules with respect to IBs will not have a significant impact on a substantial number of small entities.

RFEDs: RFEDs are a new category of registrant. The Commission does not believe that there are regulatory alternatives to those being proposed which would be consistent with the statutory mandate to provide protection to the public against irresponsible or fraudulent business practices. In the Proposing Release, the Commission proposed that RFEDs not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.[42] As with FCMs, a requirement to maintain a specified level of adjusted net capital would be imposed upon RFEDs to ensure that they maintain sufficient capital resources to guarantee their financial accountability and to promote responsible and reliable business operations. Moreover, the Commission has sought to fashion its proposed regulatory program for RFEDs in a manner which is responsive to the function, purposes, and size of the entity being regulated consistent with the objective of the RFA. In particular, the minimum capital requirement required by the CRA effectuates the Congressional purpose that RFEDs maintain sufficient reserve of capital to remain economically viable. For the reasons stated above, the Commission will not define RFEDs as small entities for RFA purposes.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 ("PRA")[43] 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. The Commission's final rules regarding retail forex transactions result in information collection requirements within the meaning of the PRA. The Commission submitted the proposing release along with supporting documentation to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve, and with respect to the collections required under the new part 5 of the Commission's regulations, assign a new control number for, the collections of information required by the proposing release. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the proposing release, are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information

[30] 75 FR 3281, 3287 and 3290 (Jan. 20, 2010).

[31] 11 U.S.C. 761, *et seq.*

[32] *See,* for example, Section 2(c)(2)(B)(iv)(I) of the Act, 7 U.S.C. 2(c)(2)(B)(iv)(I), which provides the Commission with the authority to register and promulgate rules regarding specifically defined persons or entities. *See also* Section 2(c)(2)(B)(ii) of the Act which explicitly provides for a $20 million minimum capital requirement.

[33] 5 U.S.C. 601, *et seq.*

[34] By its terms, the RFA does not apply to "individuals." See 48 FR 14933, n. 115 (April 6, 1983). Because associated persons must be individuals, (see Commission Regulation 1.3(aa) and proposed Regulations 5.1(c), (d)(2), (e)(2), (g)(2) and (i)(2)), the RFA does not apply to APs and no analysis of the economic impact of this rule proposal on such persons is required.

[35] 47 FR 18618 (April 30, 1982).

[36] *Id.* at 18619.

[37] *Id.* at 18619–20.

[38] 17 CFR 4.13(a)(2) (2009).

[39] 47 FR 18618, 18620.

[40] 48 FR 35248, 35276 (August 3, 1983)

[41] 48 FR 14933, 14955 (Apr. 6, 1983). See also 47 FR 18618, 18619.

[42] *Id.*

[43] 44 U.S.C. 3501, *et seq.*

collection requirements discussed above. The Commission received no comment on its burden estimates or on any other aspect of the information collection requirements contained in its proposing release. The affected collections are as follows:

- Existing Collection 3038–0024 (part 1 of the Commission's regulations);
- Existing Collection 3038–0023 (part 3 of the Commission's regulations);
- Existing Collection 3038–0005 (part 4 of the Commission's regulations);
- Existing Collection 3038–0055 (part 160 of the Commission's regulations); and
- New Collection 3038–0062 (part 5 of the Commission's regulations).

C. Cost-Benefit Analysis

Section 15(a) of the Act [44] requires the Commission to consider the costs and benefits of its action before issuing new regulations under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern, enumerated below. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

As discussed in more detail above, these amendments are intended to create a comprehensive scheme to implement the requirements of the CRA, and to put in place requirements including registration, disclosure, recordkeeping, financial reporting, minimum capital and other operational standards. This is to be achieved through both amendments to existing regulations and the creation of a new, free-standing part to the Commission's regulations. The Commission is considering the costs and benefits of the amendments in light of the specific provisions of section 15(a) as follows:

1. Protection of market participants and the public. The amendments should enhance considerably the protection of market participants and the public because they require, for the first time, the registration of several categories of market participants and require adherence to operational standards that have not previously applied. The benefits that inhere in the imposition of these requirements to a sector of the off-exchange market that has been largely unregulated to this point, and which is geared towards the retail public, are manifest.

2. Efficiency and competition. In its Conference Report, Congress indicated that the Commission should avoid creating two different regulatory regimes for similar business models with respect to FCMs or RFEDs engaging in off-exchange retail forex transactions.[45] Accordingly, the Commission has endeavored to ensure that these entities be treated in comparable fashion relative to one another. Moreover, the Commission has endeavored, wherever possible, to propose regulations in part 5 that are analogous to regulations imposed upon intermediaries engaged in on-exchange transactions. Accordingly, the Commission believes that it has provided an even handed regulatory scheme that will be familiar to industry participants.

3. Financial integrity of futures markets and price discovery. The amendments concern retail, off-exchange markets. These markets serve primarily as a vehicle for members of the retail public to engage in speculative transactions. Accordingly, the Commission does not perceive a significant intersection between the operations of these markets and the financial integrity or price discovery functions of the markets generally.

4. Sound risk management practices. The amendments include requirements regarding capital, financial reporting, risk assessment recordkeeping, and risk assessment reporting that are comparable to those required of entities engaged in on-exchange trading. The Commission believes that the benefits of these risk management requirements—which strive to ensure the financial soundness of firms—have been borne out on the exchange-traded side and will be of significant benefit with regard to its oversight of retail forex counterparties.

5. Other public interest considerations. The retail, off-exchange forex market has been largely unregulated until now. The Commission believes that the amendments are beneficial in that they will provide needed protections for members of the public engaging in these transactions. The amendments will also bring much needed oversight to the forex counterparties and intermediaries that interact with the public.

After considering these factors, the Commission has determined to adopt the proposed rule changes. The Commission did not receive any comments relative to its analysis of the cost-benefit provision.

List of Subjects

17 CFR Part 1

Definitions, Minimum financial and reporting requirements. Recordkeeping requirements, Prohibited transactions in commodity options, Miscellaneous.

17 CFR Part 3

Definitions, Customer protection, Licensing, Registration.

17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Exemption from registration, Reporting and recordkeeping requirements.

17 CFR Part 5

Bulk transfers, Commodity pool operators, Commodity trading advisors, Consumer protection, Customer's money, securities and property, Definitions, Foreign exchange, Minimum financial and reporting requirements, Prohibited transactions in retail foreign exchange, Recordkeeping requirements, Retail foreign exchange dealers, Risk assessment, Special calls, Trading practices.

17 CFR Part 10

Adjudicatory proceedings, Rules of practice.

17 CFR Part 140

Authority delgations (Government agencies, Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 145

Confidential business information, Freedom of information.

17 CFR Part 147

Sunshine Act.

17 CFR Part 160

Consumer financial information, Definitions, Nonpublic personal information, Privacy.

[44] 7 U.S.C. 19(a).

[45] As noted in the Conference Report that accompanied the CRA, "To the extent their risk profiles are similar, the managers intend for FCMs and RFEDs to be regulated substantially equivalently in terms of their off-exchange retail foreign currency business." H.R. Rep. No. 110–627, at 980 (2008) (Conf. Rep.). The Conference Report is available via the Internet on the CFTC's Web site.

17 CFR Part 166

Arbitration, Authorization to trade, Customer protection, Definitions, Dispute settlement, Litigation, Reparations.

■ For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6*l*, 6m, 6n, 6*o*, 6p, 7, 7a, 7b, 8, 9, 12, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

§ 1.1 [Removed and Reserved]

■ 2. Section 1.1 is removed and reserved.

■ 3. Section 1.3 is amended by revising paragraphs (nn) and (yy) to read as follows:

§ 1.3 Definitions.

* * * * *

(nn) *Guarantee agreement.* This term means an agreement of guaranty in the form set forth in part B or C of Form 1–FR, executed by a registered futures commission merchant or retail foreign exchange dealer, as appropriate, and by an introducing broker or applicant for registration as an introducing broker on behalf of an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement set forth in § 1.17(a)(1)(iii).

* * * * *

(yy) *Commodity interest.* This term means:

(1) Any contract for the purchase or sale of a commodity for future delivery;

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act; and

(3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act.

■ 4. Section 1.4 is revised to read as follows:

§ 1.4 Use of electronic signatures.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a document to be signed by a customer of a futures commission merchant or introducing broker, a retail forex customer of a retail foreign exchange dealer or futures commission merchant, a pool participant or a client of a commodity trading advisor, an electronic signature executed by the customer, participant or client will be sufficient, if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator or commodity trading advisor elects generally to accept electronic signatures; *Provided, however,* That the electronic signature must comply with applicable Federal laws and other Commission rules; And, *Provided further,* That the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator or commodity trading advisor must adopt and utilize reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

■ 5. Section 1.10 is amended by revising paragraph (j) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(j) *Requirements for guarantee agreement.* (1) A guarantee agreement filed pursuant to this section must be signed in a manner sufficient to be a binding guarantee under local law by an appropriate person on behalf of the futures commission merchant or retail foreign exchange dealer and the introducing broker, and each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the futures commission merchant, retail foreign exchange dealer, or introducing broker and is such an appropriate person. For purposes of this paragraph (j), an appropriate person shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation; and, if the firm is a limited liability company or limited liability partnership, either the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership.

(2) No futures commission merchant or retail foreign exchange dealer may enter into a guarantee agreement if:

(i) It knows or should have known that its adjusted net capital is less than the amount set forth in § 1.12(b) of this part or § 5.6(b) of this chapter, as applicable; or

(ii) There is filed against the futures commission merchant or retail foreign exchange dealer an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of this chapter.

(3) A retail foreign exchange dealer may enter into a guarantee agreement only with an introducing broker as defined in § 5.1(f)(1) of this chapter. A retail foreign exchange dealer may not enter into a guarantee agreement with an introducing broker as defined in § 1.3(mm) of this part.

(4) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(5)(i) If the registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant or retail foreign exchange dealer is suspended or revoked, the guarantee agreement shall expire 30 days after such suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

(6) A guarantee agreement may be terminated at any time during the term thereof:

(i) By mutual written consent of the parties, signed by an appropriate person on behalf of each party, with prompt written notice thereof, signed by an appropriate person on behalf of each party, to the Commission and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker;

(ii) For good cause shown, by either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures

commission merchant or retail foreign exchange dealer and the introducing broker; or

(iii) By either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, at least 30 days prior to the proposed termination date, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker.

(7) The termination of a guarantee agreement by a futures commission merchant, retail foreign exchange dealer or an introducing broker, or the expiration of such an agreement, shall not relieve any party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement.

(8) An introducing broker may not simultaneously be a party to more than one guarantee agreement: *Provided, however,* That the provisions of this paragraph (j)(8) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant or retail foreign exchange dealer if the introducing broker, futures commission merchant or retail foreign exchange dealer which is a party to the existing agreement has provided notice of termination of the existing agreement in accordance with the provisions of paragraph (j)(6) of this section, and the new guarantee agreement does not become effective until the day following the date of termination of the existing agreement: *And, provided further,* That the provisions of this paragraph (j)(8) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant or retail foreign exchange dealer if the futures commission merchant or retail foreign exchange dealer which is a party to the existing agreement ceases to remain registered and the existing agreement would therefore expire in accordance with the provisions of paragraph (j)(6)(ii) of this section.

(9)(i)(A) An introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(6) of this section, or that is due to expire in accordance with the provisions of paragraph (j)(5)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed: *Provided, however,* that an introducing broker as defined in § 5.1(f)(1) of this chapter that is party to a guarantee agreement that has been terminated or that has expired must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization a new guarantee agreement effective on or before the termination or expiration date of the terminating or expiring guarantee agreement.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii)(A) Notwithstanding the provisions of paragraph (j)(9)(i) of this section or of § 1.17(a), an introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(6)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(iii) or (a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed: *Provided, however,* that an introducing broker as defined in § 5.1(f)(1) of this chapter that is party to a guarantee agreement that has been terminated must cease doing business as an introducing broker from and after the effective date of such termination, and may not resume doing business as an introducing broker as defined in § 5.1(f)(1) of this chapter unless and until it files a new guarantee agreement.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

■ 6. Section 1.35 is amended by revising paragraphs (a), (a–1) and (b) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

(a) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of contract markets.* Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, retail forex transactions, commodity options, and cash commodities (including currencies). Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall retain the required records, data, and memoranda in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States

Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda, which have been prepared in the course of its business of dealing in commodity futures, retail forex transactions, commodity options, and cash commodities. Among such records each member of a contract market must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission or the contract market. For purposes of this section, such documents are referred to as "original source documents."

(a–1) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of contract markets: Recording of customers' and option customers' orders.* (1) Each futures commission merchant, each retail foreign exchange dealer and each introducing broker receiving a customer's, retail forex customer's or option customer's order, as applicable, shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (a–1)(5) of this section or appendix C to this part, and order number and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

(ii) Except as provided in paragraph (a–1)(3) of this section:

(A) Each contract market member who on the floor of such contract market receives an order from another member present on the floor which is not in the form of a written record shall, immediately upon receipt of such order, prepare a written record of the order or obtain from the member who placed the order a written record of the order, in non-erasable ink including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received; or

(B) When a contract market member present on the floor places an order, which is not in the form of a written record, for his own account or an account over which he has control, with another member of such contract market for execution:

(*1*) The member placing such order immediately upon placement of the order shall record the order and time of placement to the nearest minute on a sequentially-numbered trading card maintained in accordance with the requirements of paragraph (d) of this section;

(*2*) The member receiving and executing such order immediately upon execution of the order shall record the time of execution to the nearest minute on a trading card or other record maintained pursuant to the requirements of paragraph (d) of this section; and

(*3*) The member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then must submit together both of the trading cards or other records documenting such trade to contract market personnel or the clearing member, in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(iii) Each contract market may adopt rules, which must be submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, that provide alternative requirements to those contained in paragraph (a–1)(2)(ii) of this section. Such rules shall, at a minimum, require that the contemporaneous written records:

(A) Contain the terms of the order;

(B) Include reliable timing data for the initiation and execution of the order which would permit complete and effective reconstruction of the order placement and execution; and

(C) Be submitted to contract market personnel or clearing members in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(3)(i) The requirements of paragraph (a–1)(2)(ii) of this section will not apply if a contract market maintains in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, which provide for an exemption where:

(A) A contract market member places with another member of such contract market an order that is part of a spread transaction;

(B) The member placing the order personally executes one or more legs of the spread; and

(C) The member receiving and executing such order immediately upon execution of the order records the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (d) of this section.

(ii) Each contract market shall, as part of its trade practice surveillance program, conduct surveillance for compliance with the recordkeeping and other requirements under paragraphs (a–1) (2) and (3) of this section, and for trading abuses related to the execution of orders for members present on the floor of the contract market.

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of the contract market received in accordance with paragraphs (a–1)(2)(i) or (a–1)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, by timestamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on the order tickets must be written in nonerasable ink.

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a–1)(5)(i)–(iv) of this section are met.

