



# Federal Register

---

3-22-10

Vol. 75 No. 54

Monday

Mar. 22, 2010

Pages 13427-13666



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.federalregister.gov](http://www.federalregister.gov).

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register**, [www.gpoaccess.gov/nara](http://www.gpoaccess.gov/nara), available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at [gpoaccess@gpo.gov](mailto:gpoaccess@gpo.gov). The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 75 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche	202-512-1800
Assistance with public subscriptions	202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche	202-512-1800
Assistance with public single copies	1-866-512-1800 (Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Paper or fiche	202-741-6005
Assistance with Federal agency subscriptions	202-741-6005



# Contents

Federal Register

Vol. 75, No. 54

Monday, March 22, 2010

## Agricultural Marketing Service

### PROPOSED RULES

Marketing Order Regulating the Handling of Spearmint Oil  
Produced in the Far West:  
Salable Quantities and Allotment Percentages for the  
2010–2011 Marketing Year, 13445–13451

### NOTICES

Nominations for Members:  
National Organic Standards Board, 13484

## Agriculture Department

See Agricultural Marketing Service  
See National Institute of Food and Agriculture

## Air Force Department

### NOTICES

Meetings:  
United States Air Force Scientific Advisory Board, 13514

## Architectural and Transportation Barriers Compliance Board

### PROPOSED RULES

Americans with Disabilities Act Accessibility Guidelines  
for Buildings and Facilities; Telecommunications Act  
Accessibility Guidelines:  
Electronic and Information Technology Accessibility  
Standards, 13457–13468

## Census Bureau

### NOTICES

Advisory Committee Renewals:  
Census Advisory Committees on the Race and Ethnic  
Populations, 13484–13485

Meetings:  
Census Advisory Committees, 13494

## Centers for Disease Control and Prevention

### NOTICES

Meetings:  
Disease, Disability, and Injury Prevention and Control  
Special Emphasis Panel, 13559–13560

## Centers for Medicare & Medicaid Services

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 13543–13545

## Children and Families Administration

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:  
ANA Project Impact Assessment Survey, 13549–13550

## Coast Guard

### RULES

Safety Zones:  
Invista Inc. Facility Docks, Victoria Barge Canal, Victoria,  
TX, 13433–13436

### PROPOSED RULES

Special Local Regulation:  
Fran Schnarr Open Water Championships, Huntington  
Bay, NY, 13454–13457

## Commerce Department

See Census Bureau  
See Foreign-Trade Zones Board  
See International Trade Administration  
See National Oceanic and Atmospheric Administration

## Comptroller of the Currency

### NOTICES

Interagency Policy Statement on Funding and Liquidity  
Risk Management, 13656–13666

## Defense Department

See Air Force Department

## Education Department

### NOTICES

Applications for Funding:  
Migrant and Seasonal Farmworkers Program; Correction,  
13523  
Applications for New Awards (FY 2010):  
Ready-to-Learn Television Program, 13515–13521  
Proposed Priority:  
Centers for Independent Living Program—Training and  
Technical Assistance, 13521–13523

## Employee Benefits Security Administration

### NOTICES

Model Notices for Health Care Continuation Coverage  
Provided Pursuant to the Consolidated Omnibus  
Budget Reconciliation Act, etc.; Availability, 13595–  
13597

## Employment and Training Administration

### NOTICES

Labor Surplus Area Classification (under Executive Orders  
12073 and 10582); Correction, 13576–13595  
Meetings:  
Native American Employment and Training Council,  
13595

## Energy Department

See Federal Energy Regulatory Commission

## Environmental Protection Agency

### RULES

Approval and Promulgation of State Implementation Plans:  
Alaska, 13436–13441

### PROPOSED RULES

Disapproval of California State Implementation Plan  
Revisions:  
Monterey Bay Unified Air Pollution Control District,  
13468–13471

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:  
Reformulated Gasoline Commingling Provisions  
(Renewal), 13536–13537  
Clean Water Act Section 303(d):  
Call for Public Comment on 303(d) Program and Ocean  
Acidification, 13537–13540

## Executive Office of the President

See Presidential Documents

**Federal Aviation Administration****PROPOSED RULES**

Airworthiness Directives:

Turbomeca Arriel 2B1 Turboshaft Engines, 13451–13453  
 Proposed Amendment of Class E Airspace;  
 Corpus Christi, TX, 13453–13454

**NOTICES**

Meetings:

Proposed AC 20–42D, Hand Fire Extinguishers for Use in  
 Aircraft, 13646–13647

**Federal Communications Commission****PROPOSED RULES**

Telephone Consumer Protection, 13471–13482

**NOTICES**

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals, 13540–13542

**Federal Deposit Insurance Corporation****NOTICES**

Financial Institutions for Which the FDIC has been

Appointed Either Receiver, Liquidator, or Manager;  
 Update, 13542

Interagency Policy Statement on Funding and Liquidity  
 Risk Management, 13656–13666

**Federal Energy Regulatory Commission****NOTICES**

Agenda for Form No. 552 Technical Conference:

Transparency Provisions of Section 23 of the Natural Gas  
 Act, 13523–13524

Applications:

CenterPoint Energy Gas Transmission Co., 13525–13526

Eastern Shore Natural Gas Co., 13524–13525

Muskingum Valley Hydro, LLC, 13526–13528

Northern Natural Gas Co. et al., 13524

Questar Overthrust Pipeline Co., 13526–13527

Combined Notice of Filings, 13528–13532

Dispute Resolution Panel Convening and Technical  
 Conference:

Exelon Generation Co., LLC, 13532

Environmental Assessments; Availability, etc.:

Paiute Pipeline Co.; 2010 Expansion Project, 13533–  
 13534

Initial Market-Based Rate Filing:

Cornerstone Power Development, LLC, 13535

Grays Ferry Cogeneration Partnership, 13534–13535

Request Under Blanket Authorization:

Northern Natural Gas Co., 13535–13536

**Federal Labor Relations Authority****RULES**

Unfair Labor Practice Proceedings, 13429–13433

**Federal Motor Carrier Safety Administration****RULES**

Hours of Service:

Limited 90-Day Waiver for the Distribution of Anhydrous  
 Ammonia in Agricultural Operations, 13441–13444

**NOTICES**

Qualification of Drivers; Exemption Applications; Diabetes,  
 13647–13653

Qualification of Drivers; Exemption Applications; Vision,  
 13653–13654

**Federal Reserve System****NOTICES**

Interagency Policy Statement on Funding and Liquidity  
 Risk Management, 13656–13666

**Food and Drug Administration****NOTICES**Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals:

Focus Groups About Drug Products, as Used by the Food  
 and Drug Administration, 13548–13549

Guidance for Industry Entitled Hypertension Indication;  
 Drug Labeling for Cardiovascular Outcome Claims,  
 13547–13548

Compliance Policy Guide:

Canned Salmon–Adulteration Involving Decomposition;  
 Withdrawal of Guidance, 13555–13556

Filing of Color Additive Petition:

Biocompatibles UK Ltd., 13556

Impact of Dissolvable Tobacco Use on Public Health:

Request for Comments, 13556–13557

Meetings:

Endocrinologic and Metabolic Drugs Advisory  
 Committee, 13559–13560

Revised Draft Guidance for Industry on Pharmacokinetics  
 in Patients With Impaired Renal Function:

Study Design, Data Analysis, and Impact on Dosing and  
 Labeling; Availability, 13562–13563

**Foreign-Trade Zones Board****NOTICES**Foreign-Trade Zone 22; Temporary/Interim Manufacturing  
 Authority:

LG Electronics Mobilecomm USA, Inc. (Cell Phones);  
 Approval, 13484

Expansion of Foreign–Trade Zone 33:

Pittsburgh, PA, 13488–13489

**Health and Human Services Department***See Centers for Disease Control and Prevention**See Centers for Medicare & Medicaid Services**See Children and Families Administration**See Food and Drug Administration**See Indian Health Service**See National Institutes of Health**See Substance Abuse and Mental Health Services  
 Administration***NOTICES**

Decision to Evaluate a Petition to Designate a Class of  
 Employees to be Included in the Special Exposure  
 Cohort:

De Soto Facility, Los Angeles County, CA, 13542

Downey Facility in Los Angeles County, CA, 13542–  
 13543

Simonds Saw and Steel Co., Lockport, NY, 13543

**Homeland Security Department***See Coast Guard***Indian Health Service****NOTICES**

Competitive Cooperative Agreement Applications:

National Human Immunodeficiency Virus/Acquired

Immunodeficiency Syndrome Program, 13550–13555

**Interior Department***See Land Management Bureau**See Minerals Management Service**See National Park Service***Internal Revenue Service****NOTICES**

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals, 13655

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Revenue Procedure RP– 125212–09, Rules for Certain Rental Real Estate Activities, 13656

### International Trade Administration

#### NOTICES

Application(s) for Duty-Free Entry of Scientific Instruments, 13486  
Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review: Magnesium Metal from the People's Republic of China, 13489  
Final Results of Expedited Sunset Review of Antidumping Duty Order:  
Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China, 13489–13490  
Final Results of the Fifteenth Administrative Review: Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea, 13490–13492  
Initiation of Antidumping Duty Changed-Circumstances Review:  
Certain Frozen Warmwater Shrimp from India, 13492–13494  
North American Free-Trade Agreement, Article 1904: NAFTA Panel Reviews; Request for Panel Review, 13494–13495  
Preliminary Results of 2008–2009 Antidumping Duty Administrative Review:  
Saccharin from the People's Republic of China, 13495–13497  
Rescission of Antidumping Duty Administrative Review in Part:  
Freshwater Crawfish Tail Meat from the People's Republic of China, 13497–13498

### International Trade Commission

#### NOTICES

Meetings; Sunshine Act, 13573

### Justice Department

See Justice Programs Office

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Electronic Applications for Attorney Generals Honors Program and Summer Law Intern Program, 13573–13574  
Procedures for Administration of Section 5 of Voting Rights Act (of 1965), 13574–13575  
Privacy Act; Systems of Records, 13575

### Justice Programs Office

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Bulletproof Vest Partnership, 13575–13576

### Labor Department

See Employee Benefits Security Administration

See Employment and Training Administration

### Land Management Bureau

#### NOTICES

Environmental Impact Statements; Availability, etc.:  
Upper Las Vegas Wash Conservation Transfer Area, Las Vegas, NV, 13572  
Meetings:  
Central Montana Resource Advisory Council, 13573

### Maritime Administration

#### NOTICES

Environmental Impact Statements; Availability, etc.:  
TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port License Application; Hearing, 13644–13645  
Inventory of U.S.-Flag Launch Barges, 13645–13646  
Use of Foreign-Flag Anchor Handling Vessels in the Beaufort Sea or Chukchi Sea Adjacent to Alaska, 13654–13655

### Minerals Management Service

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Decommissioning Activities, 13568–13570  
Oil and Gas Well-Workover Operations, 13570–13572  
Subpart A – General, Revision of a Collection, 13563–13568

### National Aeronautics and Space Administration

#### NOTICES

Meetings:  
NASA Advisory Council, 13598  
NASA Advisory Council; Science Committee; Astrophysics Subcommittee, 13597

### National Credit Union Administration

#### NOTICES

Interagency Policy Statement on Funding and Liquidity Risk Management, 13656–13666

### National Institute of Food and Agriculture

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13483

### National Institutes of Health

#### NOTICES

Meetings:  
Center for Scientific Review, 13557  
National Cancer Institute, 13559  
National Human Genome Research Institute, 13558  
National Institute of Allergy and Infectious Diseases, 13558, 13561  
National Institute of Dental and Craniofacial Research, 13561–13562  
National Institute of Diabetes and Digestive and Kidney Diseases, 13557–13558  
National Institute of Environmental Health Sciences, 13558  
National Institute of General Medical Sciences, 13557

### National Oceanic and Atmospheric Administration

#### RULES

Fisheries of the Exclusive Economic Zone Off Alaska: Reallocation of Pacific Cod in Bering Sea and Aleutian Islands Management Area, 13444

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Socioeconomic Research and Monitoring for the Grays Reef National Marine Sanctuary, 13485–13486  
Availability of Grant Funds for Fiscal Year 2010; Amendment, 13486–13488  
Endangered Species; File No. 14949; Applications, 13488

Small Takes of Marine Mammals Incidental to Specified Activities:  
Dumbarton Bridge Seismic Retrofit Project, CA, 13498–13502

Takes of Marine Mammals Incidental to Specified Activities:  
Manette Bridge Replacement in Bremerton, WA, 13502–13514

### National Park Service

#### NOTICES

Meetings:  
Gettysburg National Military Park Advisory Commission, 13572–13573

### Neighborhood Reinvestment Corporation

#### NOTICES

Meetings; Sunshine Act, 13598

### Nuclear Regulatory Commission

#### NOTICES

Charter Renewals:  
Advisory Committee on the Medical Uses of Isotopes, 13598–13599  
Draft Regulatory Guide; Issuance, Availability, 13599  
Environmental Assessments; Availability, etc.:  
Arizona Public Service Co., Palo Verde Nuclear Generating Station (Units 1, 2, and 3), 13606–13607  
Entergy Operations, Inc., Arkansas Nuclear One (Units 1 and 2), 13607–13608  
Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station (Unit 2), 13600–13606  
Virginia Electric and Power Co.; North Anna Power Station (Unit Nos. 1 and 2) and Surry Power Station (Unit Nos. 1 and 2), 13600

#### Exemption:

Tennessee Valley Authority; Sequoyah Nuclear Plant (Units 1 and 2), 13609–13610

#### Interim Staff Guidance:

Implementation of a Seismic Margin Analysis for New Reactors Based on Probabilistic Risk Assessment, 13610–13611

#### Meetings:

Advisory Committee on Reactor Safeguards; Planning and Procedures Subcommittee, 13611  
Advisory Committee on Reactor Safeguards; Subcommittee on Reliability and PRA, 13611

### Postal Regulatory Commission

#### NOTICES

New Postal Product, 13611–13612

### Presidential Documents

#### ADMINISTRATIVE ORDERS

U.S.–India Nuclear Cooperation Approval and Nonproliferation Enhancement Act; Delegation of Functions (Memorandum of March 10, 2010), 13427

### Securities and Exchange Commission

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13612–13613

Meetings; Sunshine Act, 13613

Order of Suspension of Trading:

Talisman Enterprises, Inc., et al., 13614

Self-Regulatory Organizations; Proposed Rule Changes:  
Chicago Board Options Exchange, Inc., 13622–13623, 13625–13629

Financial Industry Regulatory Authority, Inc., 13632–13636

International Securities Exchange, LLC, 13636–13638

NASDAQ OMX BX, 13641–13643

NASDAQ OMX PHLX, Inc., 13614–13616, 13618–13620, 13638–13639

NASDAQ Stock Market LLC, 13620–13622, 13629–13632

NYSE Amex LLC, 13623–13625

NYSE Arca, Inc., 13616–13618, 13639–13641

### State Department

#### NOTICES

Meetings:

Industry Advisory Panel, 13643

### Substance Abuse and Mental Health Services Administration

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13545–13547

### Thrift Supervision Office

#### NOTICES

Interagency Policy Statement on Funding and Liquidity Risk Management, 13656–13666

### Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See Maritime Administration

#### NOTICES

Meetings:

Intelligent Transportation Systems Program Advisory Committee, 13643–13644

### Treasury Department

See Comptroller of the Currency

See Internal Revenue Service

See Thrift Supervision Office

### Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents

LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list

archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

**CFR PARTS AFFECTED IN THIS ISSUE**

---

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

**3 CFR****Administrative Orders:**

## Memorandums:

Memo. of March 10,  
2010 .....13427

**5 CFR**

2423 .....13429

**7 CFR****Proposed Rules:**

985 .....13445

**14 CFR****Proposed Rules:**

39 .....13451

71 .....13453

**33 CFR**

165 .....13433

**Proposed Rules:**

100 .....13454

**36 CFR****Proposed Rules:**

1191 .....13457

1193 .....13457

1194 .....13457

**40 CFR**

52 .....13436

81 .....13436

**Proposed Rules:**

52 .....13468

**47 CFR****Proposed Rules:**

64 .....13471

68 .....13471

**49 CFR**

395 .....13441

**50 CFR**

679 .....13444

Title 3—

Memorandum of March 10, 2010

The President

**Delegation of Certain Functions Under Section 204(c) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Public Law 110-369)****Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 204(c) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Public Law 110-369).

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
WASHINGTON, March 10, 2010



# Rules and Regulations

Federal Register

Vol. 75, No. 54

Monday, March 22, 2010

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.

## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Part 2423

#### Unfair Labor Practice Proceedings

**AGENCY:** Office of the General Counsel, Federal Labor Relations Authority.

**ACTION:** Final rule.

**SUMMARY:** The General Counsel of the Federal Labor Relations Authority (FLRA) revises portions of its regulations regarding unfair labor practice (ULP) proceedings. The purpose of the revisions is to restore the Office of the General Counsel's (OGC) role in facilitating the resolution of disputes and in providing training and educating the FLRA's customers about their rights and responsibilities under the Federal Service Labor-Management Relations Statute (Statute). The revisions also clarify certain administrative matters relating to the filing and investigation of ULP charges. These revisions reestablish the OGC's leadership role in providing guidance on Alternative Dispute Resolution (ADR) techniques to union and agency representatives to strengthen labor-management relationships that will aid in resolving disputes short of litigation. These amended regulations are also consistent with the purposes underlying Executive Order 13522 (EO 13522) on Creating Labor-Management Forums to Improve Delivery of Government Services, issued on December 9, 2009 by President Obama. EO 13522 provides a platform from which a cooperative and productive form of labor-management relations throughout the executive branch of the Federal government will be established. The FLRA will play a prominent role in providing services, i.e., training; materials and guidances; and facilitation, which are needed to accomplish the objectives of EO 13522. With renewed attention to customer

service, the OGC will use its expertise to foster successful labor-management relations through the training of union representatives and agency personnel in dispute resolution and cooperative methods of labor-management relations. Implementation of the regulatory changes will also enhance the purposes and policies of the Statute by promoting the resolution of disputes at an early stage, thereby preventing ULPs and/or reducing the need to file ULP charges, which will lower costs to the public.

**DATES:** *Effective Date:* April 1, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Dennis P. Walsh, Deputy General Counsel, at the address for the Office of the General Counsel or by telephone # (202) 218-7741.

**SUPPLEMENTARY INFORMATION:** On February 1, 2010, the General Counsel of the FLRA proposed modifications to the existing rules and regulations in subpart A Part 2423 of title 5 of the Code of Federal Regulations regarding the prevention of ULPs and invited comments on the proposed modifications. (75 FR 5003) (Feb. 1, 2010). All comments have been considered prior to publishing the final rule. The major purpose of these revisions is to restore the ADR, training and education program. The General Counsel offers the OGC staff's services to assist the parties in working collaboratively to resolve labor-management relations disputes. These regulations are consistent with internal OGC policies concerning the prevention and resolution of ULP disputes and the investigation of ULP charges.

#### Sectional Analyses

Sectional analyses of the revisions to Part 2423—Unfair Labor Practice Proceedings are as follows:

#### Part 2423—Unfair Labor Practice Proceedings

##### Section 2423.0

This section is amended to provide that this part is applicable to any charge of an alleged ULP pending or filed with the Authority on or after April 1, 2010.

#### Subpart A—Filing, Investigating, Resolving, and Acting on Charges

##### Section 2423.1

The majority of the comments received concern sections 2423.1, 2423.2 and 2423.12. These sections

clarify the OGC's role to include providing ADR services before and after the filing of a charge. Three commenters agreed with the amended regulations which restore the OGC's leadership role in providing guidance on ADR techniques and in participating in and encouraging the parties to resolve disputes before a charge has been filed, while a charge is being investigated, or after a Regional Director has made a merit determination. The commenters stated that the assistance of an FLRA Regional Office representative may help the parties to see the issues more clearly which will help to avoid unnecessary proceedings. One commenter stated that the FLRA's mission is better served by providing proactive programs including education and training.

Another commenter proposed that the references to the OGC maintaining neutrality (sections 2423.1, 2423.8 and 2423.11) be restored. This commenter suggested that the parties do not need help in pursuing their respective interests. The commenter maintained that the question of whether the FLRA acts with neutrality has always existed. Another commenter stated that the amendment of the regulations in February 2008 to expressly ensure OGC's neutrality was misguided because the preservation of neutrality in no way precluded the OGC from engaging in ADR activities. In addition to the rationale provided in the Notice of Proposed Rulemaking, the OGC's Unfair Labor Practice Casehandling Manual provides policies, procedures, and guidance to OGC agents on the importance of maintaining neutrality throughout the ULP process.

The OGC reiterates its belief that its neutrality is not compromised by helping parties to settle disputes if requested to do so, whether pre-charge, while a charge is being investigated, or after the Regional Director has made a merit determination. Thus, the final rule, as promulgated, is the same as the proposed rule.

The above comments, which concern multiple sections of the regulations, are not repeated under the sectional analyses below.

##### Section 2423.2

Comments described under the preceding section apply here. The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.3*

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.4*

One commenter suggested that a Regional Director include supporting documents that are filed with the charge when the charge is forwarded to the Charged Party. This commenter stated that it will help the Charged Party understand the basis underlying the allegations of the charge. If the basis underlying the allegations of a charge cannot be discerned, a Regional Office will send the charge back to a Charging Party for clarification. Neither a copy of the charge nor an opening letter is sent to the Charged Party until the Region receives such clarification. Moreover, the confidentiality requirements set forth under section 2423.8(d) preclude the disclosure of the documents to which the commenter refers.

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.5*

This section is reserved.

*Section 2423.6*

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.7*

This section, which is reserved, is unchanged.

*Section 2423.8*

Comments concerning the deletion of the neutrality provision are addressed above.

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.9*

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.10*

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.11*

One commenter endorsed the proposed change to provide for a Regional Director to exercise discretion concerning notifying the parties when a decision has been made to dismiss a charge. This commenter opined that the previous requirement that both parties be notified by the Regional Director of a decision to dismiss a charge had a chilling effect on the protected activity of charging parties.

The final rule, as promulgated, is the same as the proposed rule.

*Section 2423.12*

Comments concerning the implementation of ADR during the ULP process are addressed above. In addition, with regard to providing the grounds for granting an appeal of a Regional Director's approval of a unilateral settlement agreement (paragraph (c)), one commenter endorsed the change and stated that procedures for appeal of an administrative decision should be clear and that the proposed change restored transparency to the unilateral settlement procedure.

The final rule, as promulgated, is the same as the proposed rule.

*Regulatory Flexibility Act Certification*

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies to federal employees, federal agencies, and labor organizations representing federal employees.

*Unfunded Mandates Reform Act of 1995*

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Paperwork Reduction Act of 1995*

The amended regulations contain no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

**List of Subjects in 5 CFR Part 2423**

Administrative practice and procedure, Government employees, Labor management relations.

■ For these reasons, the General Counsel of the Federal Labor Relations Authority amends 5 CFR Part 2423 as follows:

**PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS**

■ 1. The authority citation for part 2423 continues to read as follows:

**Authority:** 5 U.S.C. 7134.

■ 2. Section 2423.0 is revised to read as follows:

**§ 2423.0 Applicability of this part.**

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after April 1, 2010.

■ 3. Subpart A is revised to read as follows:

**Subpart A—Filing, Investigating, Resolving, and Acting on Charges**

Sec.

2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

2423.2 Alternative Dispute Resolution (ADR) services.

2423.3 Who may file charges.

2423.4 Contents of the charge; supporting evidence and documents.

2423.5 [Reserved]

2423.6 Filing and service of copies.

2423.7 [Reserved]

2423.8 Investigation of charges.

2423.9 Amendment of charges.

2423.10 Action by the Regional Director.

2423.11 Determination not to issue complaint; review of action by the Regional Director.

2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

2423.13–2423.19 [Reserved]

**Subpart A—Filing, Investigating, Resolving, and Acting on Charges****§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.**

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If

requested, or agreed to by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issues and their interests and in resolving the dispute. Attempts by the parties to resolve unfair labor practice disputes prior to filing an unfair labor practice charge do not toll the time limitations for filing a charge set forth at 5 U.S.C. 7118(a)(4).

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to a determination on the merits of the charge by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

#### **§ 2423.2 Alternative Dispute Resolution (ADR) services.**

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission and implements the agency-wide Federal Labor Relations Authority Collaboration and Alternative Dispute Resolution Program by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services that assist labor organizations and agencies, on a voluntary basis to:

- (1) Develop collaborative labor-management relationships;
- (2) Avoid unfair labor practice disputes; and
- (3) Informally resolve unfair labor practice disputes.

(b) *Types of ADR Services.* Agencies and labor organizations may jointly request, or agree to, the provision of the following services by the Office of the General Counsel:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on using problem-solving and ADR skills, techniques, and strategies to resolve

informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

#### **§ 2423.3 Who may file charges.**

(a) *Filing charges.* Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

(b) *Charging Party.* Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director.

(c) *Charged Party.* Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice.