(i) *Eligible account managers.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion

with regard to participating customer accounts. The following persons shall qualify as eligible account managers:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) or § 4.14(a)(6) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter.

(ii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the account manager has an interest.

(iii) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) *Records.* (A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a–1)(5)(ii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a–1)(5)(iii) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants that execute orders or that carry accounts eligible for post-execution allocation, and members of contract markets that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B) of this section, the Commission may inform in writing any designated contract market or derivatives transaction execution facility and that designated contract market or derivatives transaction execution facility shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market or derivatives transaction execution facility from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (a–1)(5)(iv)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

* * * * *

(b) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and clearing members of contract markets.* Each futures commission merchant, each retail foreign exchange dealer, and each clearing member of a contract market and, for purposes of paragraph (b)(3) of this section, each introducing broker, shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer or retail forex customer or option customer all charges against and credits to such customer's or retail forex customer's or option customer's account, including but not limited to customer or retail forex customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including proprietary accounts):

(i) All commodity futures transactions executed for such account, including the date, price, quantity, market, commodity and future;

(ii) All retail forex transactions executed for such account, including the date, price, quantity, and currency; and

(iii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission and fees; and

(3) A record or journal which will separately show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made; and

(iii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery, or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees and the person for whom the transaction was made; and

(iv) In the case of an introducing broker, the record or journal required by this paragraph (b)(3) shall also include the futures commission merchant or

retail foreign exchange dealer carrying the account for which each commodity futures, retail forex and commodity option transaction was executed on that day. Provided, however, that where reproductions on microfilm, microfiche or optical disk are substituted for hard copy in accordance with the provisions of § 1.31(b) of this part, the requirements of paragraphs (b)(1) and (b)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity retail forex or commodity option books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request of any representatives of the Commission or the U.S. Department of Justice.

* * * * *

■ 7. Section 1.36 is amended by revising paragraph (a) to read as follows:

§ 1.36 Record of securities and property received from customers and option customers.

(a) Each futures commission merchant and each retail foreign exchange dealer shall maintain, as provided in § 1.31, a record of all securities and property received from customers, retail forex customers or option customers in lieu of money to margin, purchase, guarantee, or secure the commodity, retail forex or commodity option transactions of such customers, retail forex customers or option customers. Such record shall show separately for each customer, retail forex customer or option customer: A description of the securities or property received; the name and address of such customer, retail forex customer or option customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated or held; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such customer, retail forex customer or option customer, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission merchant deposits with the clearing organization of a contract market, directly or with a bank or trust company acting as custodian for such clearing organization, securities and/or property which belong to a particular customer or option customer, such futures commission merchant shall obtain written acknowledgment from such clearing organization that it was informed that such securities or property belong to customers or option customers of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in § 1.31.

* * * * *

■ 8. Section 1.37 is amended by revising paragraph (a)(1) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

(a)(1) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each commodity futures, retail forex or option account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each such commodity option account, the records kept by such futures commission merchant, introducing broker, and member of a contract market must also show the name of the person who has solicited and is responsible for each option customer's account or assign account numbers in such a manner to identify that person.

* * * * *

■ 9. Section 1.40 is revised to read as follows:

§ 1.40 Crop, market information letters, reports; copies required.

Each futures commission merchant, each retail foreign exchange dealer, each introducing broker and each member of a contract market shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, telegram, or report published or given general circulation by such futures commission merchant, retail foreign exchange dealer, introducing broker or member which concerns crop or market information or conditions that affect or tend to affect the price of any commodity or exchange rate, and the true source of or authority for the information contained therein.

■ 10. Section 1.46 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* (1) Except with respect to purchases or sales which are for omnibus accounts, or where the customer or account controller has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated contract market or registered derivatives transaction execution facility:

(i) Purchases any commodity for future delivery for the account of any customer when the account of such customer at the time of such purchase has a short position in the same future of the same commodity on the same market;

(ii) Sells any commodity for future delivery for the account of any customer when the account of such customer at the time of such sale has a long position in the same future of the same commodity on the same market;

(iii) Purchases a put or call option for the account of any option customer when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that purchased; or

(iv) Sells a put or call option for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold—shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant by an introducing broker and the names of the futures commission merchant and introducing broker.

(2) Any futures commission merchant or retail foreign exchange dealer who:

(i) Engages in a retail forex transaction involving the purchase of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has an open retail forex transaction for the sale of the same currency;

(ii) Engages in a retail forex transaction involving the sale of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has an open retail forex transaction for the purchase of the same currency;

(iii) Purchases a put or call option involving foreign currency for the account of any option customer when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or

(iv) Sells a put or call option involving foreign currency for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold—shall immediately apply such purchase or sale against such previously held opposite transaction, and shall promptly furnish such retail forex customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant or retail foreign exchange dealer by an introducing broker and the names of the futures commission merchant or retail foreign exchange dealer, and the introducing broker.

(b) *Close-out against oldest open position.* In all instances wherein the short or long futures, retail forex transaction or option position in such customer's, retail forex customer's or option customer's account immediately prior to such offsetting purchase or sale is greater than the quantity purchased or sold, the futures commission merchant or retail foreign exchange dealer shall apply such offsetting purchase or sale to the oldest portion of the previously held short or long position: Provided, That upon specific instructions from the customer or option customer the offsetting transaction shall be applied as specified by the customer or option customer without regard to the date of acquisition of the previously held position; and Provided, further, that a futures commission merchant or retail foreign exchange dealer, if permitted by the rules of a registered futures association, may offset, at the customer's request, retail forex transactions of the same size, even if the customer holds other transactions of a different size, but in each case must offset the transaction against the oldest transaction of the same size. Such instructions may also be accepted from any person who, by power of attorney or otherwise, actually directs trading in the customer's, retail forex customer's or option customer's account unless the person directing the trading is the futures commission merchant or retail foreign exchange dealer (including any partner thereof), or is an officer, employee, or agent of the futures commission merchant or retail foreign exchange dealer. With respect to every such offsetting transaction that, in accordance with such specific instructions, is not applied to the oldest portion of the previously held position, the futures commission merchant or retail foreign exchange dealer shall clearly show on the statement issued to the customer, retail forex customer or option customer in connection with the transaction, that because of the specific instructions given by or on behalf of the customer, retail forex customer or option customer the transaction was not applied in the usual manner, *i.e.,* against the oldest portion of the previously held position. However, no such showing need be made if the futures commission merchant or retail foreign exchange dealer has received such specific instructions in writing from the customer, retail forex customer or option customer for whom such account is carried.

* * * * *

■ 11. Section 1.52 is amended by:
■ a. Revising paragraphs (a), and (c) introductory text, (c)(1), and (c)(2);
■ b. Revising paragraphs (g)(3) and (g)(4); and
■ c. Revising paragraphs (h), (j), and (k) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants or registered retail foreign exchange dealers. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17, for futures commission merchants and introducing brokers, and § 5.7 of this chapter for retail foreign exchange dealers. The definition of adjusted net capital must be the same as that prescribed in § 1.17(c) for futures commission merchants and introducing brokers, and § 5.7(b)(2) of this chapter for futures commission merchants offering or engaging in retail forex transactions and for retail foreign exchange dealers: *Provided, however,* A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE, in lieu of Form 1–FR: And, *provided further,* A designated self-regulatory organization may permit its member introducing brokers to file a Form 1–FR–IB in lieu of a Form 1–FR–FCM.

* * * * *

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant, any registered retail foreign exchange dealer, or any registered introducing broker which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the financial reports necessitated by such minimum financial and related reporting requirements.

* * * * *

(g) * * *

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial rules of the self-regulatory organizations submitting the plan for any futures commission merchant, retail foreign exchange dealer, or introducing broker which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant, retail foreign exchange dealer, or introducing broker which is a member of more than one self-regulatory organization;

* * * * *

(h) After the Commission has approved a plan or part of one under § 1.52(g), a self-regulatory organization relieved of responsibility must notify

each of its members which is subject to such a plan:

(1) Of the limited nature of its responsibility for such a member's compliance with its minimum financial and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

* * * * *

(j) Whenever a registered futures commission merchant, a registered retail foreign exchange dealer, or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, DC, and send a copy of that notification to such futures commission merchant, retail foreign exchange dealer, or such introducing broker.

(k) Nothing in this section shall preclude the Commission from examining any futures commission merchant, retail foreign exchange dealer, or introducing broker for compliance with the minimum financial and related reporting requirements to which such futures commission merchant, retail foreign exchange dealer, or introducing broker is subject.

* * * * *

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23.

■ 13. Section 3.1 is amended by revising paragraph (c) to read as follows:

§ 3.1 Definitions.

* * * * *

(c) *Sponsor.* Sponsor means the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of this part for the registration of an associated person of such sponsor.

* * * * *

■ 14. Section 3.4 is amended by revising paragraph (a) to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, floor broker, floor trader, associated person, commodity trading advisor, commodity pool operator, introducing broker, and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided, however,* That a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

■ 15. Section 3.10 is amended by:

■ a. Revising the heading;

■ b. Revising paragraph (a)(1);

■ c. Revising paragraph (b); and

■ d. Revising paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1)(i) Except as provided in paragraph (a)(3) of this section, application for registration as a futures commission merchant, retail foreign exchange dealers, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant, retail foreign exchange dealer or introducing broker must accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7–R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

* * * * *

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant or retail foreign exchange dealer in accordance with § 1.10(j) of this chapter will have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

* * * * *

(d) On a date to be established by the National Futures Association, and in accordance with procedures established by the National Futures Association, each registrant as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant shall, on an annual basis, review and update registration information maintained with the National Futures Association. The failure to complete the review and update within thirty days following the date established by the National Futures Association shall be deemed to be a request for withdrawal from registration, which shall be processed in accordance with the provisions of § 3.33(f).

* * * * *

■ 16. Section 3.12 is amended by

■ a. Revising the heading;

■ b. Revising paragraph (a);

■ c. Revising paragraph (f)(1)(iii)(E);

■ d. Revising paragraph (f)(4);

■ e. Revising paragraph (h)(1)(i) and paragraph (h)(1)(iii); and

■ f. Removing paragraph (j). The revisions read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, retail foreign exchange dealer, introducing

broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), or (i), of this section or is exempt from such registration pursuant to paragraph (h) of this section.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(E) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

* * * * *

(4) If a person is associated with a futures commission merchant, with a retail foreign exchange dealer, or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant, retail foreign exchange dealer or introducing broker and all such customers' accounts solicited or accepted by the associated person are carried by the futures commission merchant, retail foreign exchange dealer or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant, retail foreign exchange dealer or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

* * * * *

(h) * * *

(1) * * *

(i) Registered under the Act as a futures commission merchant, retail foreign exchange dealer, floor broker, or as an introducing broker;

* * * * *

(iii) The chief operating officer, general partner or other person in the supervisory chain-of-command, *provided* the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity for customers as no more than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(1)(iii)(C) or (h)(1)(iii)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to:

(*1*) Solicit or accept customers', retail forex customers', or leverage customers' orders,

(*2*) Solicit a client's or prospective client's discretionary account,

(*3*) Solicit funds, securities or property for a participation in a commodity pool, or

(*4*) Exercise any line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(1)(iii)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(1)(iii)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner; or

* * * * *

■ 17. Section 3.21 is amended by:

■ a. Revising paragraph (b)(3); and

■ b. Revising paragraphs (c) introductory text, (c)(1) through (3), and (c)(4)(i) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(b) * * *

(3) *With respect to the fingerprints of a principal.* An officer, if the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal will be affiliated is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

(c) *Outside directors.* Any futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(2), file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) Is not engaged in:

(i) The solicitation or acceptance of customers' orders or retail forex customers' orders,

(ii) The solicitation of funds, securities or property for a participation in a commodity pool,

(iii) The solicitation of a client's or prospective client's discretionary account,

(iv) The solicitation or acceptance of leverage customers' orders for leverage transactions;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Commodity interest transactions;

(ii) Customer funds, retail forex customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) * * *

(i) The name of the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

* * * * *

18. Section 3.30 is amended by revising paragraph (a) to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: *Provided,* That the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

* * * * *

■ 19. Section 3.31 is amended by revising paragraphs (a)(1), (b), (c), and (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Form 8–R which no longer renders accurate and current the information contained therein. Each such correction shall be made on Form 3–R and shall be prepared and filed in accordance with the instructions thereto. *Provided, however,* that where a registrant is reporting a change in the form of organization from or to a sole proprietorship, the registrant must file a Form 7–W regarding the pre-existing organization and a Form 7–R regarding the newly formed organization.

* * * * *

(b) Each applicant or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

(i) The failure of that person to become associated with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor; or

(ii) The termination of the association of the associated person with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor.

(2) Each person registered as, or applying for registration as, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

(3) Any notice required by paragraph (c) of this section must be filed on Form 8–T or on a Uniform Termination Notice for Securities Industry Registration.

(d) Each contract market or derivatives transaction execution facility that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market or derivatives transaction execution facility.

* * * * *

■ 20. Section 3.33 is amended by revising paragraphs (a) introductory text, (b) introductory text, (b)(6), and (e) to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W, completed and filed with National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by a person duly authorized by the registrant and must specify:

* * * * *

(6) If a basis for withdrawal from registration under paragraph (a)(1) of this section is that the registrant has ceased engaging in activities requiring

registration, then, with respect to each capacity for which the registrant has ceased such activities:

(i) That all customer, retail forex customer or option customer agreements, if any, have been terminated;

(ii) That all customer, retail forex customer or option customer positions, if any, have been transferred on behalf of customers or option customers or closed;

(iii) That all customer, retail forex customer or option customer cash balances, securities, or other property, if any, have been transferred on behalf of customers, retail forex customers or option customers or returned, and that there are no obligations to customers, retail forex customers or option customers outstanding;

(iv) In the case of a commodity pool operator, that all interests in, and assets of, any commodity pool have been redeemed, distributed, or transferred, on behalf of the participants therein, and that there are no obligations to such participants outstanding;

(v) In the case of a leverage transaction merchant:

(A) Either that all leverage customer agreements, if any, and all leverage contracts have been terminated, and that all leverage customer cash balances, securities or other property, if any, have been returned, or

(B) Alternatively, that pursuant to Commission approval, the leverage contract obligations of the leverage transaction merchant have been assumed by another leverage transaction merchant and all leverage customer cash balances, securities or other property, if any, have been transferred to such leverage transaction merchant on behalf of leverage customers or returned, and that there are no obligations to leverage customers outstanding;

(vi) The nature and extent of any pending customer, retail forex customer, option customer, leverage customer, or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer, leverage customer, or commodity pool participant claims against the registrant; and

(vii) In the case of a futures commission merchant or a retail foreign exchange dealer which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration.

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, must be filed with the National Futures Association and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Clearing and Intermediary Oversight, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

* * * * *

■ 21. Section 3.44 is amended by revising paragraphs (a)(1) through (5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(1) A properly completed guarantee agreement (Form 1–FR part B) from a futures commission merchant or retail foreign exchange dealer which is eligible to enter into such an agreement pursuant to § 1.10(j)(2) of this chapter;

(2) A Form 7–R properly completed in accordance with the instructions thereto;

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, all of whom would be eligible for a temporary license if they had applied as associated persons.

(4) A certification executed by a person duly authorized by the futures commission merchant or retail foreign exchange dealer that has executed the guarantee agreement required by paragraph (a)(1) of this section, stating that:

(i) The futures commission merchant or retail foreign exchange dealer has verified the information on the Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding three years; and

(ii) To the best of the futures commission merchant's or retail foreign exchange dealer's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals and each branch office manager of the applicant on the Form 7–R and Forms 8–R, as appropriate, is accurate and complete; and

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided,* that a principal who has a current Form 8–R on file with the National Futures Association or the Commission is not required to submit a fingerprint card.

* * * * *

■ 22. Section 3.45 is amended by revising paragraph (b) to read as follows:

§ 3.45 Restrictions upon activities.

* * * * *

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant or retail foreign exchange dealer other than the futures commission merchant or retail foreign exchange dealer which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided,* That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10 (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association—

(1) Written notice of such termination and

(2) A new guarantee agreement with another futures commission merchant or retail foreign exchange dealer effective the day following the last effective date of the existing guarantee agreement.

■ 23. Section 3.50 is amended by revising paragraph (b)(2) to read as follows:

§ 3.50 Service.

* * * * *

(b) * * *

(2) Any futures commission merchant or retail foreign exchange dealer which

has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter, if the applicant or registrant is registered as or applying for registration as an introducing broker.

* * * * *

■ 24. Section 3.60 is amended by revising paragraph (b)(2)(i)(B) to read as follows:

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

* * * * *

(b) * * *

(2)(i) * * *

(B) In the case of a sponsor which is a futures commission merchant, a retail foreign exchange dealer or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of § 1.12(b), § 5.6(b) or § 31.7(b) of this chapter, respectively; and

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l*, 6m, 6n, 6*o*, 12a and 23.

■ 26. Section 4.7 is amended by:

■ a. Revising paragraph (a)(1)(v)(B); and

■ b. Revising paragraph (a)(2)(i) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(a) * * *

(1) * * *

(v) * * *

(B) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the exempt pool or the date that the person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums, together with required minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this chapter) for commodity interest transactions; or

* * * * *

(2) * * *

(i)(A) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(B) A retail foreign exchange dealer registered pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act, or a principal thereof;

* * * * *

■ 27. Section 4.12 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) Will not enter into commodity interest transactions for which the aggregate initial margin and premiums, and required minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this chapter) exceed 10 percent of the fair market value of the pool's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such 10 percent; and

* * * * *

■ 28. Section 4.13 is amended by:

■ a. Revising paragraph (a)(3)(ii)(A): and

■ b. Revising paragraph (a)(3)(ii)(B)(*1*) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) The aggregate initial margin, premiums, and required minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this chapter) required to establish such positions, determined at the time the most recent position was established, will not exceed 5 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such 5 percent; or

(B) * * *

(*1*) The term "notional value" shall be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, and for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit, and for each such retail forex transaction, by calculating the value in U.S. Dollars of such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any; and

* * * * *

■ 29. Section 4.14 is amended by revising paragraph (a)(7) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

* * * * *

(a) * * *

(7)(i) It is registered under the Act as a leverage transaction merchant and the person's trading advice is solely in connection with its business as a leverage transaction merchant;

(ii) It is registered under the Act as a retail foreign exchange dealer and the person's trading advice is solely in connection with its business as a retail foreign exchange dealer.

* * * * *

■ 30. Section 4.23 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Revising paragraph (a)(7); and

■ c. Revising paragraph (b)(1) and (2) to read as follows:

§ 4.23 Recordkeeping.

* * * * *

(a) *Concerning the commodity pool:* (1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

* * * * *

(7) Copies of each confirmation of a commodity interest transaction of the pool, each purchase and sale statement and each monthly statement for the pool received from a futures commission

merchant or retail foreign exchange dealer.

* * * * *

(b) *Concerning the commodity pool operator:* (1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant or retail foreign exchange dealer carrying the account and the introducing broker, if any whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(i) The commodity pool operator relating to a personal account of the pool operator; and

(ii) Each principal of the pool operator relating to a personal account of such principal.

* * * * *

■ 31. Section 4.24 is amended by:

■ a. Revising paragraph (b)(1) introductory text and the first three sentences of the Risk Disclosure Statement in paragraph (b)(1);

■ b. Adding paragraph (b)(4);

■ c. Revising paragraph (e)(6);

■ d. Revising paragraph (g);

■ e. Revising paragraphs (h)(2) and (h)(4)(iii);

■ f. Revising paragraph (i)(2)(ii);

■ g. Redesignating paragraph (i)(2)(xii) as paragraph (i)(2)(xiii) and adding new paragraph (i)(2)(xii);

■ g. Revising paragraphs (j)(1)(vi) and (j)(3); and

■ h. Revising paragraphs (l)(1)(iii), (l)(2) introductory text and (l)(2)(i).

The addition and revisions read as follows:

§ 4.24 General disclosures required.

* * * * *

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions.

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT COMMODITY INTEREST TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL. * * *

* * * * *

(4) If the pool may engage in retail Forex transactions, the Risk Disclosure Statement must further state:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS THAT THE POOL USES FOR OFF-EXCHANGE FOREIGN CURRENCY TRADING WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE POOL DEPOSITS SUCH FUNDS WITH A COUNTERPARTY AND THAT COUNTERPARTY BECOMES INSOLVENT, THE POOL'S CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND THE REGULATIONS THEREUNDER. THE POOL MAY BE A GENERAL CREDITOR AND ITS CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN POOL FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.

* * * * *

(e) * * *

(6) If known, the futures commission merchant and/or retail foreign exchange dealer through which the pool will execute its trades, and, if applicable, the introducing broker through which the pool will introduce its trades to the futures commission merchant and/or retail foreign exchange dealer.

* * * * *

(g) *Principal risk factors.* A discussion of the principal risk factors of participation in the offered pool. This discussion must include, without limitation, risks relating to volatility, leverage, liquidity, counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity (including retail forex transactions) expected to be engaged in by the offered pool.

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants and/or retail foreign exchange dealers carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

(4) * * *

(iii) If assets deposited by the pool as margin or as security deposit generate income, to whom that income will be paid.

(i) * * *

(2) * * *

(ii) Brokerage fees and commissions, including interest income paid to futures commission merchants, and any fees incurred to maintain an open position in retail forex transactions;

* * * * *

(xii) Any costs or fees included in the spread between bid and asked prices for retail forex transactions; and

* * * * *

(j) * * *

(1) * * *

(vi) Any other person providing services to the pool or soliciting participants for the pool, or acting as a counterparty to the pool's retail forex transactions (as defined in § 5.1(m) of this chapter).

* * * * *

(3) Included in the description of such conflicts must be any arrangement

whereby a person may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant and/or retail foreign exchange dealer, or from the introduction of the pool's account to a futures commission merchant and/or retail foreign exchange dealer by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or funds or other investments.

* * * * *

(l) * * *

(1) * * *

(iii) The pool's futures commission merchants and/or retail foreign exchange dealers and its introducing brokers, if any.

(2) With respect to a futures commission merchant and/or retail foreign exchange dealer or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

* * * * *

■ 32. Section 4.25 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 4.25 Performance disclosures.

* * * * *

(c) * * *

(3) * * *

(ii) If a major commodity trading advisor has not previously traded accounts, the pool operator must prominently display the following statement:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY TRADING AUTHORITY OVER (percentage of the pool's funds available for commodity interest trading allocated to that trading advisor) PERCENT OF THE POOL'S COMMODITY INTEREST TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS.

* * * * *

Subpart C—Commodity Trading Advisors

■ 33. Section 4.30 is revised to read as follows:

§ 4.30 Prohibited activities.

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a future commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as a commodity trading advisor under the Act or to a retail foreign exchange dealer that is registered as such under the Act.

■ 34. Section 4.33 is amended by:

■ a. Revising paragraph (a)(6); and

■ b. Revising paragraphs (b)(1) and (2) to read as follows:

§ 4.33 Recordkeeping.

* * * * *

(a) * * *

(6) Copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant or a retail foreign exchange dealer.

* * * * *

(b) * * *

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(i) The commodity trading advisor relating to a personal account of the trading advisor; and

(ii) Each principal of the trading advisor relating to a personal account of such principal.

* * * * *

■ 35. Section 4.34 is amended by:

■ a. Revising paragraph (b);

■ b. Revising paragraph (e)(2);

■ c. Revising paragraphs (g) and (h);

■ d. Revising paragraph (i)(2);

■ e. Revising paragraphs (j)(1) and (j)(3);

■ f. Revising paragraphs (k)(1)(ii), (k)(1)(iii), (k)(2) introductory text, and (k)(2)(i) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITY INTERESTS CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURES CONTRACT OR SELL A COMMODITY OPTION OR ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS OR SECURITY DEPOSIT AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES

TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLE "LONG" OR "SHORT" POSITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY INTEREST TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY INTEREST MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY INTEREST TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2)(i) If the commodity trading advisor may trade foreign futures or options contracts pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.

(ii) If the commodity trading advisor may engage in retail forex transactions pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS DEPOSITED WITH A COUNTERPARTY FOR SUCH TRANSACTIONS WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE COUNTERPARTY BECOMES INSOLVENT AND YOU HAVE A CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY, YOUR CLAIM MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND REGULATIONS THEREUNDER. YOU MAY BE A GENERAL CREDITOR AND YOUR CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.

FURTHER, YOU SHOULD CAREFULLY REVIEW THE INFORMATION CONTAINED IN THE RISK DISCLOSURE STATEMENT OF THE FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER THAT YOU SELECT TO CARRY YOUR ACCOUNT.

(3) If the commodity trading advisor is not also a registered futures commission merchant or a registered retail foreign exchange dealer, the trading advisor must make the additional following statement in the Risk Disclosure Statement, to be included as the last paragraph thereof:

THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER, AS APPLICABLE.

* * * * *

(e) * * *

(2) The futures commission merchant and/or retail foreign exchange dealer with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant or retail foreign exchange dealer with which it will maintain its account, the trading advisor must make a statement to that effect; and

* * * * *

(g) *Principal risk factors.* A discussion of the principal risk factors of this trading program. This discussion must include, without limitation, risks due to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading program and the types of transactions and investment activity expected to be engaged in pursuant to such program (including retail forex transactions, if any).

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants and/or retail foreign exchange dealers carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

(i) * * *

(2) Where any fee is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits," "net gains," "pips" or "bid-asked spread," the trading advisor must explain how such base amount will be calculated. Where any fee is based on the difference between bid and asked prices on retail forex transactions (as defined in § 5.1(m) of this chapter), the trading advisor must explain how such fee will be calculated;

* * * * *

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the trading program on the part of:

(i) The commodity trading advisor;

(ii) Any futures commission merchant and/or retail foreign exchange dealer with which the client will be required to maintain its commodity interest account;

(iii) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant and/or retail foreign exchange dealer; and

(iv) Any principal of the foregoing.

* * * * *

(3) Included in the description of any such conflict must be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant and/or retail foreign exchange dealer, or the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

(1) * * *

(ii) Any futures commission merchant or retail foreign exchange dealer with which the client will be required to maintain its commodity interest account; and

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer.

(2) With respect to a futures commission merchant, retail foreign exchange dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

* * * * *

■ 36. Part 5 is added to read as follows:

PART 5—OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

Sec.

5.1 Definitions.
5.2 Prohibited transactions.
5.3 Registration of persons engaged in retail forex transactions.
5.4 Applicability of part 4 of this chapter to commodity pool operators and commodity trading advisors.
5.5 Distribution of "Risk Disclosure Statement" by retail foreign exchange dealers. futures commission merchants and introducing brokers regarding retail forex transactions.
5.6 Maintenance of minimum financial requirements by retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.
5.7 Minimum financial requirements for retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.
5.8 Aggregate retail forex assets.
5.9 Security deposits for retail forex transactions.
5.10 Risk assessment recordkeeping requirements for retail foreign exchange dealers.
5.11 Risk assessment reporting requirements for retail foreign exchange dealers.
5.12 Financial reports of retail foreign exchange dealers.
5.13 Reporting to customers of retail foreign exchange dealers and futures commission merchants; monthly and confirmation statements.
5.14 Records to be kept by retail foreign exchange dealers and futures commission merchants.
5.15 Unlawful representations.
5.16 Prohibition of guarantees against loss.
5.17 Authorization to trade.
5.18 Trading and operational standards.
5.19 Pending legal proceedings.
5.20 Special calls for account and transaction information.
5.21 Supervision.
5.22 Registered futures association membership.
5.23 Notice of bulk transfers and bulk liquidations.
5.24 Applicability of other parts of this chapter.
5.25 Applicability of the Act.

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6*o,* 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

§ 5.1 Definitions.

(a) *Affiliated person of a futures commission merchant* means a person described in section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act;

(b) *Aggregate retail forex assets* means an amount of liquid assets held in accordance with § 5.8 of this part;

(c) *Associated person of an affiliated person of a futures commission merchant* means any natural person associated with an affiliated person of a futures commission merchant as a partner, officer or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(1) The solicitation or acceptance of retail forex customers' orders (other than in a clerical capacity); or

(2) The supervision of any person or persons so engaged;

(d)(1) *Commodity pool operator,* for purposes of this part, means any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in section 1a(12) of the Act, and that engages in retail forex transactions;

(2) *Associated person of a commodity pool operator,* for purposes of this part, means any natural person associated with a commodity pool operator as defined in paragraph (d)(1) of this section as a partner, officer, employee, consultant or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation of funds, securities, or property for a participation in a pooled investment vehicle; or

(ii) The supervision of any person or persons so engaged;

(e)(1) *Commodity trading advisor,* for purposes of this part, means any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant as defined in section 1a(12) of the Act, in connection with retail forex transactions;

(2) *Associated person of a commodity trading advisor,* for purposes of this part, means any natural person associated with a commodity trading advisor as defined in paragraph (e)(1) of this section as a partner, officer, employee, consultant or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation of a client's or prospective client's discretionary account; or

(ii) The supervision of any person or persons so engaged;

(f)(1) *Introducing broker,* for purposes of this part, means any person who solicits or accepts orders from a customer that is not an eligible contract participant as defined in section 1a(12) of the Act, in connection with retail forex transactions;

(2) *Associated person of an introducing broker,* for purposes of this part, means any natural person associated with an introducing broker as defined in paragraph (g)(1) of this section as a partner, officer, employee, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation or acceptance of retail forex customers' orders (other than in a clerical capacity); or

(ii) The supervision of any person or persons so engaged;

(g) *Primarily or substantially* means, when used to describe the extent of a futures commission merchant's engagement in the activities described in section 1a(20) of the Act, that:

(1) Such activities account for more than fifty percent of the futures commission merchant's gross revenues, computed in accordance with generally accepted accounting principles, on an annual basis;

(2) The futures commission merchant receives gross revenues, computed in accordance with generally accepted accounting principles, from such activities in excess of $500,000 in any twelve month period; or

(3) The futures commission merchant is a clearing member of a registered derivatives clearing organization.