#### **§ 2423.4 Contents of the charge; supporting evidence and documents.**

(a) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charging Party;

(2) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charged Party;

(3) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charging Party's point of contact;

(4) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice, a statement of how those facts allegedly violate specific section(s) and paragraph(s) of the Federal Service Labor-Management Relations Statute and the date and place of occurrence of the particular acts; and

(6) A statement whether the subject matter raised in the charge:

(i) Has been raised previously in a grievance procedure;

(ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action;

(iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter; or

(iv) Has been the subject of any other administrative or judicial proceeding.

(7) A statement describing the result or status of any proceeding identified in paragraph (a)(6) of this section.

(b) *When to file.* Under 5 U.S.C. 7118(a)(4), a charge alleging an unfair labor practice must normally be filed within six (6) months of its occurrence unless one of the two (2) circumstances described under paragraph (B) of 5 U.S.C. 7118(a)(4) applies.

(c) *Declarations of truth and statement of service.* A charge shall be in writing and signed, and shall contain a declaration by the individual signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that individual's knowledge and belief.

(d) *Statement of service.* A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the name, title and location of the individual served, and the method of service.

(e) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to supporting evidence and documents submitted under paragraph (f) of this section.

(f) *Submitting supporting evidence and documents and identifying potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses with contact information (telephone number, e-mail address, and facsimile number) and shall provide a brief synopsis of their expected testimony.

**§ 2423.5 [Reserved]****§ 2423.6 Filing and service of copies.**

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director. A charge received in a Region after the close of the business day will be deemed received and docketed on the next business day. The business hours for each of the Regional Offices are set forth at <http://www.FLRA.gov>.

(c) *Method of filing.* A Charging Party may file a charge with the Regional Director in person or by commercial delivery, first class mail, facsimile or certified mail. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. A Charging Party assumes responsibility for receipt of a charge. Supporting evidence and documents must be submitted to the Regional Director in person, by commercial delivery, first class mail, certified mail, or by facsimile transmission.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

**§ 2423.7 [Reserved]****§ 2423.8 Investigation of charges.**

(a) *Investigation.* The Regional Director, on behalf of the General Counsel, conducts an investigation of the charge as deemed necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons shall cooperate fully with the Regional Director in the

investigation of charges. A failure to cooperate during the investigation of a charge may provide grounds to dismiss a charge for failure to produce evidence supporting the charge. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Investigatory subpoenas.* If a person fails to cooperate with the Regional Director in the investigation of a charge, the General Counsel, upon recommendation of a Regional Director, may decide in appropriate circumstances to issue a subpoena under 5 U.S.C. 7132 for the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel or training within an agency or between an agency and the Office of Personnel Management.

(1) A subpoena shall be served by any individual who is at least 18 years old and who is not a party to the proceeding. The individual who served the subpoena must certify that he or she did so:

(i) By delivering it to the witness in person;

(ii) By registered or certified mail; or

(iii) By delivering the subpoena to a responsible individual (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the Regional Director and the General Counsel.

(2) Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke shall be served on the General Counsel.

(3) The General Counsel shall revoke the subpoena if the witness or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is

required, or if for any other reason sufficient in law the subpoena is invalid. The General Counsel shall state the procedural or other grounds for the ruling on the petition to revoke. The petition to revoke shall become part of the official record if there is a hearing under subpart C of this part.

(4) Upon the failure of any person to comply with a subpoena issued by the General Counsel, the General Counsel shall determine whether to institute proceedings in the appropriate district court for the enforcement of the subpoena. Enforcement shall not be sought if to do so would be inconsistent with law, including the Federal Service Labor-Management Relations Statute.

(d) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of ensuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

**§ 2423.9 Amendment of charges.**

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

**§ 2423.10 Action by the Regional Director.**

(a) *Regional Director action.* The Regional Director, on behalf of the General Counsel, may take any of the following actions, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Dismiss a charge;

(3) Approve a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such appropriate temporary relief is final and shall not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

**§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.**

(a) *Opportunity to withdraw a charge.* If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director will dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision to dismiss a charge by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.*

The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement or application of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's dismissal of the charge, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

**§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.**

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects

not to become a party to a bilateral settlement agreement, which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may choose to approve a unilateral settlement between the Regional Director and the Charged Party. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel may grant an appeal when the Charging Party has shown that the Regional Director's approval of a unilateral settlement agreement does not effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute. The General Counsel shall take action on the appeal as set forth in § 2423.11(b) through (g).

**§§ 2423.13–2423.19 [Reserved]**

Dated: March 17, 2010.

**Julia Akins Clark,**  
General Counsel, Federal Labor Relations Authority.

[FR Doc. 2010–6201 Filed 3–19–10; 8:45 am]

BILLING CODE 6727–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2009–0797]

RIN 1625–AA00

**Safety Zone; Invista Inc Facility Docks, Victoria Barge Canal, Victoria, TX**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a safety zone for a partial blockage of the Victoria Barge Canal when the Invista Inc facility is offloading cargo from an oversized barge, which is approximately 380 feet in length. Commercial traffic will be prohibited from passing the barge while it is offloading cargo because the navigable width of the channel will be substantially reduced. The safety zone is necessary to help ensure the safety of the maritime public during these transfer operations.

**DATES:** This interim rule is effective April 21, 2010. Comments and related

material must reach the Coast Guard on or before June 21, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0797 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the

**SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or e-mail LT Wes Geyer, Sector Corpus Christi Waterways Management Division, Coast Guard; telephone 361–888–3162, e-mail

[Wes.M.Geyer@uscg.mil](mailto:Wes.M.Geyer@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0797), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the

comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2009–0797” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2009–0797” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request

for one on or before April 21, 2010 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Regulatory Information**

The Coast Guard is issuing this interim 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 any delay encountered in this regulation’s effective date by publishing a NPRM would be contrary to public interest. Transfer operations involving the oversized barge at the Invista Inc facility are scheduled to begin in May 2010 and rapid establishment of the safety zone is needed to mitigate the potential safety hazards associated with these operations.

**Background and Purpose**

The basis and purpose of this rule are to ensure safe operations during the hazardous condition that will be placed upon commercial traffic in the Victoria Barge Canal during transfer operations involving the oversized barge. Since the oversized barge will effectively take away 40 feet of the navigable channel, we believe it is necessary to establish a safety zone around the vessel so commercial traffic does not attempt to pass when the navigable channel will be reduced by 40 feet. We are using this interim rule to put an effective rule in place before commencement of transfer operations but wish to receive comments on it before issuing a final rule.

**Discussion of Rule**

The rule places a safety zone around the barge that is offloading cargo at the Invista Inc facility docks for two 24–30 hour periods per month. The approximate location of the dock is 28°39′50.5″ N 096°57′48.3″ W (approximately 1,500 feet north of Dupont Road which crosses the Victoria Barge Canal). The safety zone encompasses all waters of the canal in a zone extending 500 ft (152.2 m) east

and west of the Invista Inc facility docks.

The safety zone will be enforced for two 24–30 hour periods per month, during transfer operations involving an oversized barge at the facility. During these operations, the barge will extend approximately 40 feet into the 125-foot wide Victoria Barge Canal and will therefore reduce the navigable width of the channel. Use of and transit through the safety zone will be prohibited during these times, except with permission from the Captain of the Port Corpus Christi.

In addition, the Invista Inc facility has agreed to provide seven days notice to neighboring facilities before the oversized barge is scheduled to conduct transfer operations there. Furthermore, the Coast Guard will issue maritime advisories widely available to users of the barge canal before enforcement of the safety zone.

### Regulatory Analyses

We developed this interim 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.

This rule is not a significant regulatory action because there is minimal commercial and recreational vessel traffic that transits through this section of the Victoria Barge Canal. The rule will only be in effect approximately twice a month for a duration of 24–30 hours each time. Businesses adjacent to the Invista Inc facility (currently there are two) will have approximately seven days advance notice of the required safety 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 and operators of vessels conducting business at Fordyce Holdings Inc and Equalizer.

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 for approximately two 24–30 hour periods per month and the receiving facility will provide seven days notification to adjacent businesses on the Victoria Barge Canal. Each 24–30 hour period will be separated by at least a 24-hour period while the barge returns to Port Lavaca-Point Comfort to receive more cargo. Neighboring businesses and the Port of Victoria have agreed that with a seven-day notification they will be able to ship or receive enough cargo to maintain adequate feedstock supplies to operate. Vessel traffic will have a minimum of 24 hours between each time the safety zone would go into effect, which local parties have agreed would be enough time to ship or receive any product they may need in the interim. Before the enforcement period, the Coast Guard will issue broadcast notice to mariners (BNM) alerts to users of the barge canal, and the Captain of the Port may authorize entry into the zone if necessary.

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

### Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call

1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

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

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

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

### Technical Standards

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

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

### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction because it establishes 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, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.837 to read as follows:

#### § 165.836 Safety Zone; Invista Inc Facility Docks, Victoria Barge Canal, Victoria, Texas.

(a) *Location.* The following area is a safety zone: All waters contained within a 500-foot (152.5m) extension east and west of the Invista Inc facility docks while performing offloading operations.

(b) *Enforcement Period.* This rule will be enforced for periods of 24–30 hours twice a month, from the time the oversized barge docks at the Invista Inc facility until the vessel departs the facility upon conclusion of its offloading operations. The Captain of the Port Corpus Christi will issue a Broadcast Notice to Mariners before beginning enforcement and upon ceasing enforcement of the safety zone.

(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 Corpus Christi.

(d) *Regulations.* (1) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number 1-361-939-6393, or the barge on VHF Channel 16 (156.800MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

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

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

(5) In accordance with the general regulations in 33 CFR part 165.23, no person or vessel may enter or remain in the zone described in paragraph (a) of this section except for support vessels/ aircraft and support personnel, or other vessels authorized by the Captain of the Port Corpus Christi or his designated representative.

(e) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: November 19, 2009.

**R.J. Paulison,**

*Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.*

**Editorial Note:** This document was received in the Office of the Federal Register on March 16, 2010.

[FR Doc. 2010-6161 Filed 3-19-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R10-OAR-2008-0690; FRL-9091-5]

### Approval and Promulgation of State Implementation Plans: Alaska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to approve numerous revisions to Alaska's State Implementation Plan (SIP) relating to the motor vehicle inspection and maintenance (I/M) program for the control of carbon monoxide (CO) in Anchorage and Fairbanks maintenance areas for CO. The State of Alaska submitted three revisions to the Alaska SIP: a March 29, 2002 submittal containing minor revisions to the statewide I/M program; a December 11, 2006 submittal containing more substantial revisions to the statewide I/M program; and a June 5, 2008 submittal containing major revisions to the statewide I/M program discontinuing the I/M program in Fairbanks as an active control measure in the SIP and shifting it to a contingency measure. EPA is approving these submittals because they satisfy the



requirements of the Clean Air Act (hereinafter the Act or CAA).

Also in this final action, EPA is correcting a transcription error in the boundary description for the Fairbanks CO maintenance area under section 110(k)(6) of the Act.

**DATES:** This action is effective on *April 21, 2010*.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2008-0690. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gina Bonifacino, (206) 553-2970, or by e-mail at [bonifacino.gina@epa.gov](mailto:bonifacino.gina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

## Table of Contents

- I. Background
- II. Comments Received During the EPA Public Comment Period
- III. Final Action
- IV. Statutory and Executive Order Reviews

### I. Background

The EPA is approving revisions to Alaska's SIP related to the I/M program. The I/M program is a control measure for CO in the maintenance plans for the Anchorage and Fairbanks areas that were approved by EPA on June 23, 2004 (69 FR 34935) and July 27, 2004 (69 FR 44601). The State submitted proposed revisions to the federally-approved SIP to EPA in three separate submittals dated March 29, 2002; December 11, 2006; and June 5, 2008. The March 29, 2002 submittal revises the statewide I/M regulations to provide for electronic

vehicle inspection renewal and to remove the requirement for a paper certificate to be maintained in the vehicle; the 2006 submittal revises the statewide I/M regulations to lengthen the time period before which new vehicles are required to obtain their first certificate of inspection from two years to four years. The June 5 submittal discontinues implementation of the I/M program for CO in the Fairbanks area. Each of the submittals also contains minor revisions that are administrative in nature. In each submittal, Alaska (the State) included a technical analysis using EPA approved models and methods to demonstrate that the Fairbanks and Anchorage areas will continue to maintain the CO standard, and the revision will not interfere with attainment of the remaining National Ambient Air Quality Standards (NAAQS) including the 24-hour fine particle (PM<sub>2.5</sub>) standard. Both the Anchorage and Fairbanks areas have been attaining the CO standards since 2001. On September 15, 2009, EPA proposed to approve the State's submittals. 74 FR 47154. EPA proposed to approve these submittals because they meet the requirements of the Act. For a more detailed discussion of the background of this rulemaking, please see EPA's notice of proposed approval. In this final action EPA is approving all of the SIP modifications proposed in Alaska's above-mentioned 2002, 2006, and 2008 submittals as originally proposed.

### II. Comments Received During the EPA Public Comment Period

The following summarizes the issues raised in comments on the EPA's proposed approval published on September 15, 2009 (74 FR 47154), and provides EPA's responses to those comments. All eight of the comments received relate to EPA's proposed action approving the State's 2008 submittal discontinuing the I/M program for CO in Fairbanks. EPA received a number of comments that were generally critical of the discontinuation of the I/M program for CO in Fairbanks. These commenters questioned the wisdom of discontinuing a program that has a beneficial impact on the community. As discussed in greater detail below, many of these issues fall outside of the scope of this action. No comments were received on the 2002 or the 2006 submittals modifying the statewide I/M program and those proposed modifications are being finalized in this action as originally proposed.

*Comment:* One commenter stated that any increase in CO levels will be a detriment to Fairbanks air quality.

*Response:* Under section 110(l) of the Act, the Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. In addition, under section 175A of the Act, an approved maintenance plan is required. As stated in EPA's September 15, 2009 proposed notice of approval of revisions to Alaska's CO SIP, including Alaska's revision to the CO maintenance plan for Fairbanks, the State's demonstration shows that emissions projections included in the State's submittal demonstrate that levels of CO will decline from current levels through 2015 with the discontinuation of the I/M program and that the State will maintain the CO standard in Fairbanks through 2015. The primary driver for this decline in CO emissions is the replacement of older, less clean burning vehicles with newer, cleaner burning vehicles.

*Comment:* A number of commenters stated concerns about the effect of the discontinuation of the Fairbanks I/M program on PM<sub>2.5</sub> in the area, and one stated that the I/M program should not be discontinued until all sources of PM<sub>2.5</sub> can be analyzed.

*Response:* The EPA is acting on the State's submission to revise the CO maintenance plan for the Fairbanks area to discontinue the I/M program beginning in calendar year 2010. As stated above, under section 110(l) of the Act, the Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. This includes a consideration of whether or not this action will interfere with attainment of the 2006 PM<sub>2.5</sub> and CO NAAQS. In addition, under section 175A of the Act, the area will need to have an approved maintenance plan. As stated in EPA's September 15, 2009 proposed notice of approval of revisions to Alaska's CO SIP, the State's demonstration shows that without the Fairbanks I/M program, PM<sub>2.5</sub> emissions from mobile sources will decline as compared to 2005 levels and the area will continue to attain the CO NAAQS through 2015.

The Fairbanks area was recently designated as a nonattainment area for 2006 PM<sub>2.5</sub> standard. 74 FR 58688, November 13, 2009. As a result of the nonattainment designation for the Fairbanks area for PM<sub>2.5</sub>, the State is required under section 172(b) of the Act to develop and submit a State

Implementation Plan within three years from the effective date of the designations that will demonstrate attainment with the PM<sub>2.5</sub> standard in the Fairbanks area. Under section 172(c)(6) and 172(a)(2) of the Act, the plan must contain a suite of control measures that will be designed to address the sources of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursor emissions in the Fairbanks area contributing to nonattainment in the area and achieve attainment status as expeditiously as practicable but within 5 years of designation. This submission will be due no later than December 14, 2012. 74 FR 58688.

According to Alaska's emissions analysis using the EPA-approved mobile source model, MOBILE6.2, emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors are generally projected to decline substantially from 2005 levels through 2015 (the end of the modeling period). Directly emitted PM<sub>2.5</sub> emissions are projected to decline by 66% during this period according to MOBILE6.2 and this rate of decline is unaffected by the discontinuation of the I/M program.

EPA has promulgated regulations that address how areas that have been designated as nonattainment for the PM<sub>2.5</sub> NAAQS should address PM<sub>2.5</sub> direct emissions and PM<sub>2.5</sub> precursors in implementation plans. See 40 CFR 51.1002(c). Contrary to the assertion of the commenter, Alaska is not required under these regulations to analyze "all sources of PM<sub>2.5</sub>." As explained in the **Federal Register** Notice promulgating the final PM<sub>2.5</sub> Implementation Rule (72 FR 20586, April 25, 2007), EPA has established requirements for PM<sub>2.5</sub> State Implementation Plans that take into account the contributions of PM<sub>2.5</sub> precursor emissions under area-specific conditions. The rule represents an approach that "requires sulfur dioxide to be evaluated for control measures in all areas, and describes general presumptive policies for NO<sub>x</sub>, ammonia, and VOC for all nonattainment areas. The rule provides a mechanism by which the State and/or EPA can make an area-specific demonstration to reverse the general presumption for these three precursors."<sup>1</sup> 72 FR 20589.

<sup>1</sup> The State must address NO<sub>x</sub> as a PM<sub>2.5</sub> attainment plan precursor and evaluate sources of NO<sub>x</sub> emissions in the State for control measures, unless the State and EPA provide an appropriate technical demonstration for a specific area showing that NO<sub>x</sub> emissions from sources in the State do not significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area. The State is not required to address VOC as a PM<sub>2.5</sub> attainment plan precursor and evaluate sources of VOC emissions in the State for control measures, unless the State provides an appropriate technical demonstration for a specific area showing that VOC emissions from

For the reasons discussed below, taking into consideration the Agency's policy position on determining whether or not certain PM<sub>2.5</sub> precursor emission sources must be taken into consideration when selecting control measures, as well as the best available data and modeling results regarding the anticipated effects of the discontinuation of the Fairbanks I/M program, EPA concludes that the minor changes in levels of certain PM<sub>2.5</sub> precursor emissions in the Fairbanks area will not interfere with the area's ability to attain the PM<sub>2.5</sub> NAAQS. EPA and Alaska have taken into consideration the effect of potentially discontinuing the Fairbanks I/M program on several PM<sub>2.5</sub> precursor emissions: hydrocarbon (HC) (also referred to as VOC), NO<sub>x</sub>, SO<sub>x</sub>, and ammonia. Baseline emissions of direct PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors are projected to decline between 2005 and 2015 regardless of whether or not the I/M program is in place. VOC levels are projected to decline by 51% with the I/M program and by 39% without the I/M program. NO<sub>x</sub> levels are projected to decline by 63% with the I/M program and by 59% without the I/M program. SO<sub>x</sub> levels are projected to almost disappear after 2005 because of the implementation of low sulfur gasoline and diesel fuel requirements in urban Alaskan areas. Ammonia is the only pollutant that modeling projects to increase from 2005 to 2015, but at a very low level, (0.01 ton/day) and this is attributable to growth in vehicle miles traveled through that period. The discontinuation of the I/M program will not affect ammonia emissions. In light of this information, EPA has concluded that any potential ammonia contributions to PM<sub>2.5</sub> formation in the Fairbanks area can not be attributed to the discontinuation of the I/M program.

Direct PM<sub>2.5</sub>, SO<sub>x</sub> and ammonia precursor PM<sub>2.5</sub> emissions in the Fairbanks area are expected to be unaffected by the discontinuation of the I/M program in Fairbanks, while HC and NO<sub>x</sub> emissions are projected to change slightly. The elimination of the I/M program will slightly diminish the

sources in the State significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area, and such demonstration is approved by EPA or the EPA provides such a technical demonstration. The State is not required to address ammonia as a PM<sub>2.5</sub> attainment plan precursor and evaluate sources of ammonia emissions from sources in the State for control measures, unless the State provides an appropriate technical demonstration for a specific area showing that ammonia emissions from sources in the State significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area, and such demonstration is approved by EPA or the EPA provides such a technical demonstration. See 40 CFR 51.1002(c)(1)-(4)

reduction in NO<sub>x</sub> and HC emissions predicted to occur between 2010 and 2015. EPA's review of the available data shows that the changes in emission rates are projected to range between 0.10 and 0.17 tons/day for each of these pollutants respectively. However, in the absence of a demonstration that VOCs are contributing significantly to PM<sub>2.5</sub> nonattainment in an area, the state is not required to develop a plan to control VOC sources for the purposes of PM<sub>2.5</sub> NAAQS attainment. See 40 CFR 51.1002(c)(3). EPA has no technical basis to conclude that VOCs are a significant contributor to PM<sub>2.5</sub> nonattainment in Fairbanks. Consequently, EPA has determined in this instance that changes in VOC emissions attributable to the discontinuation of the I/M program will not interfere with Alaska's ability to attain the PM<sub>2.5</sub> NAAQS.

EPA's PM<sub>2.5</sub> NAAQS implementation rule requires that PM<sub>2.5</sub> nonattainment areas address PM<sub>2.5</sub> precursor NO<sub>x</sub> emissions and evaluate sources of those emissions in the state for control measures, unless the state and EPA provide an appropriate technical demonstration for a specific area showing that NO<sub>x</sub> emissions from sources in the state do not significantly contribute to PM<sub>2.5</sub> concentrations in the nonattainment area. Data in the Technical Support Document for EPA's 2006 24-hour PM<sub>2.5</sub> designations evidences a poor correlation between NO<sub>x</sub> and PM<sub>2.5</sub> formation in Fairbanks. All available information regarding PM<sub>2.5</sub> precursor emissions in the Fairbanks area supports EPA's determination in this instance that that NO<sub>x</sub> emissions attributable to a discontinuation of the I/M program (estimated to be no more than 0.10 tons per day) will not significantly contribute to the formation of PM<sub>2.5</sub> in the affected area. Only a fraction of the .10 tons/day of NO<sub>x</sub> would be converted to PM<sub>2.5</sub>. Additionally, a speciation analysis of 2006-2008 PM<sub>2.5</sub> monitoring data in Fairbanks shows that on the 12 days when the PM<sub>2.5</sub> standard was exceeded in 2006-2008 the average mass of nitrate was 1.58 µg/m<sup>3</sup>. When this is adjusted for ammonium, the value of ammonium nitrate is 2.04 µg/m<sup>3</sup>. This is 4.4% of the total average PM<sub>2.5</sub> mass (46.69 µg/m<sup>3</sup>) recorded on violation days. The twelve days when the PM<sub>2.5</sub> standard was violated in 2006-2008 all occurred during the winter months and the technical data in the record indicate that levels of PM<sub>2.5</sub> above the 35 µg/m<sup>3</sup> level of the NAAQS were caused by increased use of wood-burning stoves and home heating oil. These data support EPA's

conclusion that the small increase in precursor NO<sub>x</sub> emissions attributable to the discontinuation of the I/M program will not interfere with the ability of the area to attain the PM<sub>2.5</sub> NAAQS standard.

*Comment:* One anonymous commenter stated that the removal of the I/M program will increase PM<sub>2.5</sub> and expressed concerns about discontinuing the I/M program, contending that there were high PM<sub>2.5</sub> levels in the area and citing data that shows unexplained hotspots on Airport Road coupled with the lack of study of mobile source concentrations.

*Response:* The anonymous commenter did not identify the source or nature of the data which underlies their comment and the basis for concluding that there is a PM<sub>2.5</sub> "hot spot" on Airport Road in Fairbanks. EPA is aware that the State has collected preliminary screening data using instantaneous mobile monitoring around Fairbanks that shows elevated concentrations of PM<sub>2.5</sub> in the vicinity of Airport Road. This data was collected to yield preliminary information on the location of elevated PM<sub>2.5</sub> concentrations in the Fairbanks area. As preliminary data, it has not undergone quality assurance processes, nor was it collected in accordance with EPA-approved methods. EPA believes that this preliminary data is inconclusive concerning the source(s) contributing to elevated PM<sub>2.5</sub> concentrations in that area. Although the monitoring data evidences an episodic elevated concentration of PM<sub>2.5</sub> in the Airport Road area, we have no basis to determine that these events constitute exceedences or violations of the PM<sub>2.5</sub> standard. Furthermore, this data does not provide a foundation to conclude that these elevated concentrations around Airport Road are affiliated with mobile sources that would be impacted by the discontinuation of the I/M program. As stated above, data collected and submitted by the State using EPA approved methods indicates that direct PM<sub>2.5</sub> will be unaffected by the elimination of the I/M program in Fairbanks, and the changes in NO<sub>x</sub> and HC precursor emissions projected to result from discontinuation of the I/M program will not interfere with attainment of the PM<sub>2.5</sub> NAAQS in Fairbanks.

*Comment:* Several commenters expressed concerns with health risks attributable to PM<sub>2.5</sub> and questioned the appropriateness of discontinuing the I/M program because doing so would eliminate the health-benefits of the program.

*Response:* Primary CO, PM<sub>2.5</sub> and the remaining criteria pollutant standards are health-based standards set through the process outlined in sections 108 and 109 of the Clean Air Act. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." The State's submittal demonstrates that the discontinuation of the I/M program in Fairbanks will not interfere with attainment or maintenance of the health-based ambient air quality standard for PM<sub>2.5</sub>. As discussed above, EPA expects that Alaska will develop and submit for EPA approval a SIP to achieve attainment with the 24-hour PM<sub>2.5</sub> standard in accordance with the schedule established by the Act.

*Comment:* One commenter stated that the program should be expanded to include diesel vehicles.

*Response:* The CAA established a system of air quality management whereby each state develops and proposes, after reasonable notice and public involvement processes, proposed plans for the attainment or maintenance of the NAAQS. In reviewing a state's proposed SIP amendment, EPA must determine whether or not the proposed amendment meets the requirements of the Act. EPA is not empowered to alter the scope of the regulatory regime selected by the state to achieve or maintain attainment with a national ambient air quality standard unless it finds the state's proposed plan to be deficient and elects to develop a Federal Implementation Plan (FIP) in lieu of the SIP. The State did not include any provisions related to diesel vehicles in its proposed SIP amendment. EPA is acting on the State's submission which is limited in scope to revisions to the existing SIP for CO. We have reviewed the State's submittal and found that it meets the requirements of the Act.

*Comment:* One commenter expressed concerns that without the I/M program in place in Fairbanks, vehicles that were registered as seasonally registered vehicles prohibited from driving during the winter under the I/M program would be permitted on the road. Another commenter stated that the I/M program is needed to keep dirty vehicles off of the road in the winter time.

*Response:* The State's emission projections include emissions from all vehicles in the Fairbanks area including those that qualify as seasonally registered vehicles under the I/M program. The State used these emission projections in their demonstration of

attainment and maintenance which shows that the discontinuation of the I/M program (which includes the discontinuation of seasonal prohibitions for vehicles registered as seasonally registered) will not interfere with attainment or maintenance of the CO or PM<sub>2.5</sub> standards during the winter season.

*Comment:* One commenter stated that without the I/M program, maintenance of cars will be put off until vehicles fail to run.

*Response:* As discussed above, EPA is taking this final action in accordance with section 110 of the Act to verify that the State's proposed SIP modification meets the requirements of the CAA and that the proposed SIP modification will continue to result in the maintenance of attainment with the CO NAAQS. EPA does not have the authority to add provisions to the state program in this action. Car maintenance standards of the type raised by the commenter are outside of the scope of this action when they do not have an impact on maintenance or attainment of ambient air quality standards.

*Comment:* Several commenters stated that the program should not be discontinued because the benefits of the I/M program outweigh its costs.

*Response:* The Act does not require EPA to conduct a cost-benefit analysis when reviewing state-proposed revisions to SIPs. The State must demonstrate that the revision to the SIP will not interfere with attainment or maintenance of the health-based standards. The State has demonstrated that the discontinuation of the Fairbanks I/M program will not interfere with attainment or maintenance of the NAAQS in that area, and is therefore approvable by EPA without consideration of whether the benefits achieved by the program exceed its costs.

### III. Final Action

For the reasons provided above and in our September 15, 2009 proposed rule, we are approving Alaska's 2002, 2006, and 2008 SIP revisions, including the discontinuation of the I/M program for CO in the Fairbanks area beginning in calendar year 2010. Also in this action, EPA is correcting a transcription error in the boundary description for the Fairbanks CO maintenance area contained in 40 CFR 81.302 under section 110(k)(6) of the Act.

EPA is incorporating by reference the following new and revised sections of the Alaska Department of Conservation's air quality regulations: 18 AAC 50.030 Air Quality Control as in effect May 15, 2008; 18 AAC 52

Emissions Inspection and Maintenance Requirements for Motor Vehicles as in effect May 15, 2008 and AO 2006–13, an ordinance amending Anchorage Municipal Code chapters 15.80 and 15.85 to comply with State I/M regulations and to comply with DMV Electronic Procedures January 24, 2006 and Chapters 15.80 and 15.85 of the Anchorage Municipal Code.

#### IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the 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 the 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. The 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 May 21, 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

##### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 4, 2009.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, EPA Region 10.*

■ 40 CFR parts 52 and 81 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 C—Alaska

■ 2. Section 52.70 is amended by adding paragraph (c)(37) to read as follows:

##### § 52.70 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(37) On March 29, 2002, December 11, 2006 and June 5, 2008 the Alaska Department of Environmental Conservation submitted revisions to the SIP approved inspection and maintenance program for Carbon Monoxide. The SIP revisions meet the requirements of the Clean Air Act.

(i) *Incorporation by reference.*

(A) The following new and revised sections of ADEC's air quality regulations:

(1) 18 AAC 50.030 Air Quality Control as in effect May 17, 2008.

(2) 18 AAC 52 Emissions Inspection and Maintenance Requirements for Motor Vehicles as in effect May 17, 2008.

(3) AO 2006–13 an ordinance amending Anchorage Municipal Code chapters 15.80 and 15.85 to comply with State I/M regulations and to comply with DMV Electronic Procedures January 24, 2006 and Chapters 15.80 and 15.85 of the Anchorage Municipal Code as approved February 14, 2006.

(ii) *Additional material*

(A) The following revised sections of Alaska's air quality regulations:

(1) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section II: Air Quality Program, April 4, 2008

(2) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section III.A. Statewide Carbon Monoxide Control Program, April 4, 2008

(3) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section III.C. Fairbanks Transportation Control Program, April 4, 2008

(4) Amendments to State Air Quality Control Plan, Vol. III Appendices (Appendix III.A.2 and Appendix to III.C.3), April 4, 2008

(5) State Air Quality Control Plan—Vol. II Analysis of Problems, Control Actions, Section III.B. Anchorage Transportation Control Program, September 19, 2006

(6) Vol. III. Appendix to Vol. II, Sec II, September 19, 2006

(7) Vol. III. Appendix to Vol. II, Sec III.A, September 19, 2006

(8) Vol. III. Appendix to Vol. II, Sec III.B, September 19, 2006

(9) Vol. III. Appendix to Vol. II, Sec III.C, September 19, 2006

**PART 81—[AMENDED]**

■ 3. The authority citation for Part 81 continues to read as follows:

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

■ 4. In § 81.302, the table entitled “Alaska—Carbon Monoxide” is amended by revising the entry for “Fairbanks Area Fairbanks Election District (part)” to read as follows:

**§ 81.302 Alaska.**

\* \* \* \* \*

**ALASKA—CARBON MONOXIDE**

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
* * *	*	*	*	*
Fairbanks Area	September 27, 2004.	Attainment.		
Fairbanks Election District (part)				
Fairbanks nonattainment area boundary:				
1. Township 1 South, Range 1 West, Sections 2 through 23, the portion of Section 1 west of the Fort Wainwright military reservation boundary and the portions of Section 24 north of the Old Richardson Highway and west of the military reservation boundary, also, Township 1 South, Range 2 West, Sections 13 and 24, the portion of Section 12 southwest of Chena Pump Road and the portions of Sections 14 and 23 southeast of the Chena river. Also, Township 1 South, Range 1 East, Sections 7, 8, and 18 and the portion of Section 19 north of the Richardson Highway. (Fairbanks and Ft. Wainwright)				
2. Township 2 South, Range 2 East, the portions of Sections 9 and 10 southwest of the Richardson Highway. (North Pole)				
* * *	*	*	*	*

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*  
 [FR Doc. 2010-3235 Filed 3-19-10; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 395**

**Hours of Service; Limited 90-Day Waiver for the Distribution of Anhydrous Ammonia in Agricultural Operations**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Grant of waiver.

**SUMMARY:** FMCSA grants a limited 90-day waiver from the Federal hours-of-service (HOS) regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale

distribution point. This waiver extends the agricultural operations exemption established by section 345 of the National Highway System Designation Act of 1995, as amended by the sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) to certain motor carriers engaged in the distribution of anhydrous ammonia during the 2010 spring planting season. The Agency has determined that the waiver would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed. This waiver preempts inconsistent State and local requirements applicable to interstate commerce.

**DATES:** The waiver is effective *March 22, 2010*. The waiver expires on *June 21, 2010*.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

*E-mail:* [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Phone (202) 366-4325.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations (FMCSRs) issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief. (49 U.S.C. 31136, 31315(a)) The Secretary must make a determination that the waiver is in the public interest, and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may only be granted to a person for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR

1.73(g) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

### Background

The FMCSA has been contacted by members of Congress concerning the Agency's interpretation of the agricultural exemption provided in section 345(a) of the National Highway System (NHS) Designation Act of 1995, Public Law 104-59, November 28, 1995, 109 Stat. 568, 613, 49 U.S.C. 31136 note. Constituents engaged in the transportation of farm supplies—particularly anhydrous ammonia—contacted the members to express concerns that the Agency's implementation of the agricultural exemption results in the exclusion of certain distribution activities from the regulatory relief intended by Congress.

As amended by SAFETEA-LU, the agricultural provision reads as follows:

*Transportation of agricultural commodities and farm supplies.*—Regulations prescribed by the Secretary under sections 31136 and 31502 regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.

The Agency has long understood that limited farm storage capacity necessitates a “just in time” delivery system from retail distributors of farm supplies to farms (or other locations where the farm supply product will be used) during the busy planting and harvesting seasons. Longstanding FMCSA guidance on its HOS regulations has consistently allowed that the agricultural operations exemption applies to the transportation of farm supplies from the local farm retailer to the ultimate consumer within a 100 air-mile radius. FMCSA's interpretation, however, has not extended the HOS exemption to deliveries from wholesalers located at port or terminal facilities to either local farm retailers or farms. (See Question 33, 49 CFR 395.1 on the Agency's Web site: <http://www.fmcsa.dot.gov>.) Question 33 reads as follows:

*Question 33:* How is “point of origin” defined for the purpose of § 395.1(k)?

*Guidance:* The term “point of origin” is not used in the NHS Designation Act; the statutory term is “source of the [agricultural] commodities.” The exemption created by the Act applies to two types of transportation. The first type is transportation from the

source of the agricultural commodity—where the product is grown or raised—to a location within a 100 air-mile radius of the source. The second type is transportation from a retail distribution point of the farm supply to a location (farm or other location where the farm supply product would be used) within a 100 air-mile radius of the retail distribution point.

The legislative history of the agricultural exemption indicates it was intended to only apply to retail store deliveries. Thus, it is clear Congress intended to limit this exemption to retail distributors of farm supplies.

Second-stage movements, such as grain hauled from an elevator (or sugar beets from a cold storage facility) to a processing plant, are more likely to fall outside the exempt radius. Similarly, the exemption does not apply to a wholesaler's transportation of an agricultural chemical to a local cooperative because this is not a retail delivery to an ultimate consumer, even if it is within the 100 air-mile radius.

The Agency's re-examination of the issue has made it clear that the exclusive emphasis of the Agency's regulatory guidance on deliveries from local retailers to the ultimate farm consumer may not reflect today's economic reality. Like farms, local retailers have limited storage capacity and therefore must constantly replenish their supplies during the planting and harvesting seasons. They are part of the “just in time” distribution system that extends from a wholesaler to the ultimate consumer of the supplies.

Given this reality, FMCSA has determined that is in the public interest to issue a waiver to provide regulatory relief for the transportation of anhydrous ammonia during the 2010 spring planting season. This action is in the public interest because it provides limited regulatory relief to facilitate planting activities that will ultimately result in the production of agricultural commodities at prices to which consumers have become accustomed, without compromising safety.

This waiver extends the agricultural operations exemption from the Federal HOS regulations to motor carriers in the distribution system, provided that: (1) The motor carrier is delivering anhydrous ammonia; (2) none of the transportation movements within the distribution chain exceed a 100 air-mile radius—whether from the retail or wholesale distribution point; and (3) the motor carrier has a “satisfactory” safety rating or is unrated; motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from taking advantage of the waiver. Therefore, the waiver allows motor carriers with a satisfactory safety rating or unrated motor carriers to use the HOS exemption when their drivers are

delivering anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This waiver is effective immediately.

### Safety Determination

The FMCSA compared safety performance data for agricultural carriers currently operating under the statutory HOS exemption provided by the NHS, as amended, with non-agricultural carriers that are not exempt from HOS regulations to determine whether the waiver would be likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. The data were collected as part of a study, “Agricultural Commodity and Utility Carriers Hours of Service Exemption Analysis.” The final report from the study will be published later this year.

The study was conducted in two phases. Phase 1 compares the safety performance of agricultural and non-agricultural carriers for the period 2005 through 2008, and also examines two additional industries, livestock and utility carriers, whose operations were not exempt from HOS regulations prior to the passage of SAFETEA-LU.<sup>1</sup> The Phase 1 analysis used carrier registration, inspection and crash data from FMCSA's Motor Carrier Management Information System (MCMIS). The study used cargo classification information on the FMCSA Motor Carrier Identification Report (Form MCS-150) in MCMIS to identify the carrier's industry group (agricultural, livestock, or utility carrier), and used MCS-150 information to identify carriers operating within and beyond a 100-air-mile radius. The operating radius information was used to create two agricultural carrier subgroups: (1) Agricultural carriers with 100 percent of drivers operating within a 100-air-mile radius; and (2) agricultural carriers with 100 percent of drivers operating beyond a 100-air-mile radius. The analysis used the first subgroup as representative of agricultural carriers exempt from the HOS requirements, and the second subgroup as representative of agricultural carriers not exempt from the HOS requirements.

For the Phase 2 analysis, inspection data of agricultural commodity and utility carriers (which are also exempt

<sup>1</sup> Section 4130(a).

from HOS regulations) was collected during an FMCSA special study of a sample of states. These data included only those inspections occurring during the states' planting and harvesting seasons and indicated both the commodity being transported and whether the driver was operating within or beyond the 100-air-mile radius exempt from HOS regulations. The Phase 2 analysis assessed the safety performance of the HOS exempt agricultural commodity and utility service carriers identified in the survey in comparison with non-HOS exempt carriers based on their out of service (OOS) violation rates and crash rates.

For the purposes of considering whether to issue a limited waiver, FMCSA focused on the crash rate data from the study. The Agency did not place as much of an emphasis on the OOS rates because there were no HOS violation data to consider given that the agricultural carriers for which data were available were operating under a statutory exemption from the HOS rule. Differences between the OOS rates for other issues such as driver qualifications and vehicle defects and deficiencies, while important in considering overall safety management controls of the carriers, were not necessarily related to the potential safety impact of the waiver.

The Phase 1 analysis indicates that nationally, agricultural carriers operating within a 100-air-mile radius had lower crash rates per 100 power units than those operating beyond this radius, except for in 2008, when there was no difference in the crash rates.

To provide additional validation of the crash analysis, which uses power unit data reported on the Form MCS-150, a separate analysis was performed using data only for carriers domiciled in states participating in the Performance and Registration Information Systems Management (PRISM) program that enforces MCS-150 updating.<sup>2</sup> PRISM links state motor vehicle registration systems with carrier safety data in order to identify unsafe commercial motor carriers. The PRISM state carriers are required to update their MCS-150 annually. By contrast, non-PRISM state carriers are required by FMCSA to update their MCS-150 biennially. As a result, the PRISM state data are considered more current and reliable than non-PRISM state data where there

is no direct implication for not updating the data. Data from PRISM states that enforce MCS-150 updating show that agricultural carriers operating within a 100-air-mile radius had more varied results, with crash rates higher than carriers operating beyond a 100-air-mile radius in 2008, lower in 2006 and 2007, and nearly the same in 2005.

The Phase 2 analysis indicates that in the four states participating in the survey (ID, KS, MD, MI), agricultural carriers that were subject to the HOS requirements had higher crash rates per 100 power units than agricultural carriers exempt from the HOS requirements.

#### **FMCSA Determination**

In consideration of the above, FMCSA has determined that it is in the public interest to provide a limited waiver from the Federal HOS regulations for interstate motor carriers engaged in the distribution of anhydrous ammonia during the 2010 spring planting season. A review of the available crash data comparing motor carriers currently operating under the NHS exemption from the HOS regulations provides a basis for determining that a limited waiver would achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, based on the terms and conditions imposed.

#### **Terms and Conditions of the Waiver**

The FMCSA is providing a waiver from the requirements of 49 CFR part 395 concerning the HOS requirements for drivers of property-carrying vehicles for certain motor carriers engaged in the distribution of anhydrous ammonia during the 2010 spring planting season.

This waiver extends the agricultural operations exemption from the Federal HOS regulations to motor carriers in the distribution system, provided that: (1) The motor carrier is delivering anhydrous ammonia; (2) none of the transportation movements within the distribution chain exceed a 100 air-mile radius—whether from the retail or wholesale distribution point; and (3) the motor carrier has a “satisfactory” safety rating or is “unrated;” motor carriers with “conditional” or “unsatisfactory” safety ratings are prohibited from taking advantage of the waiver.

The waiver allows “unrated” motor carriers and those with a satisfactory safety rating to use the HOS exemption when their drivers are delivering anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation

takes place within a 100 air-mile radius of the retail or wholesale distribution point.

#### **Safety Rating**

Motor carriers that have received compliance reviews are required to have a “satisfactory” rating. The compliance review is an on-site examination of a motor carrier's operations, including records on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The assignment of a “satisfactory” rating means the motor carrier has in place adequate safety management controls to comply with the Federal safety regulations, and that the safety management controls are appropriate for the size and type of operation of the motor carrier.

The FMCSA will also allow “unrated” carriers to take advantage of the waiver. Unrated motor carriers are those that have not received a compliance review. The FMCSA is allowing unrated motor carriers to participate because it would be unfair to exclude them simply because they were not selected by the Agency for a compliance review. The absence of a compliance review is in no way an indication that the carrier has done anything wrong or has safety problems.

The Agency is not allowing motor carriers with conditional or unsatisfactory ratings to participate because both of those ratings indicate that the carrier has safety management control problems. There is little reason to believe that carriers rated either unsatisfactory or conditional could be relied upon to comply with the terms and conditions of the waiver.

#### **Accident and Hazardous Materials Reporting Requirement**

Within 10 business days following an accident (as defined in 49 CFR 390.5) or any unintentional discharge of anhydrous ammonia that requires the submission of the Department of Transportation Hazardous Materials Incident Report (DOT Form F 5800.1) (see 49 CFR 171.16) involving any of the motor carrier's CMVs, irrespective of whether the CMV was being operated by a participating driver, the motor carrier must submit the following information:

- (a) Date of the accident;
- (b) City or town in which the accident occurred, or city or town closest to the scene of the accident;
- (c) Driver's name and license number;

<sup>2</sup> Current PRISM states that enforce the MCS-150 updating requirement are Alabama, Arizona, Arkansas, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, and West Virginia.

(d) Vehicle number and State license number;

(e) Number of injuries;

(f) Number of fatalities;

(g) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released;

(h) The police-reported cause of the accident;

(i) Whether the driver was cited for violating any traffic laws, motor carrier safety regulations, or hazardous materials discharge; and

(j) Whether the driver was operating under the waiver, and if so, an estimate of the total driving time, on-duty time for the day of the accident and each of the seven calendar days prior to the accident.

#### Duration of the Waiver

The waiver is effective upon publication in the **Federal Register** and is valid until *June 21, 2010*, unless revoked earlier by the FMCSA. The exemption preempts inconsistent State or local requirements applicable to interstate commerce.

#### Safety Oversight of Carriers Operating Under the Waiver

The FMCSA expects that any motor carrier operating under the terms and conditions of the waiver will maintain its safety record. However, should any deterioration occur, the FMCSA will, consistent with the statutory requirements of TEA-21, take all steps necessary to protect the public interest. Use of the waiver is voluntary, and the FMCSA will immediately revoke the waiver for any interstate motor carrier or driver for failure to comply with the terms and conditions waiver.

Issued on: March 17, 2010.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2010-6244 Filed 3-19-10; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910131363-0087-02]

RIN 0648-XV34

#### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod 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; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the A season apportionment of the 2010 total allowable catch (TAC) of Pacific cod to be harvested.

**DATES:** Effective March 17, 2010, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2010.

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

**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.

The A season apportionment of the 2010 Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,266 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11788, March 12, 2010) for the period 1200 hrs, A.l.t., January 1, 2010, through 1200 hrs, A.l.t., April 30, 2010.

The Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,200 mt of the A season apportionment of the 2010 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(1). Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 1,200 mt of Pacific cod from the A season jig gear apportionment to catcher vessels less than 60 feet (18.3 meters (m)) LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in the final 2010 harvest specifications for groundfish in the BSAI (75 FR 11788, March 12, 2010) are revised as follows: 66 mt to the A season apportionment for vessels using jig gear and 4,198 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

#### 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 reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 16, 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: March 17, 2010.

**Emily H. Menashes,**

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

[FR Doc. 2010-6228 Filed 3-17-10; 4:15 pm]

**BILLING CODE 3510-22-S**



# Proposed Rules

Federal Register

Vol. 75, No. 54

Monday, March 22, 2010

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Doc. No. AMS-FV-09-0082; FV10-985-1 PR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2010-2011 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would establish the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2010-2011 marketing year, which begins on June 1, 2010. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 566,962 pounds and 28 percent, respectively, and for Class 3 (Native) spearmint oil of 980,265 pounds and 43 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these limitations for the purpose of avoiding extreme fluctuations in supplies and prices to help maintain stability in the spearmint oil market.

**DATES:** Comments must be received by April 6, 2010.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket

number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Coleman, Marketing Specialist or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724; Fax: (503) 326-7440; or E-mail: [Sue.Coleman@ams.usda.gov](mailto:Sue.Coleman@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@ams.usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, which may be purchased from or handled for producers by handlers during the 2010-

2011 marketing year, which begins on June 1, 2010.

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

The Committee meets annually in the fall to review sales and other market information for the current marketing year, and to recommend the establishment of salable quantities and allotment percentages for each class of oil for the forthcoming marketing year beginning on June 1. The salable quantity establishes the amount of each class of spearmint oil that may be sold during the marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. The salable quantities are intended to satisfy anticipated market needs.

Recommendations are made well in advance to allow producers the chance to adjust their spearmint plantings in relation to the salable quantities and allotment percentages in the proposed regulation. In developing a regulatory recommendation for USDA, the Committee utilizes information pertaining to current and projected supply, demand, production costs and producer prices, as well as input from spearmint oil handlers and producers regarding prospective marketing conditions.

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the full eight-member Committee met on October 14, 2009, and recommended salable quantities and allotment percentages for both classes of oil for the

2010–2011 marketing year. The Committee, in a vote with six members in favor and two members opposed, recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil of 566,962 pounds and 28 percent, respectively. The two members opposing the action were in favor of a greater salable quantity and allotment percentage for Scotch. For Native spearmint oil, the Committee unanimously recommended the establishment of a salable quantity and allotment percentage of 980,265 pounds and 43 percent, respectively.

This rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2010–2011 marketing year, which begins on June 1, 2010. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

### **Class 1 (Scotch) Spearmint Oil**

The U.S. production of Scotch spearmint oil is concentrated in the Far West, which includes Washington, Idaho, and Oregon and a portion of Nevada and Utah. Scotch spearmint oil is also produced in the Midwest states of Indiana, Michigan, and Wisconsin, as well as in the States of Montana, South Dakota, North Dakota, and Minnesota.

When the order became effective in 1980, the Far West had about 72 percent of global Scotch spearmint oil sales. This was produced on about 9,702 acres within the Far West production area. In 2004, Scotch spearmint was planted on 4,772 acres in the Far West, whereas acreage in 2009 was up to 7,583 acres. About 84 percent of the Far West Scotch spearmint oil acreage is produced in Washington State.

During the last 40 years, the Far West's share of world Scotch production has varied. In 2002, for example, the Far West share of world sales reached a low of about 27 percent according to Committee records. The earlier downward trend in the Far West share of world sales was attributable to the increase in global production—specifically increases in Canada and China—and decreasing acreage in the Far West. Since that low, Far West spearmint oil sales as a percentage of total world sales is back up to over 41 percent.

This recent resurgence in overall shares of the world market is due to many factors, including an increase in Far West production, a decrease in production in China coupled with an increase in Chinese utilization of its own production, and a recent decrease in acreage in other production areas

within the United States. For example, production in the Midwest states has gone from 186,000 pounds in 2004, down to an estimated 35,000 pounds in 2009. This has increased the Far West's percentage of annual U.S. sales of Scotch spearmint oil to approximately 60 percent from the 2002 low of about 43 percent.

Other factors that have played a significant role in the Far West share of the global Scotch spearmint oil market include the overall quality of imported oil and technological advances that allow for more blending of lower quality oils. Such factors have provided the Committee with challenges in accurately predicting trade demand for Scotch spearmint oil. Despite these challenges, the marketing order has continued to contribute to price and market stabilization for Far West producers.