(h)(1) *Retail foreign exchange dealer* means any person that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff) of section 2(c)(2)(B)(i)(II) of the Act;

(2) *Associated person of a retail foreign exchange dealer* means any natural person associated with a retail foreign exchange dealer as defined in paragraph (i)(1) of this section as a partner, officer or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation or acceptance of retail forex customers' orders (other than in a clerical capacity); or

(ii) The supervision of any person or persons so engaged;

(i) *Retail forex account* means the account of a person who is not an eligible contract participant as defined in section 1a(12) of the Act, established with a retail foreign exchange dealer or a futures commission merchant, in which account retail forex transactions (including options on contracts for the purchase or sale of foreign currency) with such retail foreign exchange dealer or futures commission merchant as counterparty are undertaken, or which account is established in order to enter into such transactions.

(j) *Retail forex account agreement* means the contractual agreement between a futures commission merchant or retail foreign exchange dealer and any person who is not an eligible contract participant as defined in section 1a(12) of the Act, which agreement contains the terms governing the person's retail forex account with such futures commission merchant or retail foreign exchange dealer.

(k) *Retail forex customer* means a person, other than an eligible contract participant as defined in section 1a(12) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

(l) *Retail forex obligation* means the net credit balance at a retail foreign exchange dealer or futures commission merchant that would be obtained by combining all money, securities and property deposited by a retail forex customer into a retail forex account or accounts, adjusted for the realized and unrealized net profit or loss, if any, accruing on the open trades, contracts or transactions in the retail forex account or accounts, without including any retail forex customers' accounts that contain negative net liquidating balances.

(m) *Retail forex transaction* means any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act. A retail forex transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a contract market designated pursuant to section 5(a) of the Act or a derivatives transaction execution facility registered pursuant to section 5a(c) of the Act.

§ 5.2 Prohibited transactions.

(a) *Scope.* The provisions of this section shall be applicable to any retail forex transaction.

(b) *Fraudulent conduct prohibited.* It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction:

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

(c) *Acting as counterparty and exercising discretion prohibited.* (1) No person who acts as the counterparty for any retail forex transaction may do so for an account for which the person or any affiliate of the person is authorized (by contract, power of attorney or otherwise) to cause transactions to be effected without the client's specific authorization.

(2) For purposes of this paragraph (c), an "affiliate" of a person means a person controlling, controlled by or under common control with, the first person.

§ 5.3 Registration of persons engaged in retail forex transactions.

(a) Subject to paragraph (b) of this section, each of the following is subject to the registration provisions under the Act and to part 3 of this chapter:

(1)(i) Any affiliated person of a futures commission merchant, as defined in § 5.1(a) of this part, which affiliated person:

(A) Solicits or accepts orders from any person that is not an eligible contract participant in connection with any retail forex transaction; or

(B) Accepts money, securities, or property (or extends credit in lieu thereof) in connection with such solicitation or acceptance of orders in order to engage in any retail forex transaction, is required to register as a retail foreign exchange dealer; and

(ii) Any associated person of an affiliated person of a futures commission merchant, as defined in § 5.1(c) of this part, is required to register as an associated person of an affiliated person of a futures commission merchant.

(2)(i) Any commodity pool operator, as defined in § 5.1(d)(1) of this part, is required to register as a commodity pool operator;

(ii) Any associated person of a commodity pool operator, as defined in § 5.1(d)(2) of this part, is required to register as an associated person of a commodity pool operator;

(3)(i) Any commodity trading advisor, as defined in § 5.1(e)(1) of this part, is required to register as a commodity trading advisor;

(ii) Any associated person of a commodity trading advisor, as defined in § 5.1(e)(2) of this part, is required to register as an associated person of a commodity trading advisor;

(4)(i) Any person registered as a futures commission merchant:

(A) That is not primarily or substantially engaged in the business activities described in section 1a(20) of the Act;

(B) That solicits or accepts orders from any person that is not an eligible contract participant in connection with any retail forex transaction; and

(C) That accepts money, securities, or property (or extends credit in lieu thereof) in connection with such solicitation or acceptance of orders in order to engage in retail forex transactions, is required to register as a retail foreign exchange dealer;

(ii) Any associated person of a futures commission merchant described in paragraph (a)(4)(i) of this section is required to register as an associated person of a futures commission merchant;

(5)(i) Any introducing broker, as defined in § 5.1(f)(1) of this part, is required to register as an introducing broker;

(ii) Any associated person of an introducing broker, as defined in § 5.1(f)(2) of this part, is required to register as an associated person of an introducing broker;

(6)(i) Any retail foreign exchange dealer, as defined in § 5.1(h)(1) of this part is required to register as a retail foreign exchange dealer;

(ii) Any associated person of a retail foreign exchange dealer, as defined in § 5.1(h)(2) of this part, is required to register as an associated person of a retail foreign exchange dealer;

(b) Any person described in paragraph (a) of this section that is already registered in the required capacity specified in paragraph (a) is not required under this section to register twice in the same capacity; Provided, however, that a person already registered as an associated person of one class of registrant may also be required to register as an associated person of another class of registrant in order to comply with this section.

§ 5.4 Applicability of part 4 of this chapter to commodity pool operators and commodity trading advisors.

Part 4 of this chapter applies to any person required pursuant to the provisions of this part 5 to register as a commodity pool operator or as a commodity trading advisor. Failure by any such person to comply with the requirements of part 4 will constitute a violation of this section and the relevant section of part 4.

§ 5.5 Distribution of "Risk Disclosure Statement" by retail foreign exchange dealers, futures commission merchants and introducing brokers regarding retail forex transactions.

(a) Except as provided in § 5.23 of this part, no retail foreign exchange dealer, futures commission merchant, or in the case of an introduced account no introducing broker, may open an account that will engage in retail forex transactions for a retail forex customer, unless the retail foreign exchange dealer, futures commission merchant or introducing broker first:

(1)(i) In the case of a retail foreign exchange dealer or a person required to register as an introducing broker solely by reason of this part, furnishes the retail forex customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section and the disclosure required by paragraph (e) of this section;

(ii) In the case of a futures commission merchant or a person required to register as an introducing broker because it engages in the activities described in § 1.3(mm) of this chapter, furnishes the retail forex customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section and the disclosure required by paragraph (e) of this section; *Provided, however,* that the disclosure statement may be attached to other documents as the initial page(s) of such documents and as the only material on such page(s); and

(2) Receives from the retail forex customer an acknowledgment signed and dated by the retail forex customer that he received and understood the disclosure statement.

(b) The language set forth in the written disclosure statement required by paragraph (a) of this section shall be as follows:

RISK DISCLOSURE STATEMENT

OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS INVOLVE THE LEVERAGED TRADING OF CONTRACTS DENOMINATED IN FOREIGN CURRENCY CONDUCTED WITH A FUTURES COMMISSION MERCHANT OR A RETAIL FOREIGN EXCHANGE DEALER AS YOUR COUNTERPARTY. BECAUSE OF THE LEVERAGE AND THE OTHER RISKS DISCLOSED HERE, YOU CAN RAPIDLY LOSE ALL OF THE FUNDS YOU DEPOSIT FOR SUCH TRADING AND YOU MAY LOSE MORE THAN YOU DEPOSIT.

YOU SHOULD BE AWARE OF AND CAREFULLY CONSIDER THE FOLLOWING POINTS BEFORE DETERMINING WHETHER SUCH TRADING IS APPROPRIATE FOR YOU.

(1) TRADING IS NOT ON A REGULATED MARKET OR EXCHANGE—YOUR DEALER IS YOUR TRADING PARTNER WHICH IS A DIRECT CONFLICT OF INTEREST. BEFORE YOU ENGAGE IN ANY RETAIL FOREIGN EXCHANGE TRADING, YOU SHOULD CONFIRM THE REGISTRATION STATUS OF YOUR COUNTERPARTY.

The off-exchange foreign currency trading you are entering into is not conducted on an interbank market, nor is it conducted on a futures exchange subject to regulation as a designated contract market by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with the futures commission merchant or retail foreign exchange dealer as your counterparty. WHEN YOU SELL, THE DEALER IS THE BUYER. WHEN YOU BUY, THE DEALER IS THE SELLER. As a result, when you lose money trading, your dealer is making money on such trades, in addition to any fees, commissions, or spreads the dealer may charge.

(2) AN ELECTRONIC TRADING PLATFORM FOR RETAIL FOREIGN CURRENCY TRANSACTIONS IS NOT AN EXCHANGE. IT IS AN ELECTRONIC CONNECTION FOR ACCESSING YOUR DEALER. THE TERMS OF AVAILABILITY OF SUCH A PLATFORM ARE GOVERNED ONLY BY YOUR CONTRACT WITH YOUR DEALER.

Any trading platform that you may use to enter off-exchange foreign currency transactions is only connected to your futures commission merchant or retail foreign exchange dealer. You are accessing that trading platform only to transact with your dealer. You are not trading with any other entities or customers of the dealer by accessing such platform. The availability and operation of any such platform, including the consequences of the unavailability of the trading platform for any reason, is governed only by the terms of your account agreement with the dealer.

(3) YOUR DEPOSITS WITH THE DEALER HAVE NO REGULATORY PROTECTIONS.

All of your rights associated with your retail forex trading, including the manner and denomination of any payments made to you, are governed by the contract terms established in your account agreement with the futures commission merchant or retail foreign exchange dealer. Funds deposited by you with a futures commission merchant or retail foreign exchange dealer for trading off-exchange foreign currency transactions are not subject to the customer funds protections provided to customers trading on a contract market that is designated by the Commodity Futures Trading Commission. Your dealer may commingle your funds with its own operating funds or use them for other purposes. In the event your dealer becomes bankrupt, any funds the dealer is holding for you in addition to any amounts owed to you resulting from trading, whether or not any assets are maintained in separate deposit accounts by the dealer, may be treated as an unsecured creditor's claim.

(4) YOU ARE LIMITED TO YOUR DEALER TO OFFSET OR LIQUIDATE ANY TRADING POSITIONS SINCE THE TRANSACTIONS ARE NOT MADE ON AN EXCHANGE OR MARKET, AND YOUR DEALER MAY SET ITS OWN PRICES.

Your ability to close your transactions or offset positions is limited to what your dealer will offer to you, as there is no other market for these transactions. Your dealer may offer any prices it wishes, and it may offer prices derived

from outside sources or not in its discretion. Your dealer may establish its prices by offering spreads from third party prices, but it is under no obligation to do so or to continue to do so. Your dealer may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obligations your dealer has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by your dealer may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

(5) PAID SOLICITORS MAY HAVE UNDISCLOSED CONFLICTS

The futures commission merchant or retail foreign exchange dealer may compensate introducing brokers for introducing your account in ways which are not disclosed to you. Such paid solicitors are not required to have, and may not have, any special expertise in trading, and may have conflicts of interest based on the method by which they are compensated. Solicitors working on behalf of futures commission merchants and retail foreign exchange dealers are required to register. You should confirm that they are, in fact registered. You should thoroughly investigate the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from your dealer or a solicitor in making any trading or account decisions.

FINALLY, YOU SHOULD THOROUGHLY INVESTIGATE ANY STATEMENTS BY ANY DEALERS OR SALES REPRESENTATIVES WHICH MINIMIZE THE IMPORTANCE OF, OR CONTRADICT, ANY OF THE TERMS OF THIS RISK DISCLOSURE. SUCH STATEMENTS MAY INDICATE POTENTIAL SALES FRAUD.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF TRADING OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS WITH A FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER.

I hereby acknowledge that I have received and understood this risk disclosure statement.

____

Date

____

Signature of Customer

(c) The acknowledgment required by paragraph (a) of this section must be retained by the retail foreign exchange dealer, futures commission merchant or introducing broker in accordance with § 1.31 of this chapter.

(d) This section does not relieve a retail foreign exchange dealer, futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

(e)(1) Immediately following the language set forth in paragraph (b) of this section, the statement required by paragraph (a) of this section shall include, for each of the most recent four calendar quarters during which the counterparty maintained retail forex customer accounts:

(i) The total number of non discretionary retail forex customer accounts maintained by the retail foreign exchange dealer or futures commission merchant;

(ii) The percentage of such accounts that were profitable during the quarter; and

(iii) The percentage of such accounts that were not profitable during the quarter.

(2) Identification of retail forex customer accounts for the purpose of this disclosure and the calculation in determining whether each such account was profitable or not profitable must be made in accordance with § 5.18(i) of this part. Such statement of profitable trades shall include the following legend: PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS. Each retail foreign exchange dealer or futures commission merchant shall provide, upon request, to any retail forex customer or prospective retail forex customer the total number of non discretionary retail forex accounts maintained by such foreign exchange dealer or futures commission merchant, the percentage of such accounts that were profitable and the percentage of such accounts that were not profitable, calculated in accordance with § 5.18(i) of this part, for each calendar quarter during the most recent five year period during which such retail foreign exchange dealer or futures commission merchant maintained non discretionary retail forex customer accounts.

§ 5.6 Maintenance of minimum financial requirements by retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.

(a) Each futures commission merchant offering or engaging in retail forex transactions or who files an application for registration as a futures commission merchant that will offer or engage in retail forex transactions and each person registered as a retail foreign exchange dealer or who files an application for registration as a retail foreign exchange dealer, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 5.7 of this part or by the capital rule of a registered futures association of which it is a member, must:

(1) Give telephonic notice, to be confirmed in writing by facsimile notice, that the applicant's or registrant's adjusted net capital is less than that required by § 5.7 of this part. The notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than that required by any of the aforesaid rules to which the applicant or registrant is subject; and

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the applicant's or registrant's capital condition as of any date such person's adjusted net capital is less than the minimum required. The applicant or registrant must provide similar documentation for other days as the Commission may request.

(b) Each applicant or registrant, who knows or should have known that its adjusted net capital at any time is less than the greatest of:

(1) $22,000,000;

(2) 110 percent of the amount required by § 5.7(a)(1)(i)(B) of this part; or

(3) 110 percent of the amount of adjusted net capital required by a registered futures association of which the futures commission merchant or retail foreign exchange dealer is a member, must file written notice to that effect within 24 hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide facsimile notice of such fact, specifying the books and records which have not been made or which are not current, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2) of this chapter, of the existence of any material inadequacy, as specified in § 1.16(d)(2) of this chapter, such applicant or registrant must give facsimile notice of such material inadequacy within 24

hours, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by § 5.6 of this part, that self-regulatory organization must immediately report this failure by telephone, confirmed in writing immediately by facsimile notice, as provided in paragraph (h) of this section.

(f) A retail foreign exchange dealer or a futures commission merchant offering or engaging in retail forex transactions shall provide written notice of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to § 5.12 of this part. This notice shall be provided as follows:

(1) If any event or series of events, including any withdrawal, advance, loan or loss cause, on a net basis, a reduction in net capital of 20 percent or more, notice must be provided within two business days of the event or series of events causing the reduction; and

(2) If the equity capital of the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions or the equity capital of a subsidiary or affiliate of the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions consolidated pursuant to § 1.17(f) of this chapter would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital of 30 percent or more, notice must be provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction: *Provided, however*, That the provisions of paragraphs (f)(1) and (f)(2) of this section do not apply to any retail foreign exchange transaction in the ordinary course of business between a retail foreign exchange dealer and any affiliate where the retail foreign exchange dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a futures commission merchant offering or engaging in retail forex transactions or a retail foreign exchange dealer, the Director of the Division of Clearing and Intermediary Oversight or the Director's designee may require that the futures commission merchant offering or engaging in retail forex transactions or retail foreign exchange dealer provide or cause a Material Affiliated Person (as that term is defined in § 5.10(a)(2) of this part) to provide, within three business days from the date of the request or such shorter period as the Director or designee may specify, such other information as the Director or designee determines to be necessary based upon market conditions, reports provided by the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions, or other available information.

(g) Whenever a person registered as a futures commission merchant offering or engaging in retail forex transactions or a retail foreign exchange dealer knows or should know that the total amount of its retail forex obligation exceeds the amount of the aggregate retail forex assets the registrant maintains in accordance with the provisions of § 5.8 of this chapter, the registrant must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice.

(h) Every notice and written report required to be given or filed with the Commission by this section by an applicant must be filed with the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located, and with the National Futures Association. Every notice and written report required to be given or filed with the Commission by this section by a registrant or self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, and with the registrant's designated self-regulatory organization. In addition, every notice and written report required to be given by this section must also be filed with the Chief Accountant of the Division of Clearing and Intermediary Oversight at the Commission's principal office in Washington, DC.

(i) In lieu of filing paper copies with the Commission, all filings or other notices prepared by a futures commission merchant or retail foreign exchange dealer pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant, retail foreign exchange dealer or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

§ 5.7 Minimum financial requirements for retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.

(a)(1)(i) Each futures commission merchant offering or engaging in retail forex transactions and each retail foreign exchange dealer must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $20,000,000;

(B) $20,000,000 plus five percent of the futures commission merchant's or retail foreign exchange dealer's total retail forex obligation in excess of $10,000,000;

(C) any amount required under § 1.17 of this chapter, as applicable; or

(D) the amount of adjusted net capital required by a registered futures association of which the futures commission merchant or retail foreign exchange dealer is a member.

(ii) Section 1.17 of this chapter shall apply to retail foreign exchange dealers as if such retail foreign exchange dealers were futures commission merchants, or as applicable, applicants or registrants, as stated in § 1.17 for the purpose of determining the adjusted net capital under this section. For the purpose of applying this section, "applicant" or "registrant" shall include retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions and applicants therefore.

(2) No person applying for registration as a retail foreign exchange dealer or a futures commission merchant that will engage in retail forex transactions shall be so registered unless such person affirmatively demonstrates to the satisfaction of a registered futures association that it complies with the financial requirements of this section.

(3) Each registrant must be in compliance with this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission or the registrant's designated self-regulatory organization.

(4) A registrant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, shall, as directed by and under the supervision of the Commission or the registrant's designated self-regulatory organization, either liquidate or transfer all retail forex accounts (including the novation of retail forex contracts) and refund or transfer all funds associated with such retail forex accounts and immediately cease offering or engaging in retail forex transactions until such time as the firm is able to demonstrate to the Commission or the registrant's designated self-regulatory organization such compliance: *Provided, however,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the registrant's designated self-regulatory organization the ability to achieve compliance, the Commission or the registrant's designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days, or such additional time as determined by the Commission, in which to achieve compliance without having to liquidate positions or transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the registrant's designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

(b) For the purposes of this section:

(1) Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act Rule 15c3–1 (§ 240.15c3–1 of this title) the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with § 240.15c3–1 of this title, unless specifically stated otherwise in this section or in § 1.17 of this chapter.

(2) The adjusted net capital of an applicant or registrant for the purpose of this section shall be determined by the application of § 1.17 pursuant to paragraph (a)(1)(ii) of this section, with the following additions:

(i) All positions in retail forex accounts and other financial positions and instruments of the applicant or registrant must be marked to market and adjusted daily by referencing to current market prices or rates of exchange.

(ii) Current assets must exclude any retail forex account which liquidates to a deficit or contains a debit ledger balance only and is not secured in accordance with § 1.17(c)(3).

(iii) Current assets must exclude any unsecured receivable accrued from any over-the-counter transaction in foreign currency, options on foreign currency or options on contracts for the purchase or sale of foreign currency, or arising from the deposit of collateral or compensating balances with respect to such transactions, unless such unsecured receivable is from a person who is an eligible contract participant that also is:

(A) A bank or trust company regulated by a United States banking regulator;

(B) A broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority;

(C) A futures commission merchant registered with the Commission and a member of the National Futures Association;

(D) A retail foreign exchange dealer registered with the Commission and a member of the National Futures Association;

(E) An entity regulated as a foreign equivalent of any of the persons listed in paragraphs (b)(2)(iii)(A) through (D) of this section, if such person is regulated in a money center country as defined in § 1.49 of this chapter and recognized by the futures commission merchant's or retail foreign exchange dealer's designated self-regulatory organization as a foreign equivalent;

(F) Any other entity approved by the futures commission merchant's or retail foreign exchange dealer's designated self-regulatory organization.

(iv) The value attributed to any retail forex transaction that is an option shall be the difference between the option's exercise value or striking value and the market value of the underlying. In the case of a call, if the market value of the underlying is less than the exercise value or striking value of such call, it shall be given no value; and, in the case of a put, if the market value of the underlying is more than the exercise value or striking value of the put, it shall be given no value.

(v)(A) In computing adjusted net capital, the capital deductions set forth in § 1.17(c)(5)(ii) of this chapter shall apply to retail forex transactions other than options. The capital deductions which apply are six percent for net positions in Euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs and 20 percent for net positions in all other foreign currencies, *Provided, however,* That there shall be no capital deductions for retail forex transactions covered (as defined in § 1.17(j) of this chapter) by the applicant or registrant by open futures contracts to the extent such futures contracts are not otherwise designated as cover for any other net capital purposes. For purposes of this paragraph (b)(2)(v)(A), such retail forex transactions shall be treated as if they were inventory and cover were therefore applicable. A retail foreign exchange dealer or futures commission merchant may not use an affiliate (unless approved by the firm's designated self-regulatory organization) or any person that is considered unregulated under the rules of the firm's designated self-regulatory organization to cover its currency positions for purposes of this section.

(B) In computing adjusted net capital, the capital deductions set forth in § 1.17(c)(5)(vi) of this chapter shall apply to all retail forex transactions that are options.

(C) For the purpose of applying capital deductions on open proprietary futures positions under § 1.17(c)(5)(x) of this chapter, net or individual positions in retail forex transactions shall not constitute cover under § 1.17(j) for the purpose of applying such charges.

(c) An applicant or registrant must prepare, and keep current, ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the applicant's or registrant's asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all the applicant's or registrant's asset, liability and capital accounts are classified into the account classification subdivisions specified on Form 1–FR–FCM. Each applicant or registrant shall prepare and keep current such records.

(d) An applicant or registrant must make and keep as a record in accordance with § 5.14 of this part formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month and on other such dates called for by the Commission, the National Futures Association, or another self-regulatory organization of which the firm is a member. Such computations must be completed and made available for inspection by any representative of the Commission, the National Futures Association, a self-regulatory organization of which the firm is a member, or the United States Department of Justice commencing the

first month-end after the date the application for registration is filed.

§ 5.8 Aggregate retail forex assets.

(a) Each retail foreign exchange dealer and futures commission merchant offering or engaging in retail forex transactions shall calculate its total retail forex obligation and shall at all times hold assets solely of the type permissible under § 1.25 of this chapter equal to or in excess of the total retail forex obligation at one or more qualifying institutions in the United States or money center countries as defined in § 1.49 of this chapter.

(b) For assets held in the United States, a qualifying institution is:

(1) A bank or trust company regulated by a United States banking regulator;

(2) A broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority; or

(3) A futures commission merchant registered with the Commission and a member of the National Futures Association.

(c) For assets held in a money center country, a qualifying institution is:

(1) A bank or trust company regulated in a money center country, *Provided* that the bank or trust company has regulatory capital in excess of $1 billion;

(2) An entity regulated in a money center country as an equivalent of a broker-dealer or futures commission merchant as determined by the retail foreign exchange dealer's or futures commission merchant's designated self-regulatory organization, *Provided* that the entity maintains regulatory capital in excess of $100 million; or

(3) A futures commission merchant registered with the Commission and a member of the National Futures Association.

(d) Assets held in a money center country are not eligible to meet the requirements of paragraph (a) of this section unless the retail foreign exchange dealer or futures commission merchant has entered into an agreement that is acceptable to the firm's designated self-regulatory organization and that authorizes the qualifying institution to provide account information to the Commission and the firm's designated self-regulatory organization.

(e) In computing its adjusted net capital pursuant to § 5.7 of this part, a retail foreign exchange dealer or futures commission merchant may not include aggregate retail forex assets as current assets or otherwise record any property received from retail forex customers as an asset without recording a corresponding liability to the retail forex customers.

§ 5.9 Security deposits for retail forex transactions.

(a) Each futures commission merchant engaging, or offering to engage, in retail forex transactions and each retail foreign exchange dealer must collect from each retail forex customer a minimum security deposit for each retail forex transaction equal to the applicable percentage as set by the registered futures association of which they are a member; *Provided,* that the registered futures association's security deposit requirement cannot be less than:

(1) 2% of the notional value of the retail forex transaction for major currency pairs and 5% of the notional value of the retail forex transaction for all other currency pairs;

(2) For short options, 2% for major currency pairs and 5% for all other currency pairs of the notional value of the retail forex transaction, plus the premium received by the retail forex customer; or

(3) For long options, the full premium charged and received by the futures commission merchant or retail foreign exchange dealer from the retail forex customer.

(b) Security deposits must be made in the form of cash or other financial instruments that comply with the requirements specified in § 1.25 of this chapter.

(c) A futures commission merchant or retail foreign exchange dealer is required to collect additional security deposits from a retail forex customer, or liquidate the retail forex customer's positions, if the amount of the retail forex customer's security deposits maintained with the futures commission merchant or retail foreign exchange dealer are not sufficient to meet the requirements of this section.

(d) A major currency pair security deposit percentage is only applicable when both sides of a retail over-the-counter foreign exchange transaction involve major currencies.

(e) Any registered futures association whose members serve as counterparties to retail forex transaction shall designate which currencies are "major currencies", and shall review, no less frequently than annually, major currency designations and security deposit requirements, and shall adjust the designations and requirements as necessary.

§ 5.10 Risk assessment recordkeeping requirements for retail foreign exchange dealers.

(a) *Requirement to maintain and preserve information.* (1) Each retail foreign exchange dealer registered with the Commission pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act shall prepare, maintain and preserve the following information:

(i) An organizational chart which includes the retail foreign exchange dealer and each of its affiliated persons. Included in the organizational chart shall be a designation of which affiliated persons are "Material Affiliated Persons" as that term is used in paragraph (a)(2) of this section, which Material Affiliated Persons file routine financial or risk exposure reports with the Securities and Exchange Commission, a federal banking agency, an insurance commissioner or other similar official or agency of a state, or a foreign regulatory authority, and which Material Affiliated Persons are dealers in financial instruments with off-balance sheet risk and, if a Material Affiliated Person is such a dealer, whether it is also an end-user of such instruments;

(ii) Written policies, procedures, or systems concerning the retail foreign exchange dealer's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets of the retail foreign exchange dealer, the structure of debt capital, and sources of alternative funding;

(C) Establishing and maintaining internal controls with respect to market risk, credit risk, and other risks created by the retail foreign exchange dealer's trading activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in forex transactions, securities, futures contracts, commodity options, forward contracts and financial instruments; policies for hedging or managing risks created by trading activities or supervising accounts carried for affiliates, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities: *Provided, however,* that if the retail foreign exchange dealer has no such written policies, procedures or systems, it must so state in writing;

(iii) Fiscal year-end consolidated and consolidating balance sheets for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated

Persons, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating balance sheets may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process. Any additional information required to be filed under § 5.11(a)(2)(iii) of this part shall also be maintained and preserved; and

(iv) Fiscal year-end consolidated and consolidating income statements and consolidated cash flow statements for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating statements may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process. Any additional information required to be filed under § 5.11(a)(2)(iii) shall also be maintained and preserved.

(2) The determination of whether an affiliated person of a retail foreign exchange dealer is a Material Affiliated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the retail foreign exchange dealer and the affiliated person;

(ii) The overall financing requirements of the retail foreign exchange dealer and the affiliated person, and the degree, if any, to which the retail foreign exchange dealer and the affiliated person are financially dependent on each other;

(iii) The degree to which the retail foreign exchange dealer and the affiliated person directly or indirectly engage in over-the-counter transactions with each other;

(iv) The degree, if any, to which the retail foreign exchange dealer or its customers rely on the affiliated person for operational support or services in connection with the retail foreign exchange dealer's business;

(v) The level of market, credit or other risk present in the activities of the affiliated person; and

(vi) The extent to which the affiliated person has the authority or the ability to cause a withdrawal of capital from the retail foreign exchange dealer.

(3) For purposes of this section and § 5.11 of this part, the term Material Affiliated Person does not include a natural person.

(4) The information, reports and records required by this section shall be maintained and preserved, and made readily available for inspection, in accordance with the provisions of § 1.31 of this chapter.

(b) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* A retail foreign exchange dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(i), (iii) and (iv) of this section with respect to a Material Affiliated Person if:

(1) The Material Affiliated Person is required to maintain and preserve information pursuant to § 240.17h–1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, and the retail foreign exchange dealer maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by the Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h–1T and 240.17h–2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt;

(2) In the case of a Material Affiliated Person (including a foreign banking organization) that is subject to examination by, or the reporting requirements of, a Federal banking agency, the retail foreign exchange dealer or such Material Affiliated Person maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person to the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(3) In the case of a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, the retail foreign exchange dealer or such Material Affiliated Person maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner.

(c)(1) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A retail foreign exchange dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(iii) and (iv) of this section with respect to a Material Affiliated Person if such retail foreign exchange dealer maintains and makes available, or causes such Material Affiliated Person to make available, for inspection by the Commission in accordance with the provisions of this section copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority, provided that:

(i) The retail foreign exchange dealer agrees to use its best efforts to obtain from the Material Affiliated Person and to cause the Material Affiliated Person to provide, directly or through its foreign futures authority or other foreign regulatory authority, any supplemental information the Commission may request and there is no statute or other bar in the foreign jurisdiction that would preclude the retail foreign exchange dealer, the Material Affiliated Person, the foreign futures authority or other foreign regulatory authority from providing such information to the Commission; or

(ii) The foreign futures authority or other foreign regulatory authority with whom the Material Affiliated Person files such reports has entered into an information-sharing agreement with the Commission which is in effect as of the retail foreign exchange dealer's fiscal year-end and which will allow the Commission to obtain the type of information required herein.