When the Committee met in October 2008 to recommend the 2009–2010 volume regulation, demand for spearmint oil appeared high in relation to expected production. The Committee consequently recommended a relatively high 2009–2010 Scotch salable quantity and allotment percentage in an effort to match supply with anticipated demand. When the Committee recommended the 2009–2010 Scotch salable quantity and allotment percentage of 842,171 pounds and 42 percent, respectively, it also estimated that the quantity of salable Scotch spearmint oil carried over from the 2008–2009 marketing year into the 2009–2010 marketing year would approximate 124,735 pounds. The actual amount carried forward on June 1, 2009, however, was 207,976 pounds, an amount higher than the Committee considers desirable. Major factors contributing to the large quantity of Scotch spearmint oil being carried into the 2009–2010 marketing year included fewer 2008–2009 sales than anticipated and production levels higher than expected.

The large carry-in, coupled with the overall lackluster economy and current lack of demand for spearmint oil has led to an over-supply situation within the Far West spearmint oil industry, particularly with Scotch spearmint oil. A year ago, spearmint oil handlers had projected that the 2009–2010 trade demand for Far West Scotch spearmint oil would range from a low of 800,000 pounds to a high of 1,000,000 pounds. This year the same handlers have reassessed their earlier projection for this period with a less optimistic range of 700,000 pounds to 750,000 pounds of Scotch spearmint oil trade demand. Although consumer demand for mint flavored products is reportedly steady—

thus providing sustained optimism for the long term demand for Far West spearmint oil—the handlers report that the manufacturers of such products are currently reducing purchases and meeting current needs by trimming their own inventories to reduce the current recessionary impact on their businesses.

The Committee recommended the 2010–2011 Scotch spearmint oil salable quantity of 566,962 pounds and allotment percentage of 28 percent utilizing sales estimates for 2010–2011 Scotch spearmint oil as provided by several of the industry's handlers, as well as historical and current Scotch spearmint oil sales levels. The Committee is estimating that about 800,000 pounds of Scotch spearmint oil may be sold during the 2010–2011 marketing year. When considered in conjunction with the estimated carry-in of 349,998 pounds of oil on June 1, 2010, the recommended salable quantity of 566,962 pounds results in a total available supply of about 916,960 pounds of Scotch spearmint oil during the 2010–2011 marketing year.

The Committee's stated intent is to keep adequate supplies available to meet market needs and improve producer prices.

The Committee developed its recommendation for the proposed Scotch spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2010—349,998 pounds.* This figure is the difference between the revised 2009–2010 marketing year total available supply of 1,049,998 pounds and the estimated 2009–2010 marketing year trade demand of 700,000 pounds.

(B) *Estimated trade demand for the 2010–2011 marketing year—800,000 pounds.* This figure is based on input from producers at six Scotch spearmint oil production area meetings held in late September and early October 2009, as well as estimates provided by handlers and other meeting participants at the October 14, 2009, meeting. The average estimated trade demand provided at the six production area meetings is 800,000 pounds, which is the same level as estimated by handlers. The average of sales over the last five years is 841,436 pounds.

(C) *Salable quantity required from the 2010–2011 marketing year production—450,002 pounds.* This figure is the difference between the estimated 2010–2011 marketing year trade demand (800,000 pounds) and the estimated carry-in on June 1, 2010 (349,998 pounds).

(D) *Total estimated allotment base for the 2010–2011 marketing year—2,024,863 pounds.* This figure represents a one percent increase over the revised 2009–2010 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost because of the bona fide effort production provisions of § 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—22.2 percent.* This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) *Recommended allotment percentage—28 percent.* The Committee's recommendation is based on the computed allotment percentage (22.2 percent), the average of the computed allotment percentage figures from the six production area meetings (23.7 percent), and input from producers and handlers at the October 14, 2009, meeting. The actual recommendation of 28 percent is based on the Committee's determination that the computed percentage (22.2 percent) may not adequately supply the potential 2010–2011 Scotch spearmint oil market.

(G) *The Committee's recommended salable quantity—566,962 pounds.* This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) *Estimated available supply for the 2010–2011 marketing year—916,960 pounds.* This figure is the sum of the 2010–2011 recommended salable quantity (566,962 pounds) and the estimated carry-in on June 1, 2010 (349,998 pounds).

### **Class 3 (Native) Spearmint Oil**

The Native spearmint oil industry is facing market conditions similar to those affecting the Scotch spearmint oil market, although not as severe. Over 90 percent of U.S. production of Native spearmint is produced within the Far West production area, thus domestic production outside this area is not a major factor in the marketing of Far West Native spearmint oil. This has been an attribute of U.S. production since the order's inception. Minor domestic production of Native spearmint oil outside of the Far West is in Indiana, Michigan, Wisconsin, Montana, South Dakota, North Dakota, and Minnesota.

According to the Committee, very little true Native spearmint oil is produced outside of the United States. However, India produces an increasing quantity of spearmint oil with qualities very similar to Native spearmint oil. Committee records show that in 1996

the Far West accounted for nearly 93 percent of global sales of Native or Native quality spearmint oil. By 2009 that share had shrunk to less than 60 percent.

As with Scotch spearmint, acreage planted to Native spearmint has fluctuated with demand and producer price. In 2004, Committee records indicate that there were 4,805 acres of Native spearmint planted as opposed to the 8,919 acres planted in 2009.

When the Committee met in October 2008 to recommend the 2009–2010 volume regulation, the same relatively good market conditions buoying the industry since 2004 were in effect (although the Committee initially recommended Native spearmint oil allotment percentages averaging less than 43 percent between 2004 and 2008, demand proved better than anticipated and multiple intra-seasonal increases were effectuated each year to bring the final percentages up to a four year average of nearly 56 percent). As a consequence, the Committee recommended a 2009–2010 marketing year allotment percentage of 53 percent for Native spearmint oil to match supply with anticipated demand.

At the same time, the Committee also estimated that the quantity of salable Native spearmint oil that would be carried over from the 2008–2009 marketing year into the 2009–2010 marketing year would approximate 51,363 pounds. The actual amount carried forward on June 1, 2009, however, was 130,323 pounds. Factors contributing to the larger 2009–2010 marketing year carry-in included fewer 2008–2009 sales than anticipated and production levels higher than expected.

Although to a lesser extent than with Scotch spearmint oil, the large Native spearmint oil carry-in, coupled with the recessionary economy and subsequent lack of demand for spearmint oil, has led to a moderately over supplied Native spearmint oil market. A year ago, the 2009–2010 trade demand for Far West Native spearmint oil was projected to average about 1,275,000 pounds. This year the same handlers revised the estimate for the 2009–2010 marketing year for a projected average of about 1,143,333 pounds for Native spearmint oil trade demand.

The Committee's recommendation for the 2010–2011 Native spearmint oil salable quantity of 980,265 pounds and allotment percentage of 43 percent utilized sales estimates provided by several of the industry's handlers, as well as historical and current Native spearmint oil sales levels. With figures about the same as those of the 2009–2010 marketing year, the Committee is

estimating that 2010–2011 Native spearmint oil marketing year trade demand will be about 1,140,000 pounds. When considered in conjunction with the estimated carry-in of 186,595 pounds of oil on June 1, 2010, the recommended salable quantity of 980,265 pounds results in a total 2010–2011 available supply of Native spearmint oil of about 1,166,860 pounds.

Similar to the methods used with Scotch spearmint oil, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage primarily relies on the relationship between estimated trade demand and available supply. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee based its recommendation for the proposed Native spearmint oil salable quantity and allotment percentage for the 2010–2011 marketing year on the information discussed above, as well as the data outlined below.

(A) *Estimated carry-in on June 1, 2010—186,595 pounds.* This figure is the difference between the revised 2009–2010 marketing year total available supply of 1,326,595 pounds and the estimated 2009–2010 marketing year trade demand of 1,140,000 pounds.

(B) *Estimated trade demand for the 2010–2011 marketing year—1,140,000 pounds.* This figure is based on input from producers at the six Native spearmint oil production area meetings held in late September and early October 2009, as well as estimates provided by handlers and other meeting participants at the October 14, 2009, meeting. The average estimated trade demand provided at the six production area meetings was 1,140,000 pounds, whereas the handler estimate ranged from 1,150,000 pounds to 1,200,000 pounds.

(C) *Salable quantity required from the 2010–2011 marketing year production—953,405 pounds.* This figure is the difference between the estimated 2010–2011 marketing year trade demand (1,140,000 pounds) and the estimated carry-in on June 1, 2010 (186,595 pounds).

(D) *Total estimated allotment base for the 2010–2011 marketing year—2,279,687 pounds.* This figure represents a one percent increase over the revised 2009–2010 total allotment base. This figure is generally revised each year on June 1 due to producer base being lost due to the bona fide effort production provisions of

§ 985.53(e). The revision is usually minimal.

(E) *Computed allotment percentage—41.8 percent.* This percentage is computed by dividing the required salable quantity (953,405 pounds) by the total estimated allotment base (2,279,687 pounds).

(F) *Recommended allotment percentage—43 percent.* This is the Committee's recommendation based on the computed allotment percentage (41.8 percent), the average of the computed allotment percentage figures from the six production area meetings (45 percent), and input from producers and handlers at the October 14, 2009, meeting.

(G) *The Committee's recommended salable quantity—980,265 pounds.* This figure is the product of the recommended allotment percentage (43 percent) and the total estimated allotment base (2,279,687 pounds).

(H) *Estimated available supply for the 2010–2011 marketing year—1,166,860 pounds.* This figure is the sum of the 2010–2011 recommended salable quantity (980,265 pounds) and the estimated carry-in on June 1, 2010 (186,595 pounds).

The salable quantity is the total quantity of each class of spearmint oil that handlers may purchase from, or handle on behalf of, producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 566,962 pounds and 28 percent, and 980,265 pounds and 43 percent, respectively, are based on the goal of maintaining market stability. The Committee anticipates that this goal would be achieved by matching supply to estimated demand and thus avoiding extreme fluctuations in spearmint oil supplies and prices. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil—developing during the marketing year—can be satisfied by an intra-seasonal increase in the salable quantities. Producers who produce more than their annual allotments during the 2010–2011 marketing year may transfer such excess spearmint oil to producers with production less than their annual allotment, or, up until November 1, 2010, place it into the reserve pool.

This proposed regulation, if adopted, would be similar to regulations issued in prior seasons. The average allotment

percentage for the most recent five marketing years for Scotch spearmint oil is 47 percent, while the average allotment percentage for the same five-year period for Native spearmint oil is 53 percent. Costs to producers and handlers resulting from this rule are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with the issuance of this proposed rule, USDA has reviewed the Committee's marketing policy statement for the 2010–2011 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, fully meets the intent of § 985.50 of the order. During its discussion of potential 2010–2011 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil that should be produced for the 2010–2011 season in order to meet anticipated market demand.

#### Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order, and approximately 38 producers of Scotch spearmint oil and approximately 84 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 19 of the 38 Scotch spearmint oil producers and 29 of the 84 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk from market fluctuations. Such small producers generally need to market their entire annual allotment and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns.

Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class that handlers may purchase from, or handle for, producers during the 2010–2011 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by matching supply to estimated demand thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their spearmint planting and harvesting to meet expected market needs. The provisions of §§ 985.50, 985.51, and 985.52 of the order authorize this rule.

Instability in the spearmint oil sub-sector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by handlers. Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil

have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The significant variability is illustrated by the fact that the coefficient of variation (a standard measure of variability; “CV”) of Far West spearmint oil production from 1980 through 2008 was about 0.23. The CV for spearmint oil grower prices was about 0.14, well below the CV for production. This provides an indication of the price stabilizing impact of the marketing order.

Production in the shortest marketing year was about 49 percent of the 29-year average (1.87 million pounds from 1980 through 2008) and the largest crop was approximately 165 percent of the 29-year average. A key consequence is that in years of oversupply and low prices the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service.)

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the increase in production costs. While prices have been relatively steady, the cost of production has increased to the extent that plans to plant spearmint may be postponed or changed indefinitely. Producers are also enticed by the prices of alternative crops and their lower cost of production.

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of oil that producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate, in pounds, for the applicable class of oil, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil that may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies. All of this needs to take place by November 1.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carryout. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool stocks grown in large production years are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the trade demand for the 2010–2011 marketing year for both classes of oil at 1,940,000 pounds, and that the expected combined carry-in will be 536,593 pounds. This results in a combined required salable quantity of 1,403,407 pounds. With volume control, sales by

producers for the 2010–2011 marketing year would be limited to 1,547,227 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended salable percentages, upon which 2010–2011 producer allotments are based, are 28 percent for Scotch and 43 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a \$1.51 decline in the season average producer price per pound (from both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed without volume control. The surplus situation for the spearmint oil market that would exist without volume controls in 2010–2011 also would likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to the recommendations contained in this rule for both classes of spearmint oil. The Committee discussed and rejected the idea of recommending that there not be any volume regulation for both classes of spearmint oil because of the severe price-depressing effects that would occur without volume control.

After computing the initial 22.2 percent Scotch spearmint oil allotment percentage, the Committee considered various alternative levels of volume control for Scotch spearmint oil. Considered levels ranged from 28 percent to 32 percent. There was consensus that the allotment percentage for 2010–2011 should be less than the percentage established for the 2009–2010 marketing year (42 percent). After considerable discussion, however, the Committee determined that 566,962 pounds and 28 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2010–2011 marketing year.

The Committee was able to reach a consensus regarding the level of volume control for Native spearmint oil. After first computing the allotment percentage at 41.8 percent, the Committee unanimously determined that 980,265 pounds and 43 percent would be the most effective salable quantity and

allotment percentage, respectively, for the 2010–2011 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2010–2011 would decline substantially below current levels.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0178, Vegetable and Specialty Crops. Accordingly, this rule would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide

increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 14, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is deemed appropriate to allow interested persons the opportunity to respond to this proposal, taking into account that the marketing year begins on June 1, 2010. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

#### **PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST**

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 985.229 is added to read as follows:

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

#### **§ 985.229 Salable quantities and allotment percentages—2010–2011 marketing year.**

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2010, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 566,962 pounds and an allotment percentage of 28 percent.

(b) Class 3 (Native) oil—a salable quantity of 980,265 pounds and an allotment percentage of 43 percent.

Dated: March 16, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-6187 Filed 3-19-10; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27009; Directorate Identifier 2007-NE-02-AD]

RIN 2120-AA64

#### Airworthiness Directives; Turbomeca Arriel 2B1 Turboshift Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to revise an existing airworthiness directive (AD) for Turbomeca Arriel 2B1 turboshift engines. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Since the issuance of AD 2007-0126 Turboméca has released modification TU157 which consists in modifying the pressure relief valve of the HMU by introducing a damping device into the valve. Introduction of this device has demonstrated to decrease the pressure fluctuations in the system, therefore reducing significantly the risk of wear of the delta-P diaphragm fabric. This will delete the need for a periodical replacement of the delta-P diaphragm before overhaul of the HMU. The modification TU157 is therefore considered as the terminating action for this AD.

We are proposing this AD to prevent the loss of automatic control mode coupled with the deteriorated performance of the backup mode, which can lead to the inability to continue safe flight, forced autorotation landing, or an accident.

**DATES:** We must receive any comments on this proposed AD by April 21, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

#### FOR FURTHER INFORMATION CONTACT:

Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [kevin.dickert@faa.gov](mailto:kevin.dickert@faa.gov); telephone (781) 238-7117; fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2007-27009; Directorate Identifier 2007-NE-02-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

##### Examining the AD Docket

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

section. Comments will be available in the AD docket shortly after receipt.

#### Discussion

On September 11, 2007, the FAA issued AD 2007-19-09, Amendment 39-15200 (72 FR 53112, September 18, 2007). That AD requires initial and repetitive replacement of the hydromechanical metering unit (HMU) with a serviceable HMU every 1,500 operating hours. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007-0126, dated May 7, 2007, (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

This AD is prompted by several reported cases of rupture of the constant delta pressure valve diaphragm on Arriel 2B1 engines, due to the wear of the delta-P diaphragm fabric. Rupture can result in the loss of the automatic control mode of the helicopter, accompanied with a deterioration of the behavior of the auxiliary back-up mode (emergency mode). On a single-engine helicopter, the result may be an emergency landing or, at worst, an accident.

This AD supersedes AD EASA AD 2007-0006 which required the removal from service of all the delta pressure valve diaphragms logging more than 2,000 hours-since-new.

Since issuance of EASA AD 2007-0006, no further case of rupture of the constant delta pressure valve diaphragm has been reported on Arriel 2 engines. However, about 40 additional diaphragms returning from service have been inspected by Turbomeca, and some signs of wear have been detected on diaphragms having logged less than 2,000 hours. Based on the inspection results, it has been decided to decrease this limit from 2,000 hours to 1,500 hours in order to further reduce the probability of delta-P diaphragm rupture.

##### Actions Since AD 2007-19-09 Was Issued

Since that AD was issued, the EASA has issued MCAI AD 2009-0091, dated May 4, 2009. The MCAI states:

Since the issuance of AD 2007-0126 Turboméca has released modification TU157 which consists in modifying the pressure relief valve of the HMU by introducing a damping device into the valve.

Introduction of this device has demonstrated to decrease the pressure fluctuations in the system, therefore reducing significantly the risk of wear of the delta-P diaphragm fabric. This will delete the need for a periodical replacement of the delta-P diaphragm before overhaul of the HMU. The modification TU157 is therefore considered as the terminating action for this AD.

This AD supersedes AD 2007-0126 by retaining the same requirements as in AD 2007-0126 except that:

• In addition to the ARRIEL 2B1 engines, applicability is extended to the ARRIEL 2B1A engines, which share the same HMU design.

• Applicability is limited to ARRIEL 2B1 and 2B1A engines that do not incorporate modification TU157.

You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin No. 292 73 2818, Original Issue, dated October 18, 2006 and Update 1, dated April 3, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require initial and repetitive replacement of the HMU with a serviceable HMU every 1,500 hours-since-new, hours-since-last-overhaul (HSO), or since incorporation of Turbomeca Service Bulletin (SB) No. 292 73 2105, whichever occurs later.

### Differences Between This AD and the MCAI or Service Information

The MCAI applies to the ARRIEL 2B1 and 2B1A engines. The ARRIEL 2B1A engine is not type certificated in the United States, so this proposed AD applies to the ARRIEL 2B1 engine model only.

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 103 products of U.S. registry. We also estimate that it would take about 0.75 work-hour per product to comply with this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$10,550 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$1,093,216.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

### Regulatory Findings

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

For the reasons discussed above, I certify that the proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. *See the ADDRESSES* section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15200 (72 FR 53112, September 18, 2007) and by adding a new airworthiness directive, to read as follows:

**Turbomeca:** Docket No. FAA–2007–27009; Directorate Identifier 2007–NE–02–AD.

### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by April 21, 2010.

### Affected ADs

(b) This AD revises AD 2007–19–09.

### Applicability

(c) This AD applies to Turbomeca ARRIEL 2B1 turboshaft engines that don't incorporate modification TU157. These engines are installed on, but not limited to, Eurocopter AS 350 B3 and EC 130 B4 helicopters.

### Reason

(d) European Aviation Safety Agency (EASA) AD No. 2009–0091, dated May 4, 2009, states:

Since the issuance of AD 2007–0126 Turboméca has released modification TU157 which consists in modifying the pressure relief valve of the HMU by introducing a damping device into the valve. Introduction of this device has demonstrated to decrease the pressure fluctuations in the system, therefore reducing significantly the risk of wear of the delta-P diaphragm fabric. This will delete the need for a periodical replacement of the delta-P diaphragm before overhaul of the HMU. The modification TU157 is therefore considered as the terminating action for this AD.

We are issuing this AD to prevent the loss of automatic control mode coupled with the deteriorated performance of the backup mode, which can lead to the inability to continue safe flight, forced autorotation landing, or an accident.

### Actions and Compliance

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

(1) For ARRIEL 2B1 engines that incorporate modification TU157, no further action is required.

(2) For all other ARRIEL 2B1 engines do the following:

(i) Replace the hydromechanical metering unit (HMU) with a serviceable HMU before the HMU accumulates 1,500 hours-since-new, hours-since-last-overhaul (HSO), or since incorporation of Turbomeca Service Bulletin (SB) No. 292 73 2105, whichever occurs later.

(ii) Thereafter, replace the HMU with a serviceable HMU at every 1,500 hours-since new, since last overhaul, or since incorporation of Turbomeca SB No. 292 73 2105, whichever occurs later.

(iii) For the purposes of this AD, a serviceable HMU is an HMU fitted with a new constant delta P diaphragm in accordance with Turbomeca Mandatory Service Bulletin (MSB) No. 292 73 2818,



Original Issue, Dated October 18, 2006, or Update No. 1, dated April 3, 2007.

#### Optional Terminating Action

(3) Replacing the HMU with an HMU that has been modified to TU157 terminates the repetitive requirement of paragraph (e)(2)(ii) of this AD.

#### FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) because the MCAI applies to the ARRIEL 2B1 and 2B1A engines. The ARRIEL 2B1A engine is not type certificated in the United States, so this proposed AD applies to the ARRIEL 2B1 engine model only.

#### Other FAA AD Provisions

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

#### Related Information

(h) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: [kevin.dickert@faa.gov](mailto:kevin.dickert@faa.gov); telephone (781) 238-7117; fax (781) 238-7199, for more information about this AD.

Issued in Burlington, Massachusetts on March 15, 2010.

#### Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010-6179 Filed 3-19-10; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2010-0089; Airspace Docket No. 10-ASW-1]

#### Proposed Amendment of Class E Airspace; Corpus Christi, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace in the Corpus Christi, TX area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Aransas County Airport, Rockport, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before May 6, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of

Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2010-0089/Airspace Docket No. 10-ASW-1, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817-321-7716.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2010-0089/Airspace Docket No. 10-ASW-1." The postcard will be date/time stamped and returned to the commenter.

##### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/airports\\_airtraffic/air\\_traffic/publications/airspace\\_amendments/](http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received, and any final disposition in

person in the Dockets Office (*see ADDRESSES* section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, 202-267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

##### The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface in the Corpus Christi, TX airspace area, adding controlled airspace for SIAPs at Aransas County Airport, Rockport, TX. The addition of the RNAV (GPS) RWY 18 SIAP at Aransas County Airport has created the need to extend Class E airspace to the north of the current airspace. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace in the Corpus Christi, TX area.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

##### § 71.1 [Amended]

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

*Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

##### ASW TX E5 Corpus Christi, TX [Amended]

Corpus Christi International Airport, TX (Lat. 27°46'13" N., long. 97°30'04" W.)  
 Corpus Christi NAS/Truax Field, TX (Lat. 27°41'34" N., long. 97°17'25" W.)  
 Port Aransas, Mustang Beach Airport, TX (Lat. 27°48'43" N., long. 97°05'20" W.)  
 Rockport, San Jose Island Airport, TX (Lat. 27°56'40" N., long. 96°59'06" W.)  
 Rockport, Aransas County Airport, TX (Lat. 28°05'12" N., long. 97°02'41" W.)  
 Ingleside, T.P. McCampbell Airport, TX (Lat. 27°54'47" N., long. 97°12'41" W.)  
 Robstown, Nueces County Airport, TX (Lat. 27°46'43" N., long. 97°41'26" W.)  
 Corpus Christi VORTAC, TX (Lat. 27°54'14" N., long. 97°26'42" W.)

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of Corpus Christi International Airport and within 1.4 miles each side of the 200° radial of the Corpus Christi VORTAC extending from the 7.5 mile radius to 8.5

miles north of the airport, and within 1.5 miles each side of the 316° bearing from the airport extending from the 7.5 mile radius to 10.1 miles northwest of the airport, and within an 8.8-mile radius of Corpus Christi NAS/Truax Field, and within a 6.3-mile radius of Mustang Beach Airport, and within a 6.4-mile radius of T.P. McCampbell Airport, and within a 6.3-mile radius of Nueces County Airport, and within a 7.6-mile radius of Aransas County Airport, and within 2 miles each side of the 010° bearing from the Aransas County Airport extending from the 7.6 mile radius to 9.9 miles north of the airport, and within a 6.5-mile radius of San Jose Island Airport, and within 8 miles west and 4 miles east of the 327° bearing from the San Jose Island Airport extending from the airport to 20 miles northwest of the airport, and within 8 miles east and 4 miles west of the 147° bearing from the airport extending from the airport to 16 miles southeast of the airport, excluding that portion more than 12 miles from and parallel to the shoreline.

Issued in Fort Worth, TX, on March 11, 2010.

**Roger M. Trevino,**

*Acting Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2010–6156 Filed 3–19–10; 8:45 am]

**BILLING CODE 4901–13–P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 100

[Docket No. USCG–2009–0520]

RIN 1625–AA08

#### Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental Notice of proposed rulemaking.

**SUMMARY:** This document supplements the Coast Guard's October 6, 2009 proposal to establish a permanent Special Local Regulation on the navigable waters of Huntington Bay, New York due to the annual Fran Schnarr Open Water Championships. The Special Local Regulation is required to provide for the safety of life by protecting swimmers and their safety craft from the hazards imposed by marine traffic. This supplemental notice of proposed rulemaking will reduce the size of the proposed regulated area, clarify the course description and revise the anticipated enforcement period of the special local regulation.

**DATES:** Comments and related material must reach the Coast Guard on or before April 21, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0520 using any one of the following methods:

(1) *Federal eRulemaking Portal:*

<http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, e-mail

[christie.m.dixon@uscg.mil](mailto:christie.m.dixon@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0520), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be

considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0520" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### *Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0520 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

#### *Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### *Public Meeting*

We do not plan to hold a public meeting. But you may submit a request for one using one of the four methods

specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### **Background and Purpose**

Over the last several years, Metropolitan Swimming, Inc. has hosted an annual open water championship swim on the waters of Huntington Bay, NY during a single day in July. This swim has historically involved up to 150 swimmers and accompanying safety craft. Prior to this rule there was not a permanent regulation in place to protect the swimmers or safety craft from the hazards imposed by marine traffic.

On October 6, 2009 the Coast Guard published a Notice of Proposed Rulemaking with request for comments titled, "Special Local Regulation, Fran Schnarr Open Water Championships, Huntington Bay, NY" (Docket number USCG-2009-0520) in the **Federal Register** (74 FR 51243). No comments or requests for meetings were received. During the final edits of the Final Rule the Coast Guard realized that the description of the regulated area was incorrect, in that the regulated area was over-large, and that the descriptions of the regulated area and of the enforcement period could be more clearly stated. This supplemental notice of proposed rulemaking reduces the regulated area from "within 100 yards of the swim race course" to "within 100 yards of any swimmer," clarifies the race course description by removing the decimal seconds and removes the times (7:15 a.m.–1:30 p.m.) from the anticipated enforcement date section.

#### **Discussion of Proposed Rule**

The Coast Guard proposes to establish a permanent special local regulation on the navigable waters of Huntington Bay, New York that would exclude all unauthorized persons and vessels from approaching within 100 yards of any swimmer or safety craft on the race course. The race course, hereby referred to as, the regulated area, is bounded by the following approximate points: Start/Finish at approximate location 40°54'26" N 073°24'29" W, East Turn at approximate location 40°54'45" N 073°23'37" W and a West Turn at approximate location 40°54'31" N 073°25'21" W.

The duration of the event, and thus the enforcement period of the special local regulation is generally from 7:15 a.m. to 1:30 p.m. on the day of the race. The special local regulation will be

enforced for approximately six and quarter hours on the day of the race, normally held on a single day each July. Notification of the race date and subsequent enforcement of the special local regulation will be made via a Notice of Enforcement in the **Federal Register**, marine broadcasts and local notice to mariners.

During the enforcement period no person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the Fran Schnarr Open Water Championships event or are otherwise authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel. Any violation of the special local regulation described herein is punishable by civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

#### **Regulatory Analyses**

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

#### *Regulatory Planning and Review*

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but the potential impact would be minimized for the following reasons: Marine traffic may transit in all areas of Huntington Bay, other than within 100 yards of event participants within the regulated area. Marine traffic passing through the regulated area would only have minimal increased transit time and the special local regulation will only be enforced for approximately four and a quarter hours on a single specified day each July, made publicly known in advance of the scheduled event.

#### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities.

The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in those portions of Huntington Bay, NY covered by the special local regulation. Before the activation of the zone, we would issue maritime advisories in advance of the event and make them widely available to users of the waterway. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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

#### *Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, [christie.m.dixon@uscg.mil](mailto:christie.m.dixon@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *Collection of Information*

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

#### *Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### *Unfunded Mandates Reform Act*

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

#### *Taking of Private Property*

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Protection of Children*

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

#### *Indian Tribal Governments*

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

#### *Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply,

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

#### *Technical Standards*

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

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

#### *Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the promulgation of special local regulations in conjunction with a permitted marine event and falls under the category of actions under paragraph 34(h) of the instruction for which further environmental analysis is not normally required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

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

**Authority:** 33 U.S.C. 1233.

2. Add § 100.122 to read as follows:

**§ 100.122 Fran Schnarr Open Water Championships, Huntington Bay, New York.**

(a) *Regulated area.* All navigable waters of Huntington Bay, NY within 100 yards of any swimmer or safety craft on the race course bounded by the following points: Start/Finish at approximate location 40°54'26" N 073°24'29" W, East Turn at approximate location 40°54'45" N 073°23'37" W and a West Turn at approximate location 40°54'31" N 073°25'21" W.

(b) *Definitions.* The following definitions apply to this section: *Designated On-scene Patrol Personnel*, means any commissioned, warrant or petty officer of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) No person or vessel may approach or remain within 100 yards of any swimmer or safety craft within the regulated area during the enforcement period of this regulation unless they are officially participating in the Fran Schnarr Open Water Championships event or are otherwise authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel.

(2) All persons and vessels must comply with the instructions from Coast Guard Captain of the Port or the Designated On-scene Patrol Personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

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

(4) Persons and vessels desiring to enter the regulated area within 100 yards of a swimmer or safety craft may request permission to enter from the designated on scene patrol personnel by contacting them on VHF-16 or by a request to the Captain of the Port Long

Island Sound via phone at (203) 468-4401.

(d) *Enforcement Period.* This rule is enforced on a specified day each July to be determined on an annual basis. Notification of the specific date, times and enforcement of the special local regulation will be made via a Notice of Enforcement in the **Federal Register**, separate marine broadcasts and local notice to mariners.

Dated: February 11, 2010.

**Daniel A. Ronan,**

*Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.*

[FR Doc. 2010-6159 Filed 3-19-10; 8:45 am]

**BILLING CODE 9110-04-P**

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD****36 CFR Parts 1191, 1193, and 1194**

[Docket No. 2010-1]

RIN 3014-AA37

**Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to begin the process of updating its standards for electronic and information technology and its Telecommunications Act Accessibility Guidelines. At the same time, the Board is proposing to revise its Americans with Disabilities Act Accessibility Guidelines to address access to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias. The Board has developed draft standards and guidelines for these purposes. The draft text (draft) is available on the Board's Web site (<http://www.access-board.gov/508.htm>). The Board invites the public to review and comment on all aspects of this draft, including the advantages and disadvantages of draft provisions, the organizational approach to presenting the standards and guidelines, alternative policies to those contained in the draft, and information

on benefits and costs. After reviewing the comments received in response to this advance notice and draft, the Board will issue a proposed rule followed by a final rule.

**DATES:** Comments should be received by June 21, 2010. The Board will hold a public hearing to provide an additional opportunity for comment. The hearing will take place on March 25, 2010 from 9 a.m. to noon in conjunction with the 25th Annual International Technology & Persons With Disabilities Conference. It will be held at the Manchester Grand Hyatt Hotel, Elizabeth Ballroom, One Market Place, San Diego, CA 92101. To pre-register to testify please contact Kathy Johnson at (202) 272-0041 or [Johnson@access-board.gov](mailto:Johnson@access-board.gov).

**ADDRESSES:** You may submit comments, identified by docket number 2010-1 or RIN number 3014-AA37, by any of the following methods:

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

- *E-mail:* [ictrule@access-board.gov](mailto:ictrule@access-board.gov). Include docket number 2010-1 or RIN number 3014-AA37 in the subject line of the message.

- *Fax:* 202-272-0081.

- *Mail or Hand Delivery/Courier:* Office of Technical and Information Services, Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111.

All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Tim Creagan, Office of Technical and Information Services, Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004-1111. Telephone number: 202-272-0016 (voice); 202-272-0082 (TTY). Electronic mail address: [creagan@access-board.gov](mailto:creagan@access-board.gov).

**SUPPLEMENTARY INFORMATION:****Background**

On February 8, 1996, the Telecommunications Act of 1996 was enacted. Section 255 of the Act requires manufacturers to ensure that telecommunications equipment or customer premises equipment are designed, developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so; readily achievable means easily accomplishable, without much difficulty or expense. The Access Board was given the responsibility for developing accessibility guidelines for telecommunications equipment and

customer premises equipment in conjunction with the Federal Communications Commission (FCC). The Board was also instructed to review and update the guidelines periodically. The Board published the guidelines on February 3, 1998. 63 FR 5608 (February 3, 1998); 36 CFR part 1193. The guidelines were based on recommendations from a Telecommunications Access Advisory Committee that the Board had created.

On August 7, 1998, the Workforce Investment Act of 1998, which includes the Rehabilitation Act Amendments of 1998, was signed into law. Section 508 of the Rehabilitation Act Amendments requires that when Federal departments or agencies develop, procure, maintain, or use electronic and information technology, they must ensure that the technology is accessible to people with disabilities, unless an undue burden would be imposed on the department or agency. Section 508 required the Access Board to publish standards setting forth a definition of electronic and information technology and technical and functional performance criteria for such technology. The Board was also required to periodically review and, as appropriate, amend the standards to reflect technological advances or changes in electronic and information technology. The Board published the standards on December 21, 2000. 65 FR 80500 (December 21, 2000); 36 CFR part 1194. The standards were based on recommendations from an Electronic and Information Technology Access Advisory Committee that the Board had created to assist it in developing the standards.

Since the Board issued the Telecommunications Act Accessibility Guidelines (guidelines) and the Electronic and Information Technology Accessibility Standards (standards), technology has changed. Additionally, several organizations have asked the Board to update its standards so they are harmonized with efforts taking place around the globe. The telecommunications provisions in the standards are based on and are consistent with the telecommunications provisions in the guidelines. Therefore, the Board has decided to update and revise the standards and the guidelines together to address changes in technology and to make both documents more consistent. Through this update, the Board is addressing new technology and seeks to harmonize, to the extent possible, its criteria with other standards and guidelines in order to improve accessibility and facilitate compliance.

In addition, the Board is proposing to amend the Americans with Disabilities Act Guidelines (ADAAG) to address access to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias. In 2006, the National Council on Disability released a report, NCD Position Paper on Access to Airline Self-Service Kiosk Systems, which recommended that accessibility provisions from ADAAG or the section 508 standards be incorporated into an updated Air Carrier Access Act regulation for accessible design applicable to both proprietary and common-use self-service kiosk systems (<http://www.ncd.gov/newsroom/publications/2006/kiosk.htm>). In May 2008 the Department of Transportation amended its Air Carrier Access Act rules to apply to foreign carriers but decided to defer action on kiosks and noted that the Access Board has work under way that could affect kiosks. 73 FR 27614 (May 13, 2008).

There have also been numerous settlement agreements and structured negotiations reached with various public accommodations on tactile point of sale devices (<http://llegal.com/category/settlements/point-of-sale-settlements/>). With the proliferation of point of sale machines, kiosks, and other self-service machines, the Board has decided that in addition to updating the standards for electronic and information technology and the guidelines for telecommunications products, it should revise the Americans with Disabilities Act Accessibility Guidelines to address access to this new technology to ensure its accessibility for people with disabilities. The Board proposes to extend coverage to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias. This would include point of sale devices used to check-in or check-out products at retail establishments such as those addressed in the settlement agreements and structured negotiations as well as other self-service machines.

To begin the process of updating the standards and guidelines, the Board formed the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC or Committee), to review the existing standards and guidelines and to recommend changes. The Committee met regularly from September 2006 to April 2008, and held numerous teleconferences in between meetings. The Committee's 41 members comprised a broad cross-section of

stakeholders, including representatives from industry, disability groups, standard-setting bodies in the U.S. and abroad, and government agencies. In their deliberations, Committee members addressed a range of issues, including new or convergent technologies, market forces, and international harmonization. Recognizing the importance of standardization across markets worldwide, the Committee coordinated its work with standard-setting bodies in the U.S. and abroad, such as the World Wide Web Consortium, and the Committee included representatives from the European Union, Canada, Australia, and Japan.

On April 3, 2008 the Committee presented its report to the Board. The Committee's report recommends detailed revisions to the Board's section 508 standards and Telecommunications Act accessibility guidelines. The Committee's report is available on the Board's website at <http://www.access-board.gov/sec508/refresh/report>.

The Board staff has been working with an ad hoc committee of Board members and staff from several Federal agencies to develop this notice and draft. The final version of the draft will ultimately replace the section 508 standards, the Telecommunications Act accessibility guidelines, and make amendments to the Americans with Disabilities Act Accessibility Guidelines. In addition to agencies that are represented on the Board, staff from the Federal Communications Commission, Social Security Administration, Internal Revenue Service, and the Department of Homeland Security have been involved in the ad hoc committee's work.

The draft is available on the Board's website at [www.access-board.gov/508.htm](http://www.access-board.gov/508.htm). At a later date, the Board will publish a notice of proposed rulemaking to update the standards and guidelines based on the input received in response to this advance notice and draft. The proposed rule will provide another opportunity for public comment. The Board will also prepare a regulatory assessment to accompany the proposed rule. To assist the Board in developing the regulatory assessment, the Board invites comments on the quantitative and qualitative benefits and costs associated with the changes proposed in the draft; the Board also asks commenters to provide information on the benefits and costs of alternative policies which they propose. The Board will finalize the standards and guidelines based on the comments received in response to the proposed rule.

## Regulatory Approach

The TEITAC sought to balance the need for detailed criteria with an approach that accommodates the dynamic and ever-evolving nature of the technologies covered. Many people, from product designers and engineers to procurers and end users, have called for clear delineation of what makes a product accessible for compliance purposes. However, the Committee determined that product-specific criteria will not keep pace with innovative trends and market forces which enhance the capabilities of products and blur their categorization. Convergent technologies, for example, support the growing demand for all-in-one products, such as mobile devices that offer voice and text communication, web browsing, and media players.

The Committee's report recommended a revised set of performance criteria that specify access capabilities for products generally. The Committee organized its recommendations to serve as a framework for updated technical specifications to address hardware, user interfaces and electronic content, audio-visual players, displays, and content, real-time voice communication, and authoring tools. Unlike the current standards, the committee's recommendations are organized primarily by the features or capabilities of a product, instead of discreet product types. The recommendations contain advisory and background information on the performance and technical provisions, including references to related standards, and update defined terms and provisions covering documentation, support, and maintenance. The report also advises the Board on considerations for future updates, supplementary guidance materials and tools, compliance testing, and further research.

*Question 1:* The Board developed the draft using the organizational approach recommended by the Committee in which the provisions are organized primarily by the features or capabilities of a product, instead of discrete product types. The Board seeks comments on the usability and effectiveness of this approach, as well as alternative organizational approaches.

*Question 2:* The Board seeks input on what implementation time frames would be reasonable, specifically whether some provisions should have differing implementation dates.

## Structure of the Draft

The draft contains revisions to the current standards and guidelines which the Board is considering. The revisions

are largely based on the recommendations of the TEITAC report. Some provisions reflect changes to the TEITAC recommendations made by the Board, as noted in the detailed summary which follows. The draft also contains revisions that would amend provisions in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) by applying requirements of the standards to self-service machines. The draft standards and guidelines share a common set of functional performance criteria (Chapter 2) and technical design criteria (Chapters 3–10), but have separate introductory chapters (Chapter 1) which outline scoping, application, and definitions. Chapter 1 labeled, "508 Chapter 1: Application and Administration" addresses products covered by Section 508 of the Rehabilitation Act and its provisions are preceded by the letter "E"; the other chapter 1 is labeled, "255 Chapter 1: Application and Administration" and addresses telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996 and its provisions are preceded by the letter "C".

*Question 3:* To improve usability, the Board titled each provision and located advisory notes next to the associated requirements. Are there any other format changes that will make the draft easier to use?

The draft is substantially reorganized from the current standards and guidelines. Following the recommendations in the TEITAC report, the draft provisions have been organized in terms of functionality, rather than product categories. For example, the Board separated conversation functionality, including both voice and text (Chapter 9) from audio output functionality, such as alert indicators (Chapter 8).

*Question 4:* The Board seeks feedback on the overall organization of the draft, especially how aspects of technology are addressed by the chapter organization. For example, should software (Chapter 4) and electronic documents (Chapter 5) be combined? Or, should all requirements for audio output, including conversation functionality and status indicator sounds (Chapter 8), be combined with text messaging capability (Chapter 9) into one chapter?

## Major Changes From Current Requirements

The draft addresses some issues which were not covered in the current standards or guidelines but were the subject of supplementary technical guidance. The draft does not seek to

change the approach to these issues but instead makes them explicit. For example, the relationship between the functional performance criteria and the technical provisions is unchanged. However the draft text seeks to clarify (in Chapter 1) that a product may be deemed accessible if it meets all the technical provisions, even if the functional performance criteria are not completely met.

The draft does not seek to substantively change the majority of requirements in the current standards or guidelines, consistent with the TEITAC report. However, some material is changed in the draft. For example, the draft contains significant revisions to the general exceptions. All substantive changes are explained in the Summary of Provisions below. One of the most significant changes being considered by the Board involves the application of the guidelines and standards to electronic content. The Board is proposing to cover electronic content of certain official communications by Federal agencies. Another significant change concerns coverage of self-service machines under the Americans with Disabilities Act.

## Summary of Provisions

This section provides an overview of the draft and highlights substantive revisions and updates from the TEITAC report, unless otherwise noted. The draft includes some non-substantive editorial changes to the TEITAC recommendations made by the Board that are not detailed in this discussion. In addition to the specific questions below corresponding to individual provisions, the Board seeks general comments on these provisions, including the extent to which they are necessary, their advantages and disadvantages, their quantitative and qualitative benefits and costs, and alternative policies. The Board also invites the public to identify any gaps in the draft guidelines and standards, and approaches to addressing such gaps.

### 508 Chapter 1: Application and Administration

The draft contains provisions for information and communication technology for Federal departments and agencies, including the U.S. Postal Service, as set forth in Section 508 of the Rehabilitation Act of 1973.

#### *General Requirement (E102)*

The draft standards would be applied by Federal agencies so that employees and members of the public with disabilities have access to and use of electronic and information technology

that is comparable to the level of access and usability available to persons without disabilities unless it would be an undue burden to do so. The Board added this provision to clarify these responsibilities. This would not change the scope or application of the standards.

#### *Application (E103)*

This section covers application of the standards to information and communication technology procured, developed, maintained, or used by or on behalf of Federal agencies. The phrase "or on behalf of agencies" has been added to cover technologies used by contractors under a contract with a Federal agency. A citation to the statute has been added to this provision. Coverage of agencies is unchanged; however, the draft provision seeks to provide more detail regarding which agencies are covered. The term "Information and Communication Technology (ICT)," as defined in section E111, encompasses both electronic and information technology covered by Section 508 of the Rehabilitation Act and telecommunications products covered by Section 255 of the Telecommunications Act of 1996. The Committee recommended use of the broader term ICT for convenience and clarity since the technical requirements and functional performance criteria apply under both laws and since the term ICT is widely used by most other countries.

#### *Electronic Content (E103.3.1)*

The amendments to the Rehabilitation Act require that when developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency shall ensure, unless an undue burden would be imposed on the department or agency, that electronic and information technology allows (regardless of the type of medium) individuals with disabilities to have access to and use of information and data that is comparable to the access to and use of the information and data by others without disabilities (see 29 U.S.C. 794d (a)(1)(A)). The current standards do not adequately address what is meant by comparable access to information and data. There has been much confusion over whether and how such electronic content is addressed.

The draft contains a new provision which the Board is considering to address access to electronic content of certain official communications by Federal agencies or agency representatives. This draft requirement would apply to electronic content

regardless of the method of transmission or storage but is limited to official agency communications. "Official communication" refers specifically to communication by a Federal agency to employees that contains information necessary for those employees to perform their job functions and information relevant to enjoyment of the benefits and privileges of employment or to communication by a Federal agency to members of the general public that contains information necessary for the conduct of official business with the agency. Examples of such electronic content may include email messages, Word documents, and other types and formats. The current standards address access to some types of electronic content, such as web pages, forms, and video productions. A definition of "content," is included in section E111.

*Question 5:* The draft requirement which the Board is considering for access to electronic content in the draft is limited to certain official communications by Federal agencies. Other types of communications and electronic content are not addressed. The Board seeks comment on this draft requirement and what other types of content including social media (i.e., YouTube and Twitter) should be addressed and the benefits and costs of extending coverage to other forms of electronic content. The Board is interested in comments from agencies about how this provision could be implemented across large and diverse institutions. How should attachments to official email messages be handled? The Board is also interested in information on the benefits and costs associated with this change, particularly from Federal agencies. How should this provision apply to records requested from the National Archives and Records Administration who is prohibited from altering archival records?

#### *Undue Burden (E104)*

Consistent with the Committee's recommendations, this section in the draft is substantively unchanged from the current standards.

#### *General Exceptions (E105)*

The current standards contain six exceptions. In the draft, two of the exceptions are retained unchanged: The prohibition against requiring fundamental alteration in the nature of a product or components; and the statutory exception for products whose function, operation, or use involves national security or cryptographic activities. Another exception concerning ICT acquired by a contractor incidental to a contract has been relocated to the

application section which contains a provision specific to Federal contracts (E103.4.2).

The Board is considering removing three exceptions in the current standards:

- One exception stated that assistive technology need not be provided at all workstations for all Federal employees (1194.3(c)). The current standards require that ICT either be directly accessible or compatible with assistive technology. Since the standards do not require the provision of assistive technology at each work station, the Board considers this exception unnecessary.

- The second exception states that where agencies provide information and data to the public through accessible ICT, the accessible ICT need only be provided at the intended public location (1194.3(d)). The Board is considering removing this exception from the standards because no provision in the standards requires accessible ICT in more than one location. Since these exceptions are contained in the statute, their removal from the standards will not impact application.

- A third exception states that products located in spaces used only by service personnel for maintenance and repair need not be accessible. The Board believes this provision is unnecessary since most functions can be accessed remotely.

*Question 6:* The Board seeks comment on removing these exceptions and the impact of removing them, including the benefits and costs associated with removing them. Should the exception concerning ICT acquired by a contractor incidental to a contract be repeated in this section and in section E103.4.2?

#### *Equivalent Facilitation (E106)*

This section is substantively unchanged from the current standards.

#### *WCAG 2.0 Harmonization (E107)*

The Committee recommended that the Board seek to harmonize the standards with the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0 once they were finalized. The Web Content Accessibility Guidelines (WCAG) 2.0 was published as a W3C recommendation on December 11, 2008; about 8 months after the Committee provided its report to the Board. The Board is considering that web pages, as defined by WCAG 2.0, which are Level AA conformant, be deemed to be in conformance with the provisions noted in the draft.

*Question 7:* The Board seeks comment on this approach to harmonization with WCAG 2.0 including suggestions for



alternative approaches to achieving harmonization, and comments on the benefits and costs associated with the Board's approach.

#### *Best Meets (E108)*

This section is substantively unchanged from the current standards.

#### *Provision of Support Services and Materials (E109)*

The Board is considering requiring agencies to provide alternate methods of communication through help desks and technical support services and to provide support services and materials in alternate formats. Chapter 10 of the technical requirements specifies the types of information to be provided, such as descriptions of the built-in accessibility features of a product and information about operation of features that can be accessed from the keyboard.

#### *Definitions (E111)*

The draft contains a number of new definitions. Most defined terms derive either from the Committee report or from the WCAG 2.0. Consistent with the Committee's report, the draft seeks to minimize deviations from industry usage and understanding of defined terms to ensure consistency with industry standards and best practices.

The draft uses the term "Information and Communication Technology, (ICT)" to refer to both telecommunications products covered by Section 255 of the Telecommunications Act of 1996 and to electronic and information technology covered by Section 508 of the Rehabilitation Act. The Board has defined this term to include existing definitions of "electronic and information technology" and "telecommunications products" in the current standards and guidelines. The definition is intended to encompass a wide expanse of products and the functions for which they are used.

*Question 8:* The Board is interested in comment on the definition of Information and Communication Technology.

#### *Referenced Standards or Guidelines (E112)*

Other standards and guidelines referenced in this draft are based on recommendations from the Committee. The intent is to promote testability and usability of the draft provisions.

### **255 Chapter 1: Application and Administration**

This chapter covers application of the draft to telecommunications and interconnected Voice over Internet Protocol (VoIP) products and Customer

Premises Equipment (CPE) covered by Section 255 of the Telecommunications Act of 1996. It applies to manufacturers of telecommunications equipment or customer premises equipment and requires products to be designed, developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so; readily achievable means easily accomplishable, without much difficulty or expense.

#### *General Requirement (C102)*

This draft provision is substantially unchanged from the current guidelines and the Committee recommendations; the draft provision applies to manufacturers of telecommunications products.

#### *Application (C103)*

The draft provisions apply to telecommunications products and interconnected VoIP products and CPE. This section now specifically references interconnected VoIP products, consistent with Federal Communication Commission regulations. An advisory note provides examples of covered technologies, such as instant messaging that supports real-time conversation in other modes, and products beyond those typically thought of as communications devices, such as web interfaces used to access functions in VoIP systems.

#### *Direct Accessibility (C103.4)*

This draft provision is updated yet consistent with the current guidelines which require telecommunications equipment and CPE to be directly accessible when it is readily achievable to do so.