(2) The retail foreign exchange dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term "Foreign Futures

Authority" shall have the meaning set forth in section 1a(10) of the Act.

(d) *Exemptions.* The Commission may exempt any retail foreign exchange dealer from any provision of this section if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(e) *Location of records.* A retail foreign exchange dealer required to maintain records concerning Material Affiliated Persons pursuant to this section may maintain those records either at the principal office of the Material Affiliated Person or at a records storage facility, provided that, except as set forth in paragraph (c) of this section, the records are located within the boundaries of the United States and the records are kept and available for inspection in accordance with § 1.31 of this chapter. If such records are maintained at a place other than the retail foreign exchange dealer's principal place of business, the Material Affiliated Person or other entity maintaining the records shall file with the Commission a written undertaking, in a form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the retail foreign exchange dealer were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time, or from time to time during business hours, by representatives or designees of the Commission and promptly furnish the Commission representative or its designee true, correct, complete and current hard copy of all or any part of such records. The election to maintain records at the principal place of business of the Material Affiliated Person or at a records storage facility pursuant to the provisions of this paragraph shall not relieve the retail foreign exchange dealer required to maintain and preserve such records from any of its responsibilities under this section or § 5.11 of this part.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a retail foreign exchange dealer concerning a Material Affiliated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each retail foreign exchange dealer who is subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i) and (ii) of this section commencing 60 calendar days after registration becomes effective and the information required by paragraphs (a)(1)(iii) and (iv) of this section commencing 105 calendar days following the first fiscal year-end occurring after registration becomes effective.

§ 5.11 Risk assessment reporting requirements for retail foreign exchange dealers.

(a) *Reporting requirements with respect to information required to be maintained by § 5.10 of this part.* (1) Each retail foreign exchange dealer registered with the Commission pursuant to Section 2(c)(2)(B)(i)(II)(gg) of the Act shall file the following with the regional office of the Commission with which it files periodic financial reports within 60 calendar days after the effective date of such registration:

(i) A copy of the organizational chart maintained by the retail foreign exchange dealer pursuant to § 5.10(a)(l)(i) of this part. Where there is a material change in information provided, an updated organizational chart shall be filed within sixty calendar days after the end of the fiscal quarter in which the change has occurred; and

(ii) Copies of the financial, operational, and risk management policies, procedures and systems maintained by the retail foreign exchange dealer pursuant to § 5.10(a)(l)(ii) of this part. If the retail foreign exchange dealer has no such written policies, procedures or systems, it must file a statement so indicating. Where there is a material change in information provided, such change shall be reported within sixty calendar days after the end of the fiscal quarter in which the change has occurred.

(2) Each retail foreign exchange dealer registered with the Commission pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act shall file the following with the regional office with which it files periodic financial reports within 105 calendar days after the end of each fiscal year or, if a filing is made pursuant to a written notice issued under paragraph (a)(2)(iii) of this section, within the time period specified in the written notice:

(i) Fiscal year-end consolidated and consolidating balance sheets for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated balance sheets shall include appropriate explanatory notes. The consolidating balance sheets may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process;

(ii) Fiscal year-end annual consolidated and consolidating income statements and consolidated cash flow statements for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated statements shall include appropriate explanatory notes. The consolidating statements may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process; and

(iii) Upon receiving written notice from any representative of the Commission and within the time period specified in the written notice, such additional information which the Commission determines is necessary for a complete understanding of a particular affiliate's financial impact on the retail foreign exchange dealer's organizational structure.

(3) For the purposes of this section, the term Material Affiliated Person shall have the meaning used in § 5.10 of this part.

(4) The reports required to be filed pursuant to paragraphs (a)(1) and (2) of this section shall be considered filed when received by the regional office of the Commission with whom the retail foreign exchange dealer files financial reports pursuant to § 5.12 of this part.

(b) *Exemptions.* The Commission may exempt any retail foreign exchange dealer from any provision of this section if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(c) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic*

regulators. (1) In the case of a Material Affiliated Person that is required to maintain and preserve information pursuant to § 240.17h–1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, the retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the retail foreign exchange dealer maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by the Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h–1T and 240.17h–2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt;

(2) In the case of a Material Affiliated Person (including a foreign banking organization) that is subject to examination by, or the reporting requirements of, a Federal banking agency, the retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the retail foreign exchange dealer or such Material Affiliated Person maintains in accordance with § 5.10 of this part copies of all reports filed by the Material Affiliated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956.

(3) In the case of a retail foreign exchange dealer that has a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, such retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to the Material Affiliated Person if:

(i) With respect to a Material Affiliated Person organized as a mutual insurance company or a non-public stock company, the retail foreign exchange dealer or such Material Affiliated Person maintains in accordance with § 5.14 of this part copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner; and

(ii) With respect to a Material Affiliated Person organized as a public stock company, the retail foreign exchange dealer or such Material Affiliated Person maintains, in addition to the annual statements with schedules and exhibits required to be maintained pursuant to § 1.14 of this chapter, copies of the filings made by the Material Affiliated Person pursuant to sections 13 or 15 of the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

(4) No retail foreign exchange dealer shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Affiliated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Affiliated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 8 of the Act.

(5) The furnishing of any information or documents by a retail foreign exchange dealer pursuant to this section shall not constitute an admission for any purpose that a Material Affiliated Person is otherwise subject to the Act.

(d) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to a Material Affiliated Person if such retail foreign exchange dealer furnishes, or causes such Material Affiliated Person to make available, in accordance with the provisions of this section, copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority, provided that:

(1) The retail foreign exchange dealer agrees to use its best efforts to obtain from the Material Affiliated Person and to cause the Material Affiliated Person to provide, directly or through its foreign futures authority or other foreign regulatory authority, any supplemental information the Commission may request and there is no statute or other bar in the foreign jurisdiction that would preclude the retail foreign exchange dealer, the Material Affiliated Person, the foreign futures authority or other foreign regulatory authority from providing such information to the Commission; or

(2) The foreign futures authority or other foreign regulatory authority with whom the Material Affiliated Person files such reports has entered into an information sharing agreement with the Commission which is in effect as of the retail foreign exchange dealer's fiscal year-end and which will allow the Commission to obtain the type of information required herein. The retail foreign exchange dealer shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term "Foreign Futures Authority" shall have the meaning set forth in section 1a(10) of the Act.

(e) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a retail foreign exchange dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(f) *Implementation schedule.* Each retail foreign exchange dealer who is subject to the requirements of this section shall file the information required by paragraph (a)(1) of this section within 60 calendar days after registration is granted, and the information required by paragraph (a)(2) of this section within 105 calendar days after registration is granted.

§ 5.12 Financial reports of retail foreign exchange dealers.

(a)(1) Each person who files an application for registration as a retail foreign exchange dealer with the National Futures Association shall submit, concurrently with the filing of such application, either:

(i) A Form 1–FR–FCM certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; or

(ii) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant as of a date not more than one year prior to the date on which such report is filed.

(2) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(3) The provisions of paragraph (a)(1) of this section do not apply to any person succeeding to and continuing the

business of another retail foreign exchange dealer.

(b)(1) Each person registered as a retail foreign exchange dealer must file a Form 1–FR–FCM as of the close of business each month. Each Form 1–FR must be filed no later than 17 business days after the date for which the report is made.

(2) In addition to the monthly financial reports required by paragraph (b)(1) of this section, each person registered as a retail foreign exchange dealer must file a Form 1–FR–FCM as of the close of its fiscal year, which must be certified by an independent public accountant and must be filed no later than 90 days after the close of the retail foreign exchange dealer's fiscal year.

(3) A Form 1–FR–FCM required to be certified by an independent public accountant which is filed by a retail foreign exchange dealer must be filed in paper form and may not be filed electronically with the Commission. A Form 1–FR–FCM required to be certified by an independent public accountant which is filed by an applicant for registration as a retail foreign exchange dealer with the National Futures Association must be filed electronically in accordance with electronic filing procedures established by the National Futures Association, however a paper copy of any such filing with the original manually signed certification must be maintained by the applicant for registration as a retail foreign exchange dealer in accordance with § 1.31.

(c) Each Form 1–FR–FCM required by the provisions of paragraphs (a)(1) and (b)(2) of this section to be certified by an independent public accountant must be certified in accordance with § 1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of § 1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of § 1.16 (except paragraph (f)) of this chapter: Provided, however, that the term "§ 5.7" shall be substituted for the term "§ 1.17," and the term "retail foreign exchange dealer" shall be substituted for the term "futures commission merchant."

(d) Upon receiving written notice from any representative of the Commission, National Futures Association, or any self-regulatory organization of which the firm is a member, a retail foreign exchange dealer or applicant for such registration, must, monthly or at such times as specified, furnish the Commission, National Futures Association, or self-regulatory organization a Form 1–FR–FCM or such other financial information requested in the written notice. Each such Form 1–FR–FCM or such other information must be furnished within the time period specified in the written notice, and in accordance with the provisions of paragraph (i) of this section.

(e)(1) Each Form 1–FR–FCM filed pursuant to this § 5.12 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) A statement of income (loss) for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iii) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iv) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(v) A statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part as of the date for which the report is made; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each Form 1–FR–FCM filed pursuant to this § 5.12 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), cash flows, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: Provided, That for an applicant filing pursuant to paragraph (a) of this section the period must be the year ending as of the date of the statement of financial condition;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part as of the date for which the report is made;

(iv) Appropriate footnote disclosures;

(v) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part, in the certified Form 1–FR–FCM with the applicant's or registrant's corresponding uncertified most recent Form 1–FR–FCM filing when material differences exist or, if no material differences exist, a statement so indicating; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

(3) The statements required by paragraphs (e)(2)(i) and (ii) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraph (b)(2) of this section or accompanying the application for registration pursuant to paragraph (a)(1) of this section, rather than in the format specifically prescribed by these regulations: Provided, the statement of financial condition is presented in a format as consistent as possible with the Form 1–FR–FCM and a reconciliation is provided reconciling such statement of financial condition to the statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part. Such reconciliation must be certified by an independent public accountant in accordance with § 1.16 of this chapter.

(4) Attached to each Form 1–FR–FCM filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR–FCM is true and correct. The individual making such oath or affirmation must be: If the registrant or applicant is a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, the chief executive officer or chief financial officer; and, if a limited liability company or limited liability partnership, the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership.

(f) *Election of fiscal year.* (1) An applicant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year, in writing, concurrently with the filing of the Form 1–FR–FCM pursuant

to paragraph (a)(1) of this section, but in no event may such fiscal year end more than one year from the date of the Form 1–FR–FCM filed pursuant to paragraph (a)(1) of this section. An applicant that does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year.

(2)(i) A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year has been approved pursuant to this paragraph (f)(2).

(ii) A registrant may file with its designated self-regulatory organization an application to change its fiscal year, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the registrant's designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from its designated self-regulatory organization to approve or deny the registrant's application to change its fiscal year. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(g) In the event a retail foreign exchange dealer or applicant for registration as a retail foreign exchange dealer finds that it cannot file its Form 1–FR–FCM for any period within the time specified in paragraph (b)(1) or (2) of this section without substantial undue hardship, it may request approval for an extension of time by filing an application for an extension of time with, in the case of a registrant, its designated self-regulatory organization, or, in the case of an applicant, the National Futures Association. The registrant or applicant also must file a copy of its application for an extension of time with the Commission. The application shall be approved or denied in writing by the National Futures Association or designated self-regulatory organization, as applicable. The registrant or applicant must file immediately with the Commission a copy of any notice it receives approving or denying the request for extension of time. A written notice of approval shall become effective upon the filing by the registrant or applicant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(h) *Public availability of reports.* (1) Forms 1–FR–FCM filed pursuant to this section will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, except for the information described in paragraph (i)(2) of this section.

(2) The following information in Forms 1–FR–FCM will be publicly available:

(i) The amount of the applicant's or registrant's adjusted net capital; the amount of its minimum net capital requirement under § 5.7 of this chapter; the amount of its adjusted net capital in excess of its minimum net capital requirement; and the amount of the retail forex obligation owed to its retail forex customers; and

(ii) The Statement of Financial Condition and the opinion of the independent public accountant in the certified annual financial reports of retail foreign exchange dealers.

(3) All information that is exempt from mandatory public disclosure under paragraph (h)(1) of this section will, however, be available for official use by any official or employee of the United States or any State, by the National Futures Association or any other self-regulatory organization of which the person filing such report is a member, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (h) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

(i)(1) In the case of an applicant, all filings or other notices provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located and by the National Futures Association. In the case of a registrant, all filings or other notices provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located and by the registrant's designated self-regulatory organization. Any copy that under paragraph (f)(2) or (g) of this section is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located.

(2) All filings or other notices filed pursuant to this section which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the retail foreign exchange dealer or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in paragraph (e)(4) of this section.

§ 5.13 Reporting to customers of retail foreign exchange dealers and futures commission merchants; monthly and confirmation statements.

(a) *Monthly statements.* Each retail foreign exchange dealer or futures commission merchant must promptly furnish in writing to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each retail forex customer:

(i) The open retail forex transactions with prices at which acquired;

(ii) The net unrealized profits or losses in all open retail forex transactions marked to the market; and

(iii) Any money, securities or other property carried with the retail foreign exchange dealer or futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such retail forex accounts during the monthly reporting period, including money, securities or property received from or disbursed to such customer and realized profits and losses; and

(2) For each retail forex customer engaging in forex options transactions:

(i) All forex options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(ii) The open forex option positions carried for such customer as of the end of the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(iii) All open forex option positions marked to the market and the amount each position is in the money, if any;

(iv) Any money, securities or other property carried with the retail foreign exchange dealer or futures commission merchant; and

(v) A detailed accounting of all financial charges and credits to such retail forex account(s) during the monthly reporting period, including money, securities and property received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(b) *Confirmation statement.* Each retail foreign exchange dealer or futures commission merchant must, not later than the next business day after any retail forex or forex option transaction, furnish:

(1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day.

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

(i) The retail forex customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;

(iii) The strike price;

(iv) The underlying retail forex transaction or underlying currency;

(v) The final exercise date of the forex option purchased or sold; and

(vi) The date the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any forex option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the forex option involved, and, in the case of exercise, the details of the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(4) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a retail forex transaction or forex option transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(c) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer or forex option customer for whom such account is carried, each retail foreign exchange dealer or futures commission merchant shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(d) *Recordkeeping.* Each retail foreign exchange dealer or futures commission merchant shall retain, in accordance with § 1.31 of this chapter, a copy of each monthly statement and confirmation required by this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the retail foreign exchange dealer or futures commission merchant is providing the statement was introduced by an introducing broker and the names of the retail foreign exchange dealer or futures commission merchant and introducing broker.