#### *Compatibility Design (C103.4.1)*

This draft provision is similar to the current guidelines which require telecommunications equipment and CPE to be compatible with peripheral devices and specialized customer premises equipment when it is readily achievable to do so.

#### *Prohibited Reduction of Accessibility (C103.5)*

This draft provision is substantially unchanged from the current guidelines.

#### *Information, Documentation, and Training (C104)*

This draft provision is substantially unchanged from the current guidelines and would require manufacturers to provide access to information, documentation, and training to their customers. This may be done through help desks and support services and shall include alternate methods of

communication. Chapter 10 of the technical requirements specifies the types of information to be provided, such as descriptions of the built-in accessibility features of a product and information about operation of features that can be accessed from the keyboard.

#### *Equivalent Facilitation (C105)*

This section is substantively unchanged from the current guidelines.

#### *WCAG 2.0 Harmonization (C106)*

The Committee recommended that the Board harmonize its rule with the World Wide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0 once they were finalized. The Web Content Accessibility Guidelines (WCAG) 2.0 was published as a W3C recommendation on December 11, 2008. The Board is considering that web pages, as defined by WCAG 2.0, which are Level AA conformant, shall be deemed to be in conformance with the provisions noted in the draft.

#### *Product Design, Development, and Evaluation (C107)*

This section is substantially consistent with the current guidelines which require manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications products and CPE. It has been revised to include references to VoIP and other technologies.

#### *Definitions (C109)*

The draft contains a number of new definitions. Most defined terms derive either from the Committee report or WCAG 2.0. Consistent with the Committee's report, the draft minimizes deviations from industry usage and understanding of defined terms to ensure consistency with industry standards and best practices. The definition of "Interconnected Voice over Internet Protocol (VoIP) Service" derives from FCC regulations and was included in the Committee report.

*Question 9:* The Board is interested in comment on the proposed definitions.

#### *Referenced Standards or Guidelines (E110)*

The external standards and guidelines referenced in the draft are based on recommendations from the Committee. The intent is to promote testability and usability of the provisions of this part.

### **Chapter 2: Functional Performance Criteria**

#### *Functional Performance Criteria (202)*

This draft provision is consistent with the recommendation of the Committee to retain all existing functional

performance criteria and to add a provision that addresses color vision deficits and a provision to minimize photosensitive seizure triggers. The Committee and the Board felt it was important that functional performance criteria map to technical specifications.

*Question 10:* The Board is interested in comment on how the functional performance criteria should be implemented in relation to the technical provisions. Does the approach discussed in E103.5 and C103.6, as a statement of current practice, clarify or confuse the issue? If the approach is confusing, how could it be made less confusing?

#### *General (202.1)*

The current standards require products to have at least one mode of operation and information retrieval that meets the functional performance criteria. More and more products are now multi-functional. For example, many devices allow users to make telephone calls, send text messages, and access the Internet. In recognition of this growing multi-functionality of covered products, the Board is considering requiring that each mode of operation of a product meet the functional performance criteria.

#### *Without Vision (202.2)*

This provision is substantially unchanged from the current standards and the Committee report, except for the use of the term “non-visual access.”

#### *With Limited Vision (202.3)*

This provision addresses access to at least one mode of operation for users with limited vision. The Board is considering revising the current specification to require that ICT meet the needs of a greater range of users. The current standards require an accessible mode that accommodates visual acuity up to 20/70. The Board is considering increasing the covered range to 20/200, which is the legal definition of blindness so that more people have the option to use a visual-based mode instead of non-visual accessible modes.

*Question 11:* The Board is interested in comment on whether and the extent to which this change will sufficiently improve access for people with limited vision and the benefits and costs associated with this change.

#### *Without Perception of Color (202.4)*

The Committee’s report recommended the addition of a provision specifying that functionality not be based on the ability to perceive color. This is consistent with the technical provisions in the current standards that prohibit

relying on color alone as the sole means of indicating status or function.

*Question 12:* The Board is interested in comment on this proposed new provision, including information on the benefits and costs associated with this addition.

#### *Without Hearing (202.5)*

This draft provision is substantially consistent with the current standards and the Committee report.

#### *With Limited Hearing (202.6)*

This provision seeks to address access for users with limited hearing. The current standards stipulate that at least one mode be provided in “an enhanced auditory fashion.” The provision the Board is considering would require that any auditory features, where provided, include at least one mode of operation that improves clarity, reduces background noise, or allows control of volume. The Board included this change to make the requirement more specific. The Committee considered such a change but did not recommend specific language.

*Question 13:* The Board is interested in comment on the proposed change to improve access for individuals with hearing impairments, including information on the benefits and costs associated with this change.

#### *Without Speech (202.7)*

This provision is substantially unchanged from the current standards and the Committee report.

#### *With Limited Manipulation (202.8) and With Limited Reach and Strength (202.9)*

These draft provisions are consistent with a provision in the current standards but the Board has separated them into two distinct provisions. The Board is considering making this change to address issues of fine motor control or simultaneous actions apart from the reach ranges or strength necessary to access and operate controls. These provisions are consistent with technical specifications addressing reach ranges and operable parts.

#### *Without Physical Contact (202.10)*

This is a new provision the Board is considering adding due to the significant population of users who are unable to make contact with a product, as well as the many types of technology now available that do not require physical contact, such as Bluetooth and wireless connectivity. The Committee considered, but did not reach consensus, on adding such a requirement. The wording of the

provision derives from that considered by the Committee.

*Question 14:* The Board is interested in comment on the proposed new provision to improve access for individuals who are unable to make contact with a product, including information on the benefits and costs associated with this change.

#### *Minimize Photosensitive Seizure Triggers (202.11)*

This is a new provision which the Board is considering adding to address hazards posed to people with photosensitive epilepsy. The Board added this provision as a functional criterion for consistency with technical specifications for flashing (306).

*Question 15:* The Board is seeking comment on whether cognitive disabilities are sufficiently addressed in the functional performance provisions and seeks suggestions on how the requirements might better address the accessibility needs of individuals with cognitive disabilities.

### **Chapter 3: Common Functionality**

This chapter covers those common features of information and communication technology which are found across a variety of platforms, formats, and media. The draft requirements of this chapter which the Board is considering derive from provisions for self-contained closed products and desktop and portable computers in the current standards. The Board organized this chapter to cover all technical requirements that address elements or functionality common to ICT. These requirements apply generally to all types of ICT.

#### *Closed Functionality (302)*

The Board is considering this draft provision to require that ICT with closed functionality be usable by people with disabilities without requiring assistive technology other than personal headsets. The current standards address this only in relation to self-contained closed products. The Committee recommended this change since closed functionality is not product or function specific and may be found in many contexts, due to either design or policy considerations. For example, self-contained closed products such as kiosks may be closed due to design, while software applications may have certain limitations imposed on functionality due to policy considerations, such as maintaining security.

*Question 16:* The Board is interested in comments on how closed functionality is covered in the draft.

Should other means of assistive technology besides personal headsets be permitted to provide access to ICT with closed functionality?

#### *Biometrics (303)*

The Committee recommended that the current requirements for biometric identification be expanded to allow for alternate forms of user identification or control which may be either biometric or non-biometric. The requirement for a non-biometric form of user identification or control is retained. The Board is considering a requirement for an alternate biometric that uses dissimilar characteristics to the default biometric.

#### *Preservation of Information Provided for Accessibility (304)*

This draft provision is substantially unchanged from the current standards and the Committee recommendations.

#### *Color (305)*

This draft provision is substantially unchanged from the current requirements and the Committee recommendations.

#### *Flashing (306)*

In this draft provision the Board is considering specifying a maximum 3-per-second flash rate for ICT light flashes. This differs from the current standards which specify that “products shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.” The Committee recommended this change because the current provision is too restrictive in prohibiting flashing within a certain range with no consideration for the size of the flashing area. The provision is consistent with WCAG 2.0.

#### *Operable Parts (307)*

In this draft provision the Board is considering addressing controls and keys, tactile discernability, key repeat and adjustability functions, non-mechanical controls, and accessible reach ranges. The Board is considering revising the provision to reference specifications for reach ranges in the Board’s Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines for buildings and facilities, which address both forward and side reach ranges, since some products may require a variety of approaches. The current standards only specify side reach ranges. The ADA and ABA guidelines specify a maximum side reach height that is lower than the maximum height specified in the current standards (48

inches maximum instead of 54 inches). This would eliminate any potential conflict between the ICT requirements and the ADA and ABA accessibility guidelines.

### **Chapter 4: Platforms, Applications, and Interactive Content**

#### *General (401)*

This chapter provides technical requirements for platforms, applications, and interactive content. The Board separated these requirements from those for static electronic documents (Chapter 5). These provisions are harmonized with WCAG 2.0.

#### *Non-Text Content (402)*

In this draft section the Board is considering providing technical requirements for non-text content, including audio and visual content and CAPTCHA (Completely Automated Public Turing Test to tell Computers and Humans Apart). It references specifications for non-text content in Chapter 5 and requirements for audio and video content in Chapter 6. Specifications for all other types of interactive content are contained in this chapter.

#### *Distinguishable Content (403)*

In this section the Board is considering new requirements to address the difficulties persons with hearing loss or low vision may experience in distinguishing between foreground and background content, whether that content is audio (background music to an audio track of speakers) or text. These draft requirements are based on recommendations from the Committee. The Board is also considering adding a provision for resizable text for consistency with WCAG 2.0.

#### *Keyboard Operation (404)*

This draft section is substantively unchanged from the current standards and is consistent with recommendations from the Committee.

#### *Time Limits (405)*

This draft section is substantively unchanged from the current standards and is consistent with recommendations from the Committee.

#### *Navigation (406)*

In this draft section the Board is considering addressing navigation and includes substantive changes from the current standards and the Committee’s recommendations. A provision to bypass blocks of content (406.2), consistent with the current standards

was recommended for deletion in the Committee report. The Board is considering retaining this provision for consistency with WCAG 2.0. The Board is also considering adding a provision on focus order (406.3) for the same reason, and a new provision covering multiple ways to locate content (406.4), which was recommended by the Committee.

*Question 17:* The draft includes three provisions (406.2, 406.3, and 406.4) not included in the Committee report but that are consistent with WCAG 2.0. Are these provisions important enough for end-users to be included for the sake of harmonization with other standards? The Board seeks comment on the benefits and costs of these additions.

#### *Predictability (407), Input Assistance (408), User Preferences (409), and Interoperability With Assistive Technology (410)*

These draft sections are substantively unchanged from the current standards and are consistent with recommendations from the Committee.

#### *Compatible Technologies (411)*

This draft section is consistent with the current standards and contains provisions that are closely adapted from provisions the Committee considered but did not reach consensus on.

#### *Assistive Technology Function (412)*

The Board is considering a new requirement that closely reflects recommendations the Committee considered but did not agree on. The Board added this provision because it believes it is important to address how applications use platform accessibility services to make information about components programmatically determinable.

*Question 18:* The draft includes a requirement for ICT which provides an assistive technology function. Should the requirements apply to assistive technology? The Board seeks comment on the benefits and costs on including explicit requirements for assistive technology.

#### *Authoring Tools (413)*

In this new section the Board is considering requiring that for all formats supported by an authoring tool, the authoring tool must provide a mode of operation that supports the creation of electronic documents that conform to the ICT accessibility requirements. The Committee recommended that authoring tools be required to support the ability to improve the accessibility of content.

*Question 19:* Do the proposed provisions for authoring tools reflect

features that many authoring tools already provide? If not, could such features be added to authoring tools relatively easily? The Board seeks comment on the benefits and costs of including such requirements for authoring tools.

#### **Chapter 5: Electronic Documents**

The Board is considering separating requirements that generally apply to non-interactive content (Chapter 5) from those that generally apply to interactive interfaces (Chapter 4). Chapter 5 covers access to electronic documents which contain mostly static, read-only, non-interactive electronic content. Electronic content covered by this chapter includes most non-paper documents and web content, regardless of format. Examples include word processing files (such as Word and WordPerfect), Portable Document Format (PDF), presentations (such as Power Point), spreadsheets (such as Excel), and simple web pages not containing embedded objects (such as Flash, Silverlight, or Air). All of these elements are covered in this chapter. In addition, electronic documents may also contain some modest interactive components such as hypertext links, buttons, and form elements or fields. These common elements are covered in this chapter as well. The draft provisions of this chapter derive from requirements in the current standards for web-based intranet and internet information and applications. Whereas the current standards focus on web-based documents, this chapter would apply to a wide range of content formats.

*Question 20:* The Board seeks comment on whether there is a better way to distinguish between requirements for software applications covered by Chapter 4 and electronic documents covered by Chapter 5.

#### *Non-Text Content (502)*

This provision is consistent with the current standards but provides more detail on what constitutes a "text equivalent" for many common situations.

#### *Adaptable Presentation of Content (503)*

In this section the Board is considering addressing adaptable presentation of content, including features which allow content to be presented in different ways without losing or changing information or the structure of the content, such as contrast options for viewing websites. Other elements of presentation include the ability to programmatically determine the information, structure, and relationships implied by visual or

auditory formatting. When a screen reader reads content, the presentation format of the content changes, but the information provided and the structure or relationships of the content do not. For example, columns in a table should still be distinguishable from rows, separate paragraphs of information should still be separate, and the arrangement of the content should still be apparent. This draft section contains specifications based on the current standards for data tables, scripts, and forms, but includes new provisions for logically correct reading sequence and sensory characteristics.

#### *Distinguishable Presentation of Text Content (504)*

This draft section is based on requirements in the current standards for web-based intranet and internet information and applications but includes new specifications for contrast and text enlargement. The Committee recommended contrast ratios for text and images of text of at least 4.5:1. The draft includes a requirement that text be easily resizable for consistency with WCAG 2.0 which the Board is considering.

#### *Navigation and Orientation (505)*

In this draft section the Board is considering addressing navigation and orientation and stems from the current standards but includes new requirements regarding link purpose in context, headings, and labels. The draft contains new requirements which the Board is considering which state that the purpose of each link shall be determinable from the link text alone, or from the link text together with its programmatically determined link text, unless the author intends the purpose of the link to be ambiguous. The reason for this requirement is to allow users to understand the purpose of each link so they can determine whether they want to follow the link. In addition, the Committee report included an advisory note recommending that specifications for document titles (505.2) apply not just to frames, as in the current standards, but broadly to all document types. The Board also has included this provision as a requirement for greater consistency with WCAG 2.0.

#### *Readability (506)*

This draft provision which the Board is considering is new and requires that the language of documents and changes in language be identified. It is consistent with WCAG 2.0.

#### *Input Assistance (507)*

This draft provision is consistent with requirements in the current standards for web based forms but has been revised to apply to all types of forms.

#### *Compatible Technologies (508)*

In this new draft section the Board is considering requiring that content using mark up languages, such as XML or HTML, use that language according to specification when creating electronic content so that user agents, such as assistive technology like screen readers, will be able to properly interpret and read the content. The Committee noted that a screen reader may be unable to properly interpret content which has been improperly coded, so this provision is intended to address that issue. The Committee recommended this addition as an advisory (non-mandatory) provision, but the Board is considering the addition as a requirement to better harmonize the draft with WCAG 2.0.

#### **Chapter 6: Synchronized Media Content and Players**

Chapter 6 addresses audio and visual electronic content as well as players of that content. Other forms of electronic content are addressed in Chapter 4 (Platforms, Applications, and Interactive Content) and Chapter 5 (Electronic Documents). In order to address the broader range of content now in use, references to "multimedia video" have been replaced by the term "synchronized media," as recommended by the Committee. The Board recognizes that while much of the draft maintains a functional approach to the requirements, Chapters 6 through 9 adopt a more product oriented approach.

*Question 21:* The Board seeks comment on whether this proposed approach is successful in making the document more understandable and useful. The Board welcomes alternatives to this organizational approach.

#### *Video or Audio Content With Interactive Elements (602)*

This is a new provision which the Board is considering to address technology that allows users to interact with video or audio content. It was recommended by the Committee to address a new development in technology that occurred after the current standards were issued.

#### *Captions and Transcripts for Audio Content (603)*

This draft provision is derived substantively from the current standards but has been reorganized for clarity. It

distinguishes pre-recorded content from real-time content and audio-only content from synchronized media.

*Question 22:* The Board is interested in comments on whether there is a voluntary consensus standard which could address some issues related to captioning quality, such as the degree of synchronization required and an allowable error rate.

#### *Video Description and Transcripts for Video Content (604)*

The term "video description" was recommended by the Committee to replace the term "audio description." Video description is used to refer to the process whereby visual content is made accessible by the insertion of verbal or auditory description of on-screen visuals intended to describe important visual details. "Video description" is the preferred terminology.

This draft provision derives substantively from the current standards, but has been reorganized for clarity. It distinguishes pre-recorded content from real-time content and visual-only content from synchronized media.

The Board is considering adding a new provision on multiple visual areas of focus to address a problem experienced by persons with disabilities when there are multiple, simultaneous sources of information and data being provided on-screen. People with disabilities may miss some of the information displayed simultaneously on a screen, when some, but not all, of the information is described. A typical example is text on screen that states the name and title of the person speaking, but the text is not included in the main audio output. This provision is intended to address that concern.

The Board departed from a Committee recommendation for video description of pre-recorded content by keeping it as an unconditional requirement, consistent with the current standards. The Committee recommended an option for providing a text description of video content where space is not available in the main program for synchronized video descriptions. However, new technology for "extended description" may support conformance to this provision without fundamentally altering pre-recorded synchronized media. Extended description allows users to pause a video to listen to a description and resume playing the video.

#### *Caption Processing Technology (605)*

This draft provision addresses technologies that display and process captions and is distinct from provisions

for caption content (603). The Committee recognized that current audio visual players and displays may be separate components of a larger system.

#### *Video Description Processing Technology (606)*

This draft provision addresses technologies that play and process video descriptions and is distinct from requirements for video description of content (604). It is substantively consistent with the current standards but specifies distinct provisions to be followed for both analog signal tuners and digital television tuners.

#### *User Controls for Captions and Video Description (607)*

This draft provision covers user controls for captions as well as video descriptions and differs from the current standards which only address video description controls and are not as comprehensive in scope. As recommended by the Committee, this provision addresses on-screen menus, a new technology not addressed by the current standards.

#### *Audio Track and Volume Control (608)*

This is a new provision being considered by the Board to address the issue of background audio as a barrier to understanding speech in video content. It reflects the new digital television standard that allows separating audio content into separate tracks. Rather than applying a requirement on content authoring, this provision requires ICT that displays and processes synchronized media to allow user adjustment and selection for multi-channel videos.

*Question 23:* The Board seeks comment on any impact this approach may have on manufacturers of hardware or software for audio video players.

### **Chapter 7: Hardware Aspects of ICT**

This chapter covers those features of ICT relating to hardware. The requirements of this chapter derive from provisions for self contained closed products, desktop and portable computers, and telecommunication products in the current standards, as well as provisions for output, display, and control functions in the guidelines. The Committee sought to cover all requirements specifically related to hardware in one chapter.

#### *Reach Ranges for Installed or Free-Standing ICT (702)*

The Committee recommended that specifications for reach ranges in the current ADA and ABA Accessibility

Guidelines, which address both forward and side reach ranges, be referenced due to technologies that may require a variety of approaches. This is a change from the current standards which only addressed side reach ranges. In addition, the ADA and ABA Accessibility Guidelines specify a maximum side reach height that is lower than the maximum height specified in the current standards (48 inches maximum instead of 54 inches).

#### *Standard Connections (703)*

This provision derives from the Committee report and current standards and addresses reach ranges for free-standing ICT. The Board is considering modifying the provision by replacing references to "slots, ports and connectors," with the term "connection points" which encompasses a wider variety of possible ways of connecting to devices, such as infrared and Bluetooth.

*Question 24:* The Board seeks comment on whether this change in terminology is sufficient, or if it will result in any confusion or unintended implementation issues. Should this term be defined?

#### *Text, Images of Text, and Symbols for Product Use (704)*

This is a new provision that would require that when text, images of text, and symbols are provided on hardware for product use, they must provide one mode of operation which provides the same information in electronic format, unless an exception applies. Without the addition of a provision to make the information available electronically, someone who is blind would not be able to independently read information on the bottom of products such as symbols describing various ports on a portable computer. In addition, text, images of text, and symbols must conform to minimum requirements for size and contrast ratio. This provision was recommended by the Committee. The Board added measurement specifications on text attributes, derived from the ADA and ABA Accessibility Guidelines.

### **Chapter 8: Audio Output From Hardware**

Following recommendations from the Committee to orient requirements to functions of products, the Board has organized criteria for audio output functionality into a separate chapter. As structured, this chapter is a departure from the current standards and guidelines which located volume control provisions in separate sections associated with different product types. The provisions of this chapter address

the audio output functionality of products such as telephones and information kiosks, as well as media products, such as portable music players.

#### *Interactive ICT Within Reach (802)*

This draft provision being considered by the Board applies to those products that have audio output, are adjustable by the user, and are within the reach of the user, such as telephones and information kiosks. Consistent with a Committee recommendation for audio connection, this provision requires products with audio output to provide a means of listening through a handset, jack, or connection adaptor. It would also require that features be provided to control volume through hardware such as jacks and speakers, as well as software controls for audio.

#### *ICT Typically Held to the Ear (803)*

The Board is considering this provision to address requirements for volume gain in products with audio output (either two way voice communication or one way audio output), that are typically held to the ear. It specifies a minimum adjustable gain level of 18 dB, with a baseline to ensure measurability and consistency among products. These specifications differ from the current standards and guidelines (which require a gain adjustable up to a minimum of 20 dB but do not specify a baseline). In addition, the provision differs from the recommendation of the Committee.

The Committee recommended harmonization with the current FCC Part 68 regulation, which requires a gain adjustable up to a minimum of 18 dB gain for analog telephones and a 15 dB minimum gain for other telephones. However, FCC Part 68 specifies 12 dB as an allowable minimum gain. The Board is concerned that a product designed with a 12 dB or 15 dB minimum gain will not sufficiently meet the needs of individuals with hearing impairments.

This section also includes requirements for incremental volume control and automatic reset that are consistent with the current standards and guidelines. An exception for reset manual override was added at the recommendation of the Committee and is consistent with FCC policy (see FCC Memorandum Opinion and Order, DA 01-578, March 5, 2001; [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DA-01-578A1.doc](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DA-01-578A1.doc)). The requirements specified in the FCC Memorandum Opinion and Order have been included in the draft.

Requirements for magnetic coupling and minimized interference (803.5) are

also included in this section and are consistent with the standards and guidelines. The Board departed from the recommendations of the Committee by including a requirement for magnetic coupling to apply to headsets because they are part of telecommunications products. The draft extends the minimized interference requirement to ICT that may not necessarily be used for telecommunications, such as wands used for listening to museum audio tours.

*Question 25:* The Board is interested in comment on these provisions, including information on the benefits and costs associated with the proposed requirement for volume gain. In addition, the Board seeks comment on whether the specified volume gain for cellular and landline telephones should be consistent since the amplification needs of people who are hard of hearing are the same for both products.

#### *ICT Not Typically Held to the Ear (804)*

This section addresses volume gain, incremental volume control, and automatic reset in products that are not typically held to the ear. The Board departed from Committee recommendations and did not differentiate requirements for products designed for personal use, such as speaker telephones, from products designed for communal use, such as information transaction machines.

### **Chapter 9: Conversation Functionality and Controls**

This chapter addresses products that support a telecommunications conversation, whether it is in an audio, text, or video format.

#### *Real-Time Text Functionality (902)*

This section contains detailed specifications being considered by the Board for real-time text (RTT) and for hardware and software systems that support its functionality. Products covered include terminals, such as telephones, as well as pass-through products, including routers. These specifications are based on recommendations from the Committee and are considerably more comprehensive than those of the current standards and guidelines that only address TTY text.

The Board considered referencing the RFC-4103 standard for VoIP systems that connect to other VoIP systems using session initiation protocol (SIP). (RFC is otherwise known as the Request for Comments—a series of Internet standards and protocols distributed by the Internet Assigned Numbers Authority; see <http://>

[datatracker.ietf.org/doc/rfc4103/](http://datatracker.ietf.org/doc/rfc4103/)).

However, since the RFC-4103 was not developed through a standards development organization, the Board did not include a reference to it in this draft.

*Question 26:* Is there a similar standard to the RFC-4103 standard that has been published by a standards development organization that the Board could reference?

#### *Voice Mail, Messaging, Auto-Attendant, Conferencing and Interactive Voice Response (903)*

This provision corresponds to specifications in the current standards for interactive voice response TTY compatibility but also applies to other real time text. The Committee recommended that this provision reference G.711 specifications for audio intelligibility in the ITU-T Standard (International Telecommunication Union Telecommunication Standardization Sector). Instead, the Board has chosen to reference the G.722 standard which provides greater accessibility through superior clarity. As recommended by the Committee, this section also includes a new provision for message and prompt navigation.