(f) *Electronic transmission of statements.* (1) The statements required by this section may be furnished to a retail forex customer by means of electronic media if the retail forex customer so consents, *Provided, however,* that a retail foreign exchange dealer or futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time, and provided, further, that a retail foreign exchange dealer or futures commission merchant must obtain the retail forex customer's signed consent acknowledging such disclosure prior to the transmission of any statement by means of electronic media.

(2) Any statement required to be furnished to a person other than a retail forex customer in accordance with paragraph (f) of this section may be furnished by electronic media.

(3) A retail foreign exchange dealer or futures commission merchant who furnishes statements to a retail forex customer by means of electronic media must retain a daily confirmation statement for such retail forex customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31 of this chapter.

(g) *Combination with other statements.* Any futures commission merchant required to deliver statements to retail forex customers in accordance with § 1.33 of this chapter may combine into one monthly statement or confirmation statement, as the case may be, the information required by this section and the information required by § 1.33, provided that retail forex account information is separately identified from any other trading or account activity of the retail forex customer.

§ 5.14 Records to be kept by retail foreign exchange dealers and futures commission merchants.

(a) No person shall be registered as a retail foreign exchange dealer under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or categories that are in accord with generally accepted accounting principles as applicable. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 of this chapter formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or § 5.7 of this chapter, or the requirements of the designated self-regulatory organization to which it is subject, as applicable, as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the

case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed.

§ 5.15 Unlawful representations.

It shall be unlawful for any person registered pursuant to the requirements of this part to represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that its abilities or qualifications have been reviewed or evaluated, by the Commission, the Federal government or any agency thereof.

§ 5.16 Prohibition of guarantees against loss.

(a) No retail foreign exchange dealer, futures commission merchant or introducing broker may in any way represent that it will, with respect to any retail foreign exchange transaction in any account carried by a retail foreign exchange dealer or futures commission merchant for or on behalf of any person:

(1) Guarantee such person against loss;

(2) Limit the loss of such person; or

(3) Not call for or attempt to collect security deposits, margin, or other deposits as established for retail forex customers.

(b) No person may in any way represent that a retail foreign exchange dealer, futures commission merchant or introducing broker will engage in any of the acts or practices described in paragraph (a) of this section.

(c) This section shall not be construed to prevent a retail foreign exchange dealer, futures commission merchant or introducing broker from assuming or sharing in the losses resulting from an error or mishandling of an order.

(d) This section shall not affect any guarantee entered into prior to October 18, 2010, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

§ 5.17 Authorization to trade.

No retail foreign exchange dealer, futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a retail forex transaction for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account specifically authorized the retail foreign exchange dealer, futures commission merchant, introducing broker or any of their associated persons to effect the transaction. A transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies:

(a) The precise retail forex transaction to be effected;

(b) The exact amount of the foreign currency to be purchased or sold; and

(c) In the case of an option, the identity of the foreign currency or contract that underlies the option.

§ 5.18 Trading and operational standards.

(a) For purposes of this section:

(1) The term *retail forex counterparty* includes, as appropriate:

(i) A retail foreign exchange dealer as defined in § 5.1 of this part;

(ii) A futures commission merchant as defined in section 1a(20) of the Act; and

(iii) An affiliated person of a futures commission merchant as defined in § 5.1 of this part.

(2) The term *related person* when used in reference to a retail forex counterparty means any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the retail forex counterparty, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

(b) Prior to engaging in a retail forex transaction, each retail forex counterparty shall, at a minimum, establish and enforce internal rules, procedures and controls to:

(1) Ensure, to the extent possible, that each order received from a retail forex customer which order is executable at or near the price that the retail forex counterparty has quoted to the customer is entered for execution before any order in any retail forex transaction for any proprietary account, any other account in which a related person of the retail forex counterparty has an interest, or any account for which such a related person may originate orders without the prior specific consent of the account owner (if such related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account), an account in which such a related person has an interest, or an account in which such a related person may originate orders without the prior specific consent of the account owner; and

(2) Prevent related persons of forex counterparties from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of paragraph (b)(1) of this section;

(3) Fairly and objectively establish settlement prices for retail forex transactions; and

(4) Record and maintain essential information regarding customer orders and account activity, and to provide such information to customers upon request. Such information shall include:

(i) Transaction records for the customer's account, including:

(A) The date and time each order is received by the retail forex counterparty;

(B) The price at which each order is placed, or, in the case of an option, the premium paid

(C) If the transaction was entered into by means of a trading platform, the price quoted on the trading platform when the order was placed, or, in the case of an option, the premium quoted;

(D) The customer account identification information;

(E) The currency pair;

(F) The size of the transaction;

(G) Whether the order was a buy or sell order;

(H) The type of order, if the order was not a market order;

(I) If a trading platform is used, the date and time the order is transmitted to the trading platform;

(J) If a trading platform is used, the date and time the order is executed;

(K) The size and price at which the order is executed, or in the case of an option, the amount of the premium paid for each option purchased, or the amount credited for each option sold; and

(L) For options, whether the option is a put or call, the strike price, and expiration date.

(ii) Account records that contain the following information:

(A) The funds in the account, net of any commissions and fees;

(B) The net profits and losses on open trades; and

(C) The funds in the account plus or minus the net profits and losses on open trades. (In the case of open option positions, the account balance should be adjusted for the net option value);

(iii) If a trading platform is used, daily logs showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price; and

(iv) Any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which customer orders are executed, including, but not limited to, any markups, fees, commissions or other items which affect the profitability or risk of loss of a retail forex customer's transaction.

(c) No retail forex counterparty shall disclose that an order of another person

is being held by the retail forex counterparty, unless such disclosure is necessary to the effective execution of such order or is made at the request of an authorized representative of the Commission, or a futures association registered with the Commission pursuant to section 17 of the Act.

(d) No retail forex counterparty shall knowingly handle the account of any related person of another retail forex counterparty unless it:

(1) Receives written authorization from a person designated by such other retail forex counterparty with responsibility for the surveillance over such account pursuant to paragraph (b)(2) of this section;

(2) Prepares immediately upon receipt of an order for such account a written record of such order, including the account identification and order number, and records thereon to the nearest minute, by time-stamp or other timing device, the date and time the order is received; and

(3) Transmits on a regular basis to such other retail forex counterparty copies of all statements for such account and of all written records prepared upon the receipt of orders for such account pursuant to paragraph (b)(2) of this section.

(e) No related person of a retail forex counterparty shall have an account, directly or indirectly, with another retail forex counterparty unless:

(1) It receives written authorization to maintain such an account from a person designated by the retail forex counterparty of which it is a related person with responsibility for the surveillance over such account pursuant to paragraph (b)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such other retail forex counterparty upon receipt of orders for such account pursuant to paragraph (d)(2) of this section are transmitted on a regular basis to the retail forex counterparty of which it is a related person.

(f) No retail forex counterparty shall:

(1) Enter into a retail forex transaction, to be executed pursuant to a market or limit order at a price that is not at or near the price at which other retail forex customers, during that same time period, have executed retail forex transactions with the retail forex counterparty; *Provided, however,* that this paragraph (f)(1) shall not prohibit such practice if done in accordance with the rules of a registered futures association, and of which such retail foreign exchange dealer, futures commission merchant or affiliated person of a futures commission merchant is a member;

(2) Adjust or alter prices for a retail forex transaction after the transaction has been confirmed to the retail forex customer; *Provided, however,* that this paragraph (f)(2) shall not prohibit such practice if in accordance with the rules of a registered futures association, and of which such retail foreign exchange dealer, futures commission merchant or affiliated person of a futures commission merchant is a member;

(3)(i) Provide a retail forex customer a new bid price for a retail forex transaction that is higher than its previous bid without providing a new asked price that is also higher than its previous asked price by a similar amount;

(ii) Provide a retail forex customer a new bid price for a retail forex transaction that is lower than its previous bid without providing a new asked price that is also lower than its previous asked price by a similar amount; or

(4) Establish a new position for a retail forex customer (except one that offsets an existing position for that retail forex customer) where the retail forex counterparty holds outstanding orders of other retail forex customers for the same currency pair at a comparable price.

(g)(1) Each retail forex counterparty and each CPO, CTA and IB subject to this Part 5 shall maintain a record of all communications received by such person concerning facts giving rise to possible violations of the Act, rules, regulations or orders thereunder, related to their retail forex business. The record shall contain the name of the complainant, if provided, the date of the communication, the agreement, contract or transaction, the substance of the communication, and the name of the person who received the communication.

(2) Each retail forex counterparty and each CPO, CTA and IB subject to this Part 5 shall provide to the Division of Enforcement of the Commission, electronically, a copy of the record of each communication received pursuant to paragraph (g)(1) of this section. Such copy shall be provided to the Division of Enforcement of the Commission no later than 30 calendar days after the communication is received: *Provided, however,* that in the case of a communication concerning facts giving rise to possible fraud under the Act or Commission regulations, such copy shall be provided to the Division of Enforcement of the Commission within three business days after the communication is received.

(h) An introducing broker as defined in § 5.1(f)(1) of this part, applicant for registration as an introducing broker as defined in § 5.1(f)(1) of this part, or person succeeding to and continuing the business of another introducing broker as defined in § 5.1(f)(1) of this part must comply with all provisions applicable to an introducing broker under this chapter; *Provided, however,* that an introducing broker operating pursuant to, or an applicant for registration as an introducing broker who has filed concurrently with its application for registration, a guarantee agreement meeting the requirements of § 1.10(j) of this chapter is not subject to the minimum capital and related financial reporting requirements of §§ 1.10, 1.12 and 1.17 of this chapter.

(i)(1) Each retail forex counterparty shall prepare and maintain on a quarterly basis (calendar quarter) a calculation of the percentage of nondiscretionary retail forex customer accounts open for any period of time during the quarter that were profitable, and the percentage of such accounts that were not profitable. In calculating whether a retail forex account was profitable or not profitable during the quarter, the FCM or RFED must compute the realized and unrealized gains and/or losses on all retail forex transactions carried in the retail forex account at any time during the quarter, and subtract all fees, commissions, and any other charges posted to the retail forex account during the quarter, and add any interest income and other income or rebates credited to the retail forex account during the quarter. All deposits and/or withdrawals of funds made by a retail forex customer during the quarter must be excluded from the computation of whether the retail forex account was profitable or not profitable during the quarter. Computations that result in a zero or negative number shall be considered a retail forex account that was not profitable. Computations that result in a positive number shall be considered a retail forex account that was profitable. RFEDs and FCMs shall maintain such calculations along with data supporting such calculations for five years in accordance with § 1.31.

(2) In calculating its percentages of nondiscretionary retail forex customer accounts that were profitable or not profitable, the retail forex counterparty may only use those retail forex accounts, as defined in § 5.1(i) of this part, that are nondiscretionary accounts; provided, that the retail forex account is not a proprietary account, as defined in paragraph (i)(3) of this section.

(3) Proprietary account for this section means a retail forex account carried on

the books of a retail foreign exchange dealer or a futures commission merchant for one of the following persons, or of which ten percent or more is owned by one of the following persons, or of which an aggregate of ten percent or more of which is owned by more than one of the following persons:

(i) Such retail foreign exchange dealer or futures commission merchant itself;

(ii) If the retail foreign exchange dealer or futures commission merchant is a partnership, a general partner in such partnership;

(iii) If the retail foreign exchange dealer or futures commission merchant is a limited partnership, a limited or special partner in such partnership whose duties include:

(A) The management of the partnership business or any part thereof,

(B) The handling of retail forex transactions of such partnership,

(C) The keeping of records pertaining to retail forex transactions, or

(D) The signing or co-signing of checks or drafts on behalf of such partnership;

(iv) If the retail foreign exchange dealer or futures commission merchant is a corporation or association, an officer, director or owner of ten percent or more of the capital stock, of such organization;

(v) An employee of such retail foreign exchange dealer or futures commission merchant whose duties include:

(A) The management of the business of such retail foreign exchange dealer or futures commission merchant or any part thereof,

(B) The handling of retail forex transactions of such retail foreign exchange dealer or futures commission merchant,

(C) The keeping of records pertaining to retail forex transactions of such retail foreign exchange dealer or futures commission merchant, or

(D) The signing or co-signing of checks or drafts on behalf of such retail foreign exchange dealer or futures commission merchant;

(vi) A spouse or minor dependent living in the same household of any of the foregoing persons;

(vii) A business affiliate that directly or indirectly controls such retail foreign exchange dealer or futures commission merchant; or

(viii) A business affiliate that, directly or indirectly is controlled by or is under common control with, such retail foreign exchange dealer or futures commission merchant.

(j) Each retail forex counterparty shall designate one or more principals to serve as a chief compliance officer(s). The chief compliance officer(s) shall certify to the Commission and a registered national futures association annually that the retail forex counterparty has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder. The certification shall include a statement that the counterparty has in place compliance processes, and that the chief compliance officer(s) has apprised the chief executive officer of the compliance efforts to date and identify and address significant compliance problems and plans to address those problems.

§ 5.19 Pending legal proceedings.

(a) Every retail foreign exchange dealer or futures commission merchant and each CPO, CTA or IB subject to this Part 5 shall submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed, the notice of appeal and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the retail foreign exchange dealer, futures commission merchant, CPO, CTA or IB is a party or to which its property or assets is subject with respect to retail forex transactions.

(b) Every retail foreign exchange dealer or futures commission merchant and each CPO, CTA or IB subject to this Part 5 shall submit to the Commission copies of any dispositive or partially dispositive decision concerning which a notice of appeal has been filed, the notice of appeal, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any person who is a principal of the retail foreign exchange dealer, futures commission merchant CPO, CTA or IB (as the term "principal" is defined in § 3.1(a) of this chapter) arising from conduct in such person's capacity as a principal of the retail foreign exchange dealer, futures commission merchant, CPO, CTA or IB and alleging violations, with regard to retail forex transactions, of:

(1) The Act or any rule, regulation, or order thereunder; or

(2) Provisions of state law relating to a duty or obligation owed by such a principal.

(c) All documents required by this section to be submitted to the Commission shall be mailed via first-class or submitted by other more expeditious means to the Commission's headquarters office in Washington, DC, Attention: Director, Division of Enforcement. All documents required by this section to be submitted to the Commission as to matters pending on October 18, 2010 shall be mailed to the Commission within 45 days of that effective date. Thereafter, all decisions and notices of appeal required to be submitted by retail foreign exchange dealers, futures commission merchants, CPOs, CTAs or IBs shall be mailed within 10 days of the filing or receipt by the retail foreign exchange dealer or futures commission merchant of the relevant notice of appeal. For purposes of paragraph (a) and (b) of this section, a "material legal proceeding" includes but is not limited to actions involving alleged violations of the Commodity Exchange Act or the Commission's regulations. However, a legal proceeding is not "material" for the purposes of this rule if the proceeding is not in a federal or state court or if the Commission is a party.

§ 5.20 Special calls for account and transaction information.

(a) *Preparation and transmission of information upon special call.* All information required upon special call shall be prepared in such form and manner and in accordance with such instructions, and shall be transmitted at such time and to such office of the Commission, as may be specified in the call.