#### *Information About Call Status and Functions (904)*

This section addresses caller identification and similar functions and is substantially similar to specifications in the current standards. An advisory note clarifies other types of call status information covered.

#### *Video Communications Support (905)*

This is a new provision recommended by the Committee to require interoperable technology support for people who use sign language to communicate via telecommunications. It addresses signals as well as terminals and includes a provision that supports audio input and output. The Board enhanced specifications for video communication quality by adding requirements for data stream and display screens, including the provision of an alternate video display screen, and revised requirements for speed and resolution. In addition, the Board added a requirement for an indication of camera status for security reasons and specifications for end-user controls to help ensure privacy. At the recommendation of the Committee, the Board also included a provision to support a non-auditory alerting system.

*Question 27:* The Board seeks comment on this requirement. Are the specifications for video quality sufficient to support accessibility? Are

there other ways of addressing video communications that are less complex?

*Audio Clarity for Interconnected VoIP (906)*

This is a new section which the Board is considering that addresses the ability to enhance clarity in audio through VoIP systems. This requirement is based on a recommendation from the Committee report, but the Board has revised it to reference the G.722 standard instead of the G.711 standard to provide greater accessibility.

*Alternate Alerting for VoIP Telephone Systems (907)*

As recommended by Committee, in this new section the Board is considering requiring that a signal be provided to indicate incoming calls on VoIP systems. This requirement can be met through either built-in or compatible signaler solutions. Advisory notes clarify sufficiency of audible and visual signaling technology.

*Question 28:* The Board seeks comment on the requirement that a signal be provided on all incoming calls on VoIP systems. Should the requirement be limited, or should it apply to all such calls? Should this feature be selectable by the user?

**Chapter 10: ICT Support Documentation and ICT Support Services**

This chapter covers product support documentation and services and is largely consistent with requirements in the current standards and guidelines. The Board is considering new provisions to enhance specifications for documentation (1002) and support services (1003).

*ICT Support Documentation (1002)*

This section addresses documentation for accessibility features (1002.2) and provision of product documentation in alternate formats (1002.3). The overall requirements of this section remain substantively unchanged.

*Accessibility Documentation (1002.2)*

The Board is considering revising the provision for documentation to specifically require that product documentation address those features that support accessibility, including the capability to change settings, and those features that support compatibility with assistive technology (1002.2.2). This revision, as recommended by the Committee, represents a change from the current standards, which do not include such a requirement, and the guidelines, which require a description of the compatibility features of a

product upon request. In addition, the Board included a new requirement that when product components are intended to be integrated as part of a system, information must be provided on how to configure the system to support accessibility (1002.2.3).

*Question 29:* The Board seeks comment on the benefits and costs of the increased requirements for documentation.

The Board is also considering adding a new provision that would require that documentation be provided on all features using only the keyboard (1002.2.4). This includes information on available keyboard commands and keyboard navigation. The Committee discussed this change, but did not achieve consensus on it.

*Alternate Formats (1002.3)*

This provision requires that product documentation be made available in alternate formats. It has been revised to require that alternate formats meet relevant specifications for electronic documents in Chapter 5.

*ICT Support Services (1003)*

This section addresses access to product support services where provided, such as help desks and technical support services. It has been revised, as recommended by the Committee to require that help desk and technical support services provide information on ICT accessibility features through a referral to a point of contact, and that information on a contact method be provided (1003.2.2). The Board clarified the requirement that help desks and technical support services shall provide information and training on ICT accessibility features directly to the end user, where appropriate (1003.2.1). The current standards only generally require that support services accommodate the communication needs of end-users with disabilities, while the guidelines require provision of contact information for manufacturers of telecommunications products.

The requirement that help desk and technical support services provide alternate methods of communication (1003.2) is consistent with the provisions in the current standards and guidelines. Documentation on ICT accessibility features must be provided by help desks and technical support services in alternate formats upon request. In addition, alternate methods of communication, such as in-person and remote communication is required.

**Amendments to the Americans With Disabilities Act Accessibility Guidelines**

*Automatic Teller Machines, Fare Machines, and Self-Service Machines (220)*

As part of this advance notice, the Board proposes to supplement provisions in its ADA Accessibility Guidelines (ADAAG) to address access to self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias.

The Board maintains similar guidelines under the Architectural Barriers Act (ABA) which applies to facilities that are federally funded. Since the section 508 standards apply to ICT in the Federal sector, corresponding changes to the ABA guidelines are not considered necessary. ADAAG already addresses access to automated teller machines (ATMs) and to fare vending machines and provides scoping requirements (section 220) and technical specifications (section 707) for such devices. In its update of ADAAG in 2004, the Board considered supplementing these provisions to cover other types of interactive transaction machines (ITMs). The Board opted to defer action at that time to monitor the application of the section 508 standards to ITMs in the Federal sector.

In the draft, the Board is considering extending coverage of ADAAG section 220 beyond ATMs and fare vending machines to other kinds of self-service machines. The ADAAG changes being considered by the Board would apply relevant requirements of the section 508 standards to these types of machines but would not change existing requirements for ATMs or fare vending machines. The provision references chapters 3 through 9 of the standards.

The changes being considered by the Board would supplement ADAAG 220 to specifically cover self-service machines used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias (220.2). Two exceptions are being considered. One exception notes that self-service machines are not required to comply with sections 302; 409–412; 503.1–503.3; 506; 508; 703; 802.2.3; and 802.2.4 of the draft. These provisions generally address requirements for products to interoperate with assistive technology and therefore are not appropriate for self-service machines. A second exception exempts drive-up only self-service machines.

*Question 30:* The Board seeks comment from users and manufacturers of self-service machines on their

experiences in using or designing accessible machines and the benefits and costs associated with the proposed requirements.

#### Impact on Small Entities

The Board is interested in receiving comments on the potential impact of this rule on small entities pursuant to the Regulatory Flexibility Act (RFA). In particular, the Board is seeking input on the numbers of small entities that may be impacted by this rulemaking, and the potential compliance costs to these small entities. Section 601 of the RFA defines small entities as small businesses (defined by the U.S. Small Business Administration), small not-for-profit organizations, and small governmental jurisdictions with a population of less than 50,000. The Board is also seeking comment on any significant alternatives that can minimize the economic impact of this rulemaking on small entities while accomplishing the Board's objectives.

**Question 31:** The Board is interested in comment on the impact on small entities of the provisions implementing section 508 of the Rehabilitation Act for technology procured, developed, maintained, or used by or on behalf of Federal agencies. The phrase "or on behalf of agencies" covers technologies used by contractors under a contract with a Federal agency. How many contractors and subcontractors would be considered small entities under the SBA small business size standards? What types of compliance costs will these contractors and subcontractors face in developing the technologies covered by section 508? For example, will small contractors and subcontractors face capital costs for equipment, or hiring professional expertise or extra staff to comply with the requirements? Will the cost of implementation create a competitive disadvantage for small contractors versus large contractors? (i.e., will a small contractor become less likely to win a Federal contract based on price?) Should the Board establish different compliance or reporting requirements for small contractors and subcontractors? Does the Board need to clarify or simplify the compliance requirements for small contractors or exempt certain small contractors from these requirements?

**Question 32:** The Board is interested in comment on the impact on small entities (manufacturers of telecommunications products) of the provisions implementing section 255 of the Telecommunications Act of 1996. How many manufacturers of telecommunications products would be considered small entities, particularly

with the application of this rule to interconnected VoIP products? What types of compliance costs will small manufacturers face? The Board is interested in small business estimates for services required by this rule such as providing access to information, documentation, and training of customers (for example through help desks and support services). Will this section require extra technology, professional expertise or extra staff? Are there alternative ways that small manufacturers can provide information and training at lower costs? Should the Board establish different compliance or reporting requirements for small manufacturers?

**Question 33:** The Board is interested in comment on the impact on small entities (places of public accommodations and state and local government entities) of the provisions for self-service machines under the Americans With Disabilities Act. How many and what types of small entities utilize self-service machines, and what types of machines do they use? How many small manufacturers make these types of machines? How many of the small entities that use or manufacture self-service machines have machines that are accessible? How much will it cost to develop and produce the technology that would meet the proposed provisions? Should the Board establish different compliance requirements for small entities to have accessible machines? Does the Board need to clarify or simplify the requirements for small entities or exempt certain types of machines from these requirements?

The Board will hold a public hearing to provide an opportunity for comment. The hearing will take place on March 25, 2010 from 9 a.m. to Noon in conjunction with the 25th Annual International Technology & Persons with Disabilities Conference. It will be held at the Manchester Grand Hyatt Hotel, Elizabeth Ballroom, One Market Place, San Diego, CA 92101. The hearing location is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. For the comfort of other participants, persons attending the hearing are requested to refrain from using perfume, cologne, and other fragrances. To pre-register to testify please contact Kathy Johnson at (202) 272-0041 or [Johnson@access-board.gov](mailto:Johnson@access-board.gov).

**David M. Capozzi,**  
Executive Director.

[FR Doc. 2010-6245 Filed 3-19-10; 8:45 am]

**BILLING CODE 8150-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2009-0080; FRL-9128-7]

#### Disapproval of California State Implementation Plan Revisions, Monterey Bay Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to disapprove a revision to the Monterey Bay Unified Air Pollution Control District (MBAPCD) portion of the California State Implementation Plan (SIP). This revision concerns opacity standards related to multiple pollutants, including particulate matter (PM) emissions from several different types of sources, ranging from fugitive dust to gas turbine generators. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by April 21, 2010.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2009-0080, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment.



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.

**Docket:** The index to the docket for this action 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:**  
Andrew Steckel, EPA Region IX,  
(415)947-4115,  
[steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
Throughout this document, “we,” “us,” and “our” refer to EPA.

**Table of Contents**

- I. The State’s Submittal
  - A. What Rule Did the State Submit?
  - B. Are There Other Versions of This Rule?
  - C. What Is the Purpose of the Submitted Rule Revision?

- II. EPA’s Evaluation and Action
  - A. How Is EPA Evaluating the Rule?
  - B. Does the Rule Meet the Evaluation Criteria?
  - C. What Are the Rule Deficiencies?
  - D. EPA Recommendations To Further Improve the Rule
  - E. Proposed Action and Public Comment
- III. Statutory and Executive Order Reviews

**I. The State’s Submittal**

*A. What Rule Did the State Submit?*

Table 1 lists the rule proposed for disapproval with the date that it was adopted and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
MBUAPCD .....	400	Visible Emissions .....	12/15/04	03/07/08

On April 17, 2008, EPA found this rule submittal met the completeness criteria in 40 CFR Part 51 Appendix V. These criteria must be met before formal EPA review.

*B. Are There Other Versions of This Rule?*

On August 11, 2005, EPA approved a previous version of Rule 400 into the SIP. Please see 70 FR 46770. CARB has not submitted a subsequent version of the rule for our consideration besides the March 2008 version.

*C. What Is the Purpose of the Submitted Rule Revision?*

Particulate matter (PM) contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM and other emissions.

MBUAPCD Rule 400 is designed to limit the emissions of particulate matter or other pollutants such as oxides of nitrogen from a variety of activities and sources using a 20% opacity standard. These sources may include construction sites, unpaved roads, disturbed soil in open areas, and power plants. MBUAPCD has amended Rule 400 to allow for a 40% opacity standard in lieu of the rule’s existing 20% opacity standard during facility start-up operations. EPA’s technical support document (TSD) has more information about this submitted rule.

**II. EPA’s Evaluation and Action**

*A. How Is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The MBUAPCD, however, attains the PM standards and is not required to implement RACM or BACM per section 189.

Guidance and policy documents that we use to evaluate enforceability and other regulatory requirements include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,” (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. “State Implementation Plans for Serious PM-10 Nonattainment Areas,

and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 59 FR 41998 (August 16, 1994).

5. “PM-10 Guideline Document,” EPA 452/R-93-008, April 1993.

6. “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown”, USEPA Memorandum, September 20, 1999.

*B. Does the Rule Meet the Evaluation Criteria?*

Rule 400 is largely enforceable, but has one provision which does not meet the evaluation criteria. This deficiency is summarized below and discussed further in the TSD.

*C. What Is the Rule Deficiency?*

New section 3.2.3 places no time limitation on opacity between 20% and 40% for gas turbines except as defined in the District permit pursuant to new section 2.5. This is inconsistent with long-standing national policy on excess emissions, which explains that SIP rules must ensure that emissions during startup conditions are minimized. We believe this could be addressed by adding rule text establishing appropriate time limitations on gas turbine startup, requiring sources to minimize time and emissions during startup, and demonstrating in the staff report that the rule minimizes emissions during startup.

#### *D. EPA Recommendations to Further Improve the Rule*

The TSD describes an additional rule revision that we recommend for the next time the local agency modifies the rule, but that is not currently the basis for disapproval of the rule.

#### *E. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted MBUAPCD Rule 400. If finalized, this action would retain the version of Rule 400 approved in 2005 in the SIP. Sanctions will not be imposed under section 179 of the Act, because revision of Rule 400 is not a required submittal under the CAA and the Monterey Bay area continues to meet the NAAQS for multiple pollutants, including ozone and PM. A final disapproval would similarly not trigger the Federal implementation plan (FIP) requirement under section 110(c).

We will accept comments from the public on the proposed disapproval for the next 30 days.

### **III. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866, Regulatory Planning and Review*

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business

as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

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

#### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector.” EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10,

1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, EPA’s role is to approve or disapprove State choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 23, 2010.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2010–6103 Filed 3–19–10; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 64 and 68**

**[CG Docket No. 02–278; FCC 10–18]**

**Telephone Consumer Protection**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission invites comment on proposed revisions to its rules under the Telephone Consumer Protection Act (TCPA) that would harmonize those rules with the Federal Trade Commission’s (FTC’s) recently amended Telemarketing Sales Rule. The Commission seeks comment on whether these proposed revisions would benefit consumers and industry by creating greater symmetry between the two agencies’ regulations, and by extending the FTC’s standards to regulated entities that are not currently subject to the FTC’s rules.

**DATES:** Comments are due on or before May 21, 2010. Reply comments are due on or before June 21, 2010. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties to Cathy Williams, Federal Communications Commission, via e-mail to *Cathy.Williams@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas\_A\_Fraser@omb.eop.gov* or via fax at 202–395–5167 on or before May 21, 2010.

**ADDRESSES:** You may submit comments identified by CG Docket No. 02–278

and/or FCC Number 10–18, by any of the following methods:

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

- *Federal Communications Commission’s Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *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:** Lisa Boehley, Consumer and Governmental Affairs Bureau, Policy Division, at (202) 418–7395 (voice), or e-mail *Lisa.Boehley@fcc.gov*.

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or e-mail *Cathy.Williams@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** On July 3, 2003, the Commission released the *Rules and Regulations Implementing the TCPA of 1991*, Report and Order (2003 *TCPA Order*), CG Docket No. 02–278, FCC 03–153, published at 68 FR 44144, July 25, 2003, revising the TCPA rules, and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations, including the establishment of a national do-not-call registry. This is a summary of the Commission’s document *Rules and Regulations Implementing the TCPA of 1991, Notice of Proposed Rulemaking*, CG Docket No. 02–278, FCC 10–18, adopted January 20, 2010, and released January 22, 2010, seeking comment on proposed revisions to the Commission’s rules under the Telephone Consumer Protection Act (TCPA) that would harmonize those rules with the Federal Trade Commission’s (FTC’s) recently amended Telemarketing Sales Rule.

Document FCC 10–18 contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. In addition, it contains a new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Paper Filers:** 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, filers 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- 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.

- 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.

**People with Disabilities:** 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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.

Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances 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 is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

A copy of document FCC 10–18 and any subsequently filed documents in this matter will be available during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document FCC 10–18 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at their Web site, <http://www.bcpweb.com>, or call (800) 378–3160. A copy of document FCC 10–18 and any subsequently filed documents in this matter may also be found by searching the Commission's Electronic Comment Filing System (ECFS) at <http://www.fcc.gov/cgb/ecfs> (insert CG Docket No. 02–278 into the Proceeding block).

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](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document FCC 10–18 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/policy>.

#### **Initial Paperwork Reduction Act of 1995 Analysis**

Document FCC 10–18 contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burden, invites the general public, OMB and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Public and agency comments are due May 21, 2010. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are

requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

**OMB Control Number:** 3060–0519.

**Title:** Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02–278.

**Form Number:** N/A.

**Type of Review:** Revision of a currently approved collection.

**Respondents:** Business or other for-profit entities; Not-for-profit institutions; and Individuals or households.

**Number of Respondents and Responses:** 49,397 respondents, 135,632,883 responses.

**Estimated Time per Response:** .004 hours (15 seconds) to 1 hour.

**Frequency of Responses:** Recordkeeping requirement; Monthly, annual, and on occasion reporting requirements; Third party disclosure requirement.

**Obligation to Respond:** Required to obtain or retain benefits. The authorizing statute for this information collection is found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102–243, 105 Statute 2394 (1991), which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

**Total Annual Burden:** 650,906 hours.

**Total Annual Cost:** \$4,590,000.

**Privacy Impact Assessment:** Yes. The Privacy Impact Assessment was completed on June 28, 2007. It may be reviewed at [http://www.fcc.gov/omd/privacyact/privacy\\_impact\\_assessment.html](http://www.fcc.gov/omd/privacyact/privacy_impact_assessment.html). The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the system of records notice (SORN).

**Nature and Extent of Confidentiality:** Confidentiality is an issue to the extent

that individuals and households provide personally identifiable information, which is covered by the FCC's SORN, FCC/CGB-1, "Informal Complaints and Inquiries." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published SORN, FCC/CGB1, "Informal Complaints and Inquiries," in the **Federal Register** on December 15, 2009 (74 FR 66356), which became effective on January 25, 2010. A system of records for the do-not-call registry was created by the Federal Trade Commission (FTC) under the Privacy Act. The FTC published a notice in the **Federal Register** describing the system. See 68 FR 37494, June 24, 2003.

*Needs and Uses:* On July 3, 2003, the Commission released the *Rules and Regulations Implementing the TCPA of 1991, Report and Order (2003 TCPA Order)*, CG Docket No. 02-278, FCC 03-153, published at 68 FR 44144, July 25, 2003, revising the TCPA rules, and adopted new rules to provide consumers with several options for avoiding unwanted telephone solicitations. These new rules established a national do-not-call registry, set a maximum rate on the number of abandoned calls, required telemarketers to transmit caller ID information, and modified the Commission's unsolicited facsimile advertising requirements. On January 22, 2010, the Commission released the *Rules and Regulations Implementing the TCPA of 1991, Notice of Proposed Rulemaking (NPRM)*, CG Docket No. 02-278, FCC 10-18 seeking comment on proposed revisions to its rules under the Telephone Consumer Protection Act (TCPA) that would harmonize those rules with the Federal Trade Commission's (FTC's) recently amended Telemarketing Sales Rule. The Commission anticipates that proposed revisions to §§ 64.1200(a)(1) and 64.1200(a)(2) of the Commission's TCPA rules would contain new information collection requirements under the Paperwork Reduction Act of 1995. The proposed revisions would require sellers and telemarketers, when obtaining telephone subscribers' prior express consent to receive prerecorded telemarketing calls, to obtain such prior express consent *in writing* (including electronic methods of consent).

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4)

select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR."

### Synopsis

#### Discussion

##### A. Prerecorded Message Calls

##### Written Consent Requirement

1. *The FCC's TCPA Rules.* The TCPA prohibits the delivery of artificial or prerecorded voice messages to residential telephone lines, absent an emergency, without the "prior express consent" of the called party. Under the Commission's TCPA rules and orders, prior express consent of a residential telephone subscriber to receive a prerecorded telemarketing call (or live telephone solicitation) must be *in writing* if the subscriber's number is listed on the national do-not-call registry, but may be obtained *orally* or *in writing* if the subscriber's number is not listed on the registry. In explaining the basis for this distinction, the Commission has noted that a residential subscriber who places his or her number on the registry has indicated a desire, through the act of registering, not to receive unsolicited telemarketing calls and, as such, written consent evidences the subscriber's wish to be contacted by only particular sellers at a particular number. When written consent is required under the Commission's rules and orders (because the subscriber is listed on the national do-not-call registry), the seller or telemarketer must obtain a signed, written agreement between the subscriber and seller stating that the subscriber agrees to be contacted by that seller and including the telephone number to which the calls may be placed. The Commission has indicated that the term "signed" may include an electronic or digital form of signature, to the extent such form of signature is recognized as a valid signature under applicable Federal or State contract law.

2. With respect to a residential subscriber who has *not listed* his number on the national do-not-call registry, the Commission has declined to require written consent to deliver prerecorded messages to such a subscriber and noted that allowing oral consent in that context is consistent with statements in the legislative history

suggesting that Congress did not believe written consent was needed with respect to calls placed to unregistered subscribers. Whether consent has been obtained orally or in writing, a seller or telemarketer placing a prerecorded telemarketing call must be prepared to provide "clear and convincing evidence" that it received prior express consent from the called party.

3. *The FTC's Telemarketing Sales Rule.* Under the Telemarketing Sales Rule, as amended, prior express consent to receive prerecorded telemarketing calls must be in writing. The written agreement must be signed by the consumer and must be sufficient to show that he or she: (1) Received "clear and conspicuous disclosure" of the consequences of providing the requested consent—*i.e.*, that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller—and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition, the written agreement must be obtained "without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service." The FTC has determined that written agreements obtained in compliance with the E-SIGN Act will satisfy the requirements of its rule, such as, for example, agreements obtained via an e-mail or Web site form, telephone keypress, or voice recording. Finally, under the Telemarketing Sales Rule, the seller bears the burden of proving that a clear and conspicuous disclosure was provided, and that an unambiguous consent was obtained.

4. Consistent with Congress's directive in the Do Not Call Improvement Act of 2007 (DNCLIA) to "maximize consistency" of the Commission's TCPA rules with the FTC's Telemarketing Sales Rule, the Commission seeks comment on whether it should revise §§ 64.1200(a)(1) and 64.1200(a)(2) of its rules to provide that, for all calls, prior express consent to receive prerecorded telemarketing messages must be obtained in writing. The Commission seeks comment on these proposed revisions and specific related issues in the discussion that follows.

5. As an initial matter, the Commission seeks comment on its authority to adopt a prior written consent requirement similar to the FTC's. Specifically, while the term "prior express consent" appears in both subsections 227(b)(1)(A) and (b)(1)(B) of the Communications Act, the statute is silent regarding the precise form of such

consent (*i.e.*, oral or written). Certain statements in the legislative history, however, suggest that Congress may have contemplated that consent may be obtained orally *or* in writing.

6. Given that such a rule change would permit a telemarketer wishing to deliver prerecorded telemarketing messages to residential subscribers to obtain agreements from the subscribers by any electronic means authorized by the E-SIGN Act (including, for example, e-mail, Web form, telephone key press, or voice recording), the Commission seeks comment on whether Congressional concerns expressed nearly two decades ago regarding the potential burdens of a written consent requirement remain relevant today in light of the multitude of quick and cost effective options now available for obtaining written consent, other than via traditional pen and paper. The Commission also notes that section 227(b)(2)(B) of the Communications Act, in authorizing the Commission to adopt exemptions from the prerecorded message prohibition, states that it may do so "subject to such conditions as the Commission may prescribe." This statement suggests that Congress intended the Commission to exercise discretion in establishing the parameters of any exemption from the prohibition on prerecorded messages. The Commission seeks comment on whether the discretion afforded it in this subsection extends to establishing a written consent requirement. The Commission also seeks comment on how best to reconcile the congressional objective to maximize consistency between the FTC's rule and the Commission's rule with the statements referenced above in the TCPA's legislative history reflecting the concern that written consent may prove unduly burdensome to telemarketers and to subscribers who wish to receive telephone solicitations. The Commission seeks comment on whether the convenience afforded by the E-SIGN Act addresses these concerns.

7. As noted above, when written consent is required under the Commission's current rules (because the called party's number is listed on the national do-not-call registry), the seller or telemarketer must obtain a signed, written agreement between the subscriber and seller stating that the subscriber agrees to be contacted by that seller and including the telephone number to which the calls may be placed. If the Commission were to adopt a written consent requirement for placing prerecorded telemarketing calls to unregistered subscribers, it seeks comment on whether it also should

adapt existing § 64.1200(c)(2)(ii) of its rules (governing the content of written consent agreements) to apply specifically to prerecorded telemarketing calls, as the FTC has done in its Telemarketing Sales Rule. The Commission tentatively concludes that requiring a written agreement evidencing consent to receive prerecorded messages in particular, such as that required by the FTC, may help to ensure that consumers are adequately apprised of the specific nature of the consent that is being requested and, in particular, of the fact that they will receive prerecorded message calls as a consequence of their agreement.