(b) *Special calls for information on controlled accounts from retail foreign exchange dealers, futures commission merchants and introducing brokers.* Upon call by the Commission, each retail foreign exchange dealer, futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in retail forex transactions.

(c) *Special calls for information on open transactions in accounts carried or introduced by retail foreign exchange dealers, futures commission merchants, and introducing brokers.* Upon special call by the Commission for information relating to retail forex transactions held or introduced on the dates specified in the call, each retail foreign exchange dealer, futures commission merchant, or introducing broker shall furnish to the Commission the following information concerning accounts of traders owning or controlling such retail forex transaction positions, as may be specified in the call:

(1) The name, address, and telephone number of the person for whom each account is carried;

(2) The principal business or occupation of the person for whom each

account is introduced or carried, as specified in the call;

(3) The name, address and principal business or occupation of any person who controls the trading of each account;

(4) The name and address of any person having a financial interest of ten percent or more in each account;

(5) The number of open retail forex transaction positions introduced or carried in each account, as specified in the call; and

(6) The total number of retail forex transactions against which delivery has been made.

(d) *Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight and the Director of the Division of Market Oversight.* The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and the Director of the Division of Market Oversight, or to the respective Director's designees, the authority set forth in this section to make special calls for information on controlled accounts from retail foreign exchange dealers, futures commission merchants and from introducing brokers, and to make special calls for information on open contracts in accounts carried or introduced by futures commission merchants, introducing brokers, and foreign brokers. Either Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this section. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Directors.

§ 5.21 Supervision.

Each Commission registrant subject to this Part 5, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all retail forex accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

§ 5.22 Registered futures association membership.

(a) Each person registered as a retail foreign exchange dealer must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such retail foreign exchange dealer.

(b) Each person required to register as:

(1) An introducing broker, because the person solicits or accepts orders for retail forex transactions;

(2) A commodity pool operator because the person operates, or solicits funds, securities, or property for, a pooled investment vehicle that engages in retail forex transactions; or

(3) A commodity trading advisor because the person exercises discretionary trading authority, or obtains written authorization to exercise discretionary trading authority over, an account in connection with retail forex transactions, must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such person.

§ 5.23 Notice of bulk transfers and bulk liquidations.

(a) *Notice and disclosure to retail forex customers of a bulk transfer.* (1) A retail foreign exchange dealer, futures commission merchant or introducing broker must obtain the written prior and specific consent of its retail forex customer to the assignment of any position or transfer of any account of the retail forex customer to another retail foreign exchange dealer, futures commission merchant or introducing broker, unless made at the retail forex customer's request.

(2) Absent a request of the retail forex customer or the consent described in paragraph (a)(1) of this section, assignments of positions and transfers of accounts of retail forex customers may be permitted under rules of the retail forex dealer's, futures commission merchant's, or introducing broker's designated self-regulatory organization that establish notice and other requirements with respect to the assignment of positions and transfers of accounts of retail forex customers. If such rules permit implied consent as a result of the failure of the retail forex customer to object after having received notice of the proposed assignment or transfer, such rules must provide that the notice must include a statement that the retail forex customer is not required to accept the proposed assignment or transfer and may direct the transferor firm to liquidate the positions of the retail forex customer or transfer the account to a firm of the retail forex customer's selection.

(3) For assignments and transfers made under this section, other than at the retail forex customer's request, the transferee retail foreign exchange dealer, futures commission merchant or introducing broker must provide to the retail forex customer the risk disclosure statements and forms of acknowledgment required by Part 5 of this chapter and receive the required signed acknowledgments within sixty days of such assignments or transfers. This requirement shall not apply:

(i) If the transferee retail foreign exchange dealer, futures commission merchant or introducing broker has clear written evidence that the retail forex customer has received and acknowledged receipt of the required disclosure statements; or

(ii) If the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same retail foreign exchange dealer or futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) of this chapter and such retail foreign exchange dealer or futures commission merchant maintains the relevant acknowledgments required by Part 5 of this chapter.

(b) *Notice to the Commission.* Each retail foreign exchange dealer, futures commission merchant or introducing broker shall file with the Commission prior notice of any transfer of accounts of any retail forex customer that is not initiated at the request of the customer, where the transfer involves 50 percent or more of the transferor's total number of retail forex customer accounts.

(c) *Contents of notice to the Commission.* The notice required by paragraph (b) of this section shall include:

(1) The name, principal business address and telephone number of the transferor futures retail foreign exchange dealer, futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of each transferee retail foreign exchange dealer, futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of any notices to customers regarding the transfers; and

(6) A statement of the number of accounts to be transferred.

(d) *Notice of the bulk liquidation of retail forex transactions.* A retail foreign exchange dealer or futures commission merchant may not initiate the bulk liquidation of properly margined retail forex transactions unless such liquidation complies with the rules and procedures of the retail forex dealer's or

futures commission merchant's designated self-regulatory organization and the retail forex dealer or futures commission merchant provides the Commission with prior written notice of the liquidation.

(e) *Contents of notice of bulk liquidation.* The notice required by paragraph (d) of this section shall include:

(1) The name, principal business address and telephone number of the initiating retail foreign exchange dealer or futures commission merchant;

(2) A brief statement of the reasons for the liquidation;

(3) A copy of any notices to customers regarding the liquidation; and

(4) A statement of the number of accounts to be liquidated.

(f) *Filing of notices.* The notice required by paragraph (b) and (d) of this section shall be filed five business days prior to the transfer or liquidation of the retail forex transaction with the Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; the National Futures Association Attn: Vice President-Compliance; and the designated self-regulatory organization for the transferor firm.

(g) *No effect on other obligations.* The requirements of this section shall not affect the obligations of a retail foreign exchange dealer, futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to assignments of positions or transfers of accounts or liquidation of positions.

(h) *Corrective notice.* If a proposed transfer is not completed in accordance with the notice required to be filed by paragraph (b) of this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

§ 5.24 Applicability of other parts of this chapter

Insofar as it is consistent with the requirements of this part, all other provisions of this chapter that apply to a person shall apply to such person as though such provisions were expressly set forth in this part.

§ 5.25 Applicability of the Act.

Except as otherwise specified in this part and unless the context otherwise requires, the provisions of Sections 4b, 4c(b), 4f, 4g, 4k, 4m, 4n, 4o, 6(c)–(e), 6b, 6c, 8(a)–(e), 8a and 12(f) of the Act shall apply to retail forex transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to retail forex transactions and the persons defined in § 5.1 of this part.

PART 10—RULES OF PRACTICE

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

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 2a(12).

■ 38. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning, restricting or modifying of registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, or associated person, floor broker, floor trader, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(c), 8a(2), 8a(3), 8a(4) and 8a(11) of the Act, 7 U.S.C. 9 and 15, 12a(2), 12a(3), 12a(4) and 12(a)(11), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6(a) and 6(b) of the Act, 7 U.S.C. 8;

* * * * *

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 39. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

■ 40. Section 140.94 is added to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time:

(1) All functions reserved to the Commission in § 5.7 of this chapter;

(2) All functions reserved to the Commission in § 5.10 of this chapter;

(3) All functions reserved to the Commission in § 5.11 of this chapter;

(4) All functions reserved to the Commission in § 5.12 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 5.12(i) of this chapter; and

(5) All functions reserved to the Commission in § 5.14 of this chapter.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Clearing and Intermediary Oversight under paragraph (a) of this section.

PART 145—COMMISSION RECORDS AND INFORMATION

■ 41. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

■ 42. Section 145.5 is amended by revising paragraphs (d)(1)(viii) and (h) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *

(1) * * *

(viii) The following reports and statements that are also set forth in paragraph (h) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 31.13(m), or 17 CFR 5.12(h): Forms 1–FR required to be filed pursuant to 17 CFR 1.10 or 17 CFR 5.12; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(h) Contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (d)(1)(viii) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 5.12(h) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10 or 17 CFR 5.12; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in

accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

■ 43. The authority citation for part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

■ 44. Section 147.3 is amended by revising paragraphs (b)(4)(i)(H) and (b)(8) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 5.12, or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10, 17 CFR 5.12(h)(2), or 17 CFR 31.13(m); FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 5.12, or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10, 17 CFR 5.12(h)(2), or 17 CFR 31.12(m); FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 45. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C. 6801, *et seq.*

■ 46. Section 160.1 is amended by revising paragraph (b) to read as follows:

§ 160.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to all futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators and introducing brokers that are subject to the jurisdiction of the Commission, regardless whether they are required to register with the Commission. These entities are hereinafter referred to in this part as "you." This part does not apply to foreign (non-resident) futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators and introducing brokers that are not registered with the Commission. Nothing in this part modifies, limits or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d—1320d–8.

47. Section 160.3 is amended by:

■ a. Revising paragraph (a) introductory text and paragraph (a)(2);

■ b. Redesignating paragraphs (k)(2)(i)(B) through (F) as paragraphs (k)(2)(i)(C) through (G) and republishing them, and adding new paragraph (k)(2)(i)(B);

■ c. Revising paragraphs (n)(1)(i) and (n)(2)(i);

■ d. Revising paragraph (o)(1)(i);

■ e. Revising paragraph (u)(2)(i)(A);

■ f. Redesignating paragraphs (w)(2) through (4) as paragraphs (w)(3) through (5) and adding new paragraph (w)(2); and

■ g. Adding new paragraph (x) to read as follows:

§ 160.3 Definitions.

* * * * *

(a) *Affiliate* of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker means any company that controls, is controlled by, or is under common control with a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker that is subject to the jurisdiction of the Commission. In addition, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker subject to the jurisdiction of the Commission will be deemed an affiliate of a company for purposes of this part if:

* * * * *

(2) Rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the GLB Act treat the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker as an affiliate of that company.

* * * * *

(k) * * *

(2) * * *

(i) * * *

(B) You are a retail foreign exchange dealer with whom a consumer has opened an account, or that effects or engages in retail forex transactions with or for a consumer, even if you do not hold any assets of the consumer;

(C) You are an introducing broker that solicits or accepts specific orders for trades;

(D) You are a commodity trading advisor with whom a consumer has a contract or subscription, either written or oral, regardless of whether the advice is standardized, or is based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of the particular consumer;

(E) You are a commodity pool operator, and you accept or receive from the consumer, funds, securities, or property for the purpose of purchasing an interest in a commodity pool;

(F) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or

(G) You regularly effect or engage in commodity interest transactions with or for a consumer even if you do not hold any assets of the consumer.

* * * * *

(n)(1) * * *

(i) Any futures commission merchant, retail foreign exchange dealer,

commodity trading advisor, commodity pool operator or introducing broker that is registered with the Commission as such or is otherwise subject to the Commission's jurisdiction; and

* * * * *

(2) * * *

(i) Any person or entity, other than a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker that, with respect to any financial activity, is subject to the jurisdiction of the Commission under the Act.

* * * * *

(o)(1) * * *

(i) Any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, or introducing broker could offer that is subject to the Commission's jurisdiction; and

* * * * *

(u) * * *

(2) * * *

(i) * * *

(A) Information a consumer provides to you on an application to open a commodity interest trading account, to invest in a commodity pool, or to obtain another financial product or service;

* * * * *

(w) * * *

(2) Any retail foreign exchange dealer;

* * * * *

(x) *Retail foreign exchange dealer* has the same meaning as in § 5.3(i)(1) of this chapter.

■ 48. Section 160.4 is amended by:

■ a. Revising paragraph (c)(2)(ii); and

■ b. Revising paragraph (e)(1)(iv) to read as follows:

§ 160.4 Initial privacy notice to consumers required.

* * * * *

(c) * * *

(2) * * *

(ii) Opens a retail forex account, or opens a commodity interest account through an introducing broker or with a futures commission merchant that clears transactions for its customers through you on a fully-disclosed basis;

* * * * *

(e) * * *

(1) * * *

(iv) You have established a customer relationship with a customer in a bulk transfer in accordance with § 1.65, if you are a transferee futures commission merchant, retail foreign exchange dealer or introducing broker.

* * * * *

■ 49. Section 160.30 is amended by revising the introductory text to read as follows:

§ 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator and introducing broker subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

* * * * *

PART 166—CUSTOMER PROTECTION RULES

■ 50. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7, 12a and 23, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 51. Section 166.2 is revised to read as follows:

§ 166.2 Authorization to trade.

No futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account:

(a) With respect to any commodity interest as defined in § 1.3(yy)(1) through (3) of this chapter, specifically authorized the futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies—

(1) The precise commodity interest to be purchased or sold; and

(2) The exact amount of the commodity interest to be purchased or sold); or

(b) With respect to any commodity interest as defined in § 1.3(yy)(1) or (2) of this chapter, authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; Provided, however, That if any such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

■ 52. Section 166.5 is amended by:

■ a. Removing paragraph (a)(1)(iv), redesignating paragraphs (a)(1)(i) through (a)(1)(iii) as paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), and adding new paragraph (a)(1)(ii);

■ b. Revising paragraphs (a)(2) and (a)(3);

■ c. Revising paragraphs (c)(5)(i)(A) and (c)(5)(i)(C) to read as follows:

§ 166.5 Dispute settlement procedures.

(a) * * * (1) * * *

(ii) Arises out of any retail forex transaction (as defined in § 5.1(m) of this chapter).

(2) The term customer as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter), a retail forex customer (as defined in § 5.1(k) of this chapter) and any person for or on behalf of whom a member of a designated contract market, or a participant transacting on or through such designated contract market, effects a transaction on such contract market, except another member of or participant in such designated contract market; *Provided, however,* a person who is an "eligible contract participant" as defined in section 1a(12) of the Act shall not be deemed to be a customer within the meaning of this section.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, retail foreign exchange dealer, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(A) The designated contract market, if applicable and if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

* * * * *

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the designated contract market, if applicable, or employee thereof, and

that are not otherwise associated with the designated contract market (mixed panel), if applicable: Provided, however, that the list of qualified organizations provided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

* * * * *

Issued in Washington, DC, on August 26, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–21729 Filed 9–9–10; 8:45 am]

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H.R. 511/P.L. 111–231
To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village. (Aug. 16, 2010; 124 Stat. 2489)

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H.R. 3509/P.L. 111–233
Agricultural Credit Act of 2010 (Aug. 16, 2010; 124 Stat. 2493)

H.R. 4275/P.L. 111–234
To designate the annex building under construction for the Elbert P. Tuttle United States Court of Appeals Building in Atlanta, Georgia, as the ''John C. Godbold Federal Building''. (Aug. 16, 2010; 124 Stat. 2494)

H.R. 5278/P.L. 111–235
To designate the facility of the United States Postal Service located at 405 West Second Street in Dixon, Illinois, as the ''President Ronald W. Reagan Post Office Building''. (Aug. 16, 2010; 124 Stat. 2495)

H.R. 5395/P.L. 111–236
To designate the facility of the United States Postal Service located at 151 North Maitland Avenue in Maitland, Florida, as the ''Paula Hawkins Post Office Building''. (Aug. 16, 2010; 124 Stat. 2496)

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