8. Assuming the Commission has legal authority to adopt a written consent requirement, it seeks comment on whether it should adopt the same requirement both for calls governed by section 227(b)(1)(A) of the Communications Act (generally prohibiting automated or artificial or prerecorded message calls without prior express consent to emergency lines, health care facilities, and cellular services), and for calls governed by section 227(b)(1)(B) of the Communications Act (generally prohibiting prerecorded message calls without prior express consent to residential telephone lines). Because the two provisions include an identically worded exception for calls made with the "prior express consent of the called party," the Commission tentatively concludes that any written consent requirement adopted should apply to both provisions. The Commission seeks comment on this tentative conclusion.

9. The Commission also seeks information concerning the extent to which, in the absence of written consent, residential subscribers have been targeted by unscrupulous senders of prerecorded messages who erroneously claim to have obtained the subscriber's oral consent. If, after reviewing the record, the Commission determines that it does not have legal authority to adopt a written consent requirement, it seeks comment on what, if any, additional steps should be required by senders who choose to obtain consent orally in order to verify that consent was, in fact, given.

10. As a policy matter, the Commission tentatively concludes that harmonizing its prior consent requirement with the FTC's may reduce the potential for industry and consumer confusion surrounding a telemarketer's obligations to the extent that similarly situated entities would no longer be subject to different requirements depending upon whether an entity is

subject to the FTC's rule or to the Commission's rule. It tentatively concludes that written consent also may enhance the Commission's enforcement efforts and serve to protect both consumers and industry from erroneous claims that consent was or was not given, to the extent that, unlike oral consent, the existence of a paper or electronic record may provide unambiguous proof of consent. The Commission seeks comment on these tentative conclusions.

11. The Commission notes that in light of the numerous options available today under the E-SIGN Act to obtain a written agreement, a telemarketer may be afforded flexibility to determine the form of "written" consent that is most appropriate, least burdensome, and most cost effective for that particular business (*e.g.*, e-mail, Web site form, telephone keypress, or voice recording). It seeks information and data on the specific compliance costs and burdens associated with various written consent options under the E-SIGN Act and on the extent to which sellers and telemarketers are already utilizing these methods for obtaining consumer consent, either pursuant to the FTC's amended Telemarketing Sales Rule or pursuant to Commission rules when a called party's number is listed on the national do-not-call registry. Finally, to the extent that the Commission currently requires sellers and telemarketers placing prerecorded telemarketing calls to be prepared to provide "clear and convincing evidence" of the receipt of prior express consent from the called party, even when consent has been obtained orally, it seeks comment on the extent to which Commission adoption of a written consent requirement would add to the compliance burden associated with this existing requirement.

#### Exemption for Prerecorded Telemarketing Calls to Established Business Relationship Customers

12. *The FCC's TCPA Rules.* The TCPA prohibits the use of artificial or prerecorded messages in telephone calls to residential (wireline) numbers without the prior express consent of the called party, but permits the Commission to exempt from this provision calls that are non-commercial and commercial calls that "do not adversely affect the privacy rights of the called party" and that do not transmit an "unsolicited advertisement." The TCPA does not explicitly exempt from the prohibition on artificial and prerecorded message calls those from a party with whom the subscriber has an established business relationship. Nevertheless, in

1992, the Commission determined to create such an exemption, based on its authority under the TCPA to exempt commercial calls that “do not adversely affect residential subscriber privacy interests.” The Commission concluded, based upon “the comments received and the legislative history,” that a solicitation to someone with whom a prior business relationship exists does not adversely affect subscriber privacy interests. It further concluded that such a solicitation can be “deemed to be invited or permitted” by a subscriber in light of the business relationship. Finally, noting that the legislative history indicates that the TCPA “does not intend to unduly interfere with ongoing business relationships,” the Commission stated that “requiring actual consent to prerecorded message calls where [established business] relationships exist could significantly impede communications between businesses and their customers.”

13. *The FTC’s Telemarketing Sales Rule.* In 2004, the FTC published a notice of proposed rulemaking in which it proposed, at the request of a telemarketer, the creation of a safe harbor under the Telemarketing Sales Rule for prerecorded telemarketing calls to established business customers. Under the proposed safe harbor, prerecorded messages to consumers with whom a seller has an “established business relationship” (as defined by the FTC’s rules) would not violate the FTC’s Telemarketing Sales Rule if, among other things, a keypress opt-out mechanism or other means were provided at the outset of the call for consumers to add their telephone number to the seller’s company-specific do-not-call list.

14. In 2006, the FTC denied the proposed safe harbor request that would have permitted prerecorded telemarketing calls to established business customers based, in large measure, on the more than 13,000 consumer comments it had received opposing the proposal. According to the FTC, many consumers expressed the view that, in light of the “intrusive and impersonal nature” of prerecorded messages, neither a prior inquiry nor a purchase should be deemed to imply consumer consent to receive future prerecorded solicitations from a seller. The FTC noted that this reaction was contrary to prior consumer support among commenters for an exemption to allow *live* telemarketing calls to established business customers. In addition, the FTC denied the proposed safe harbor based on record evidence indicating, among other things, that: (1) the self interest of sellers in retaining

established customers could not be relied on to prevent abuse through excessive prerecorded message telemarketing, especially as new digital technologies, including Voice over Internet Protocol (VoIP), reduce the cost of transmitting prerecorded telemarketing messages by telephone; (2) prerecorded telemarketing messages impose potential costs, including risks to health and safety when an extended message ties up a line and prevents consumers from placing emergency calls, as well as burdens on consumers, including costs to store and retrieve prerecorded messages on home answering machines or voicemail services; and (3) various methods by which consumers may elect to opt out of future prerecorded message calls are often cumbersome to use or simply do not work. Based on this record, the FTC changed course and published a new proposed amendment to the Telemarketing Sales Rule to expressly prohibit all unsolicited prerecorded telemarketing calls without the consumer’s prior written agreement, even with respect to prerecorded calls to established business relationship customers.

15. In 2008, the FTC amended the Telemarketing Sales Rule to make explicit that the existence of an established business relationship will *not* serve as authorization for placing *prerecorded* telemarketing calls. Thus, although an established business relationship will continue to serve as authorization for placing *live* telemarketing calls to consumers under the FTC’s Telemarketing Sales Rule, it no longer serves as authorization for placing prerecorded telemarketing calls. As amended, the FTC’s Telemarketing Sales Rule prohibits prerecorded message calls *unless* the called party has given prior express written consent and the call complies with certain additional requirements in 16 CFR 310.4(b)(1)(v).

In light of the substantial record of public comments developed over the course of the FTC’s four-year rulemaking opposing the creation of a safe harbor for prerecorded telemarketing calls to established business customers, and in view of Congress’s mandate to maximize consistency between the Commission’s rules and the FTC’s Telemarketing Sales Rule, the Commission seeks comment on whether it should reconsider its 1992 determination that an established business relationship may be deemed to constitute express invitation or permission to receive unsolicited prerecorded telemarketing calls. The FTC’s 2008 rule amendments make explicit that, absent a consumer’s

express prior written agreement, sellers and telemarketers are prohibited from delivering a prerecorded telemarketing message, regardless of whether the call is made to a consumer who has an established business relationship with the seller. As a result, an “established business relationship” currently provides the necessary permission to deliver prerecorded telemarketing messages only for entities subject to the Commission’s, but not the FTC’s, jurisdiction (*e.g.*, banks, airlines, common carriers). Based on the foregoing, the Commission seeks comment on whether it should conform its rule to the FTC’s Telemarketing Sales Rule by eliminating the established business relationship exemption from the general prohibition on prerecorded telemarketing calls to residential telephone lines.

16. As noted above, the Commission created the “established business relationship” exemption from the TCPA’s ban on artificial or prerecorded messages based on its authority under the TCPA to exempt calls that “do not adversely affect residential subscriber privacy interests.” It reasoned that a subscriber’s privacy interests are not adversely affected by the receipt of such prerecorded message calls because, in that instance, the solicitation can be “*deemed to be invited or permitted*” by the subscriber in light of the business relationship. In light of the strenuous opposition expressed by the thousands of consumers who filed comments in the FTC’s rulemaking, the Commission seeks comment on the continued validity of this determination and whether prerecorded telemarketing calls (*i.e.*, sales calls) may reasonably be “deemed invited or permitted” by established business customers. In particular, the Commission seeks comment on whether its established business relationship exception remains supportable on the basis that artificial or prerecorded message calls to established customers do not adversely affect residential subscriber privacy interests and do not transmit an unsolicited advertisement.

17. In the 1992 rulemaking, the Commission also expressed the concern that “requiring actual consent to prerecorded message calls where [established business] relationships exist *could significantly impede communications between businesses and their customers*” and, as such, might be at odds with statements in the legislative history indicating Congress’s desire not to “unduly interfere with ongoing business relationships.” The Commission seeks comment on the extent to which authorization to receive

prerecorded message calls based on prior written or oral consent (rather than on the basis of an established business relationship) would in fact “unduly interfere with ongoing business relationships” or “impede communications” between businesses and their customers. In particular, the Commission seeks comment on whether technological advances, such as the use of one or more methods available under the E-SIGN Act for establishing a consumer’s prior express written consent to receive prerecorded telemarketing calls, have minimized the burden associated with obtaining the express consent of established business customers (e.g., instructing an established customer during a live telephone solicitation to use a keypress feature to request future prerecorded message calls).

18. The Commission also seeks specific comment on the experiences of telemarketers that have conducted marketing campaigns on behalf of sellers that are subject to the FTC’s recently amended Telemarketing Sales Rule in obtaining the requisite prior written consent from those businesses’ established customers. Has the FTC’s revised rule had the effect of impeding communications between businesses and their customers and, if so, in what ways? If the Commission were to retain the current exemption for established business customers, it seeks comment, particularly from individual consumers and consumer groups, regarding whether consumers would support the use of prerecorded telemarketing messages by sellers and telemarketers with established business customers if such messages provided an interactive opt-out mechanism that would provide a means to avoid future prerecorded messages from that seller.

19. Finally, the Commission tentatively concludes that conforming its rule governing prerecorded message calls to established business customers to the FTC’s may reduce the potential for industry and consumer confusion surrounding a telemarketer’s authority to place unsolicited prerecorded message calls to established customers to the extent that similarly situated entities would no longer be subject to different requirements depending upon whether an entity is subject to the FTC’s rule or to the Commission’s. The Commission seeks comment on this tentative conclusion.

#### Exemption for Health Care Related Calls Subject to HIPAA

20. *The FCC’s TCPA Rules.* As previously noted, section 227 of the Communications Act allows the

Commission to create exemptions from the TCPA’s ban on artificial or prerecorded messages to residential lines for calls that are non-commercial and for commercial calls that do not adversely affect the privacy rights of the called party and that do not transmit an unsolicited advertisement. The Commission’s prerecorded message rules currently contain no specific exemption for healthcare-related prerecorded message calls that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

21. *The FTC’s Telemarketing Sales Rule.* In its 2008 amendments to the Telemarketing Sales Rule, the FTC exempted from its prior written consent requirement healthcare-related prerecorded message calls that are subject to HIPAA. These prerecorded calls include, among others, flu shot and other immunization reminders, prescription refill reminders, health screening reminders; calls to obtain permission to contact doctors for renewal of medication or medical supply orders; calls to obtain documentation needed for billing health plans; calls by home health agencies to follow-up on patients for six months after discharge; calls monitoring patient compliance with prescribed medical therapies; and calls encouraging enrollment in disease management or treatment programs, and in migration from branded to generic drugs, and from retail to mail order pharmacies. The FTC noted commenters’ fear that such calls may be subject to the Telemarketing Sales Rule to the extent that they can result in a payment or copay for medication, durable medical equipment, or medical services. An exemption is necessary, the FTC determined, because (among other things) the individuals most in need of these healthcare-related prerecorded messages (elderly or ill patients) might be unable or simply unlikely to take the steps necessary to provide their express written consent to receive them. To the extent that the communications between healthcare-related entities subject to HIPAA regulations and their customers already are subject to extensive Federal regulations, some of which directly address the making of telephone solicitations to patients, the FTC was persuaded that there would be little risk that the creation of an exemption for these calls would lead to abusive practices by these entities. Finally, citing evidence that prerecorded healthcare messages of the type described above are generally deemed more welcome and less intrusive by

consumers, the FTC determined that the creation of an exemption for this category of calls would not adversely affect consumer privacy rights.

22. On the basis of information presented in the record of the FTC’s rulemaking proceeding on healthcare-related prerecorded message calls made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, the Commission seeks comment on whether it likewise should exempt such calls from the general prohibition on prerecorded message calls to residential lines under the TCPA. If so, it seeks comment on the Commission’s authority to exempt these calls either under section 227(b)(2)(B)(i) of the Communications Act (calls that are not made for a commercial purpose), or under section 227(b)(2)(B)(ii) of the Communications Act (commercial calls that do not adversely affect the privacy rights of the called party and that do not transmit an unsolicited advertisement). In addition, it notes that, with limited exception, HIPAA requires that a “covered entity” obtain an individual’s written authorization before using protected health information (including the individual’s name and telephone number) for marketing purposes. As a practical matter, this HIPAA restriction (in conjunction with other HIPAA provisions) would appear to preclude or limit the delivery of prerecorded telemarketing calls placed by a “covered entity” or its “business associate” to individuals with whom the covered entity or business associate has no pre-existing relationship (i.e., “cold calling” of consumers). The Commission seeks comment on this aspect of the HIPAA requirements, on the relative frequency and volume of healthcare-related prerecorded telemarketing calls placed to individuals by entities that do not have a pre-existing relationship with the consumer, and on the extent to which consumers consider such calls intrusive or an invasion of privacy.

23. The Commission notes that when one of its TCPA rules differs substantively from the FTC’s Telemarketing Sales Rule, it has been generally understood that the more restrictive requirement prevails and sets the standard applicable to all entities that are subject to the jurisdiction of both agencies. In this instance, although the FTC has adopted a more specific provision, the Commission’s rule, by providing no exemption for healthcare-related prerecorded message calls subject to HIPAA, is arguably more restrictive. Accordingly, the Commission seeks comment on the practical impact of this disparity on



regulated entities currently and if the Commission does not adopt a similar exemption in the future.

#### Opt-Out Mechanism

24. *The FCC's TCPA Rules.* The TCPA directs the Commission to prescribe technical and procedural standards for systems that are used to transmit "any" artificial or prerecorded voice message via telephone. Under any Commission-adopted standards, the entity initiating a call must be identified at "the beginning" of a prerecorded message, and, "during or after the message," the telephone number or address of such entity must be provided. Such Commission-adopted standards also must require that a prerecorded message call "automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls."

Consistent with the TCPA's technical and procedural standards provision, the Commission's rules require that, *at the beginning* of all artificial or prerecorded message calls, the message identify the entity responsible for initiating the call (including the legal name under which the entity is registered to operate), and *during or after the prerecorded message*, provide a telephone number that consumers can call during regular business hours to make a company-specific do-not-call request.

25. *The FTC's Telemarketing Sales Rule.* The FTC's Telemarketing Sales Rule, as amended in 2008, requires, with limited exception, that any prerecorded message call that could be answered by the consumer in person provide an automated interactive opt-out mechanism *that is announced* at the outset of the message and is available *throughout the duration of the call*. The opt-out mechanism, when invoked, must automatically add the consumer's number to the seller's do-not-call list and immediately disconnect the call. Where a call could be answered by an answering machine or voicemail service, the message must also include a toll-free number that enables the consumer to call back and connect directly to an automated opt-out mechanism.

26. There are several key differences between the Commission's and the FTC's rules with respect to their respective "opt-out" and related disclosure requirements. First, the FTC opt-out requirement specifies that, if there is any possibility that a call could be answered in person by a consumer, an automated interactive opt-out mechanism must be available

throughout the call. The provision permits either a voice or keypress-activated opt-out mechanism to be used, or both in combination. If there is any possibility that a prerecorded call could be answered by an answering machine or voicemail service, a toll-free number must be provided and disclosed promptly at the outset of the call. The toll-free number must connect directly to an automated interactive opt-out mechanism that is accessible at any time throughout the duration of the telemarketing campaign. The provision further requires that, once invoked, the interactive mechanism must automatically add the number called to the seller's entity-specific do-not-call list. In contrast, the Commission's analogous provision does not require an automated opt-out mechanism and, instead, simply requires a telephone number that consumers can call "during regular business hours" to make an entity-specific do-not-call request. Inasmuch as automated, interactive opt-out mechanisms are now widely available and, as discussed above, are now required of most sellers and telemarketers by virtue of the FTC's rule, the Commission seeks comment on whether it should conform its rule to the FTC's rule by requiring their use. Comments supporting this revision should address the Commission's authority to adopt this change, consistent with the "technical and procedural standards" provision of the TCPA, as codified in section 227(d)(3) of the Communications Act. In addition, given that section 227(d)(3) of the Communications Act prescribes technical standards for "any" artificial or prerecorded voice message via telephone, the Commission seeks comment on whether it may adopt additional disclosure and opt-out requirements mirroring the FTC's solely for artificial or prerecorded voice message calls that are for telemarketing purposes.

27. Second, whereas the FTC's Telemarketing Sales Rule requires that prerecorded message calls provide a disclosure at the outset of the message explaining how to opt out of future calls, the TCPA itself provides that, for opt-out purposes, the telephone number of the entity initiating a call can be disclosed "during or after the message." Therefore, commenters supporting a requirement that the telephone number of the entity initiating the prerecorded message be disclosed at the outset of the message should address the Commission's legal authority to do so.

28. Third, although each agency's rule provides for prompt termination of the call after a consumer hangs up, the

Commission's standard is more specific (call must be released within 5 seconds of time notification is transmitted to system) than the FTC's (call must be released immediately). Again, in light of the specific statutory language pertaining to call termination, commenters supporting a change to the Commission's existing rules to require immediate release of a call once the consumer has hung up are asked to address the Commission's authority to adopt such a requirement.

29. Finally, the Commission notes that, in addition to exempting certain healthcare-related prerecorded message calls from its express written consent requirement, the FTC likewise exempted such calls from its automated opt-out requirement. Inasmuch as the TCPA technical standards codified in section 227(d)(3) of the Communications Act apply to "any" artificial or prerecorded messages, the Commission seeks comment on its authority to exempt any category of prerecorded message calls from the specific requirements of that section. If it adopts separate disclosure and opt-out requirements (mirroring the FTC's) specifically for prerecorded *telemarketing* calls, the Commission seeks comment on whether it may exempt the category of healthcare-related prerecorded message calls identified in the FTC's rule from those separate requirements and, if so, whether it should provide such an exemption.

30. As a policy matter, the FTC's automated opt-out requirement appears to be more consumer friendly than the Commission's to the extent that it allows consumers to easily and immediately assert their opt-out rights, regardless of the time of day, and without having to wait to opt out until the next business day during regular business hours when an operator is available to record the opt-out request. The Commission therefore seeks comment on whether it should revise its opt-out requirements to make them more consistent with the FTC's, and, if so, how to do so in a manner that is consistent with the "technical and procedural standards" provision of the TCPA.

#### B. Abandoned Calls/Predictive Dialers

31. *The FCC's TCPA Rules.* Under the Commission's rules, an outbound telephone call is deemed "abandoned" if a person answers the telephone and the caller does not connect the call to a sales representative within two seconds of the person's completed greeting. The Commission imposes restrictions on the percentage of live telemarketing calls

that a telemarketer may drop or “abandon” as a result of the use of predictive dialers. Under the Commission’s rules, a seller or telemarketer would not be liable for violating the restrictions on call abandonment if, among other things, it employs technology that ensures abandonment of no more than three percent of all calls answered by a person (rather than by an answering machine). The Commission’s call abandonment rule measures the abandonment rate over a 30-day period, but contains no “per campaign” limitation.

32. *The FTC’s Telemarketing Sales Rule.* Like the Commission’s rule, an outbound telephone call is deemed “abandoned” under the FTC’s Telemarketing Sales Rule if a person answers the telephone and the caller does not connect the call to a sales representative within two seconds of the person’s completed greeting. A seller or telemarketer similarly is not liable for violating the prohibition on call abandonment if, among other things, the seller or telemarketer employs technology that ensures abandonment of no more than three percent of all calls answered by a person (rather than by an answering machine).

In its 2008 final rule amendments, the FTC revised the standard it uses for measuring the three percent (permissible) call abandonment rate. Whereas the FTC previously required that a telemarketer employ technology that ensures abandonment of no more than three percent of all calls answered by a person, *measured per day per calling campaign*, it revised the standard in 2008 to permit telemarketers to measure the abandonment rate over a 30-day period for the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues. According to the FTC, the effect of this change, which had been requested by the telemarketers, was to allow telemarketers to conduct smaller telemarketing campaigns, such as in test markets, in a more cost effective manner. At the same time, the FTC considered, but rejected, a separate request to eliminate the “per campaign” limitation contained in its rule, which would have allowed call abandonment rates to be averaged across multiple telemarketing campaigns. The FTC reasoned that the absence of a “per campaign” limitation in its rule might encourage telemarketers “to target less-valued customers with a disproportionate share of abandoned calls.”

33. The Commission’s current rule measures the three percent (permissible) call abandonment rate over a 30-day period but, because it imposes no “per campaign” limitation, it effectively allows the averaging of call abandonment rates across multiple telemarketing campaigns during any single 30-day period. As noted above, the FTC’s rulemaking proceeding highlighted concerns that this approach might allow a telemarketer to compute a single call abandonment rate for all campaigns that it conducts during a 30-day period and, in so doing, to allocate a greater percentage of abandoned calls to a less desirable marketing campaign (e.g., a campaign directed at lower income individuals) while allocating a smaller percentage to a more desirable campaign (e.g., a campaign directed at upper income individuals). The Commission seeks comment on the prevalence of such practices among those sellers or telemarketers that are subject to its (but not the FTC’s) telemarketing rules and on the practical impact of the two agencies’ currently differing standards. In addition, the Commission seeks comment on whether it should revise the standard by which it measures the three percent call abandonment rate to include a “per campaign limitation” in order to eliminate any potential incentive for telemarketers to engage in such practices and to make the Commission’s standard more consistent with the FTC’s. Finally, it notes that the FTC has clarified that the term “campaign” refers to “the offer of the same good or service for the same seller.” If the Commission adopts a “per campaign limitation,” as proposed, it seeks comment on whether it also should adopt the FTC’s definition of the term “campaign.”

#### C. Implementation Issues

34. In order to reduce initial compliance costs and burdens, the FTC deferred the effective date of the requirement that prerecorded message calls provide an automated interactive opt-out mechanism for three months, and the express written agreement requirement for twelve months. If the Commission adopts an express written consent requirement and/or an automated interactive opt-out mechanism such as those adopted by the FTC, it seeks comment on whether it also should adopt similar implementation periods to ensure that companies have adequate time to prepare to comply. If the Commission adopts these or similar requirements, it seeks comment on whether to allow sellers and telemarketers, as did the FTC, to continue placing prerecorded

telemarketing calls to consumers with whom the seller has an established business relationship for the duration of the implementation period for the express written consent requirement. Finally, it seeks comment on an appropriate implementation period for the proposed change to the Commission’s call abandonment rules.

#### Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in document FCC 10–18. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on document FCC 10–18 provided on the first page of this document. The Commission will send a copy of document FCC 10–18, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### *Need for, and Objectives of, the Proposed Rules*

36. In document FCC 10–18, the Commission seeks comment on proposed revisions to its rules under the TCPA pertaining to prerecorded telemarketing calls and certain other telemarketing practices. Document FCC 10–18 proposes to amend the Commission’s TCPA rules in four areas. The first proposed amendment would conform the Commission’s rules to the FTC’s Telemarketing Sales Rule by prohibiting the use of prerecorded messages in telemarketing sales calls unless the seller or telemarketer has obtained the consumer’s prior express consent, in writing, to receive such messages and irrespective of any established business relationship between the caller and the called party. The Commission also proposes to allow sellers or telemarketers to obtain such consent using any medium or format permitted by the E–SIGN Act. The Commission’s objective in proposing to harmonize its prior consent requirement with the FTC’s by adopting a written consent requirement is to reduce the potential for industry and consumer confusion surrounding telemarketers’ obligations to the extent that similarly situated entities would no longer be subject to different requirements depending upon whether an entity is subject to the FTC’s rule or to the Commission’s rule. The Commission also believes that written consent may

enhance its enforcement efforts and serve to protect both consumers and industry from erroneous claims that consent was or was not given, to the extent that, unlike oral consent, the existence of a paper or electronic record may provide unambiguous proof of consent.

37. The second proposed amendment would conform the Commission's rules to the FTC's Telemarketing Sales Rule by exempting certain healthcare-related calls from the general prohibition on prerecorded telemarketing calls to residential telephone lines. The Commission proposes to exempt such calls based on the FTC's findings that: (1) The individuals most in need of these healthcare-related prerecorded messages (elderly or ill patients) might be unable or unlikely to take the steps necessary to provide their express written consent to receive them; (2) communications between healthcare-related entities subject to HIPAA regulations and their customers already are subject to extensive regulations at the Federal level, including regulations directly addressing the making of telephone solicitations to patients, such that it would be unlikely that the creation of an exemption for these calls would lead to abusive practices; and (3) prerecorded healthcare messages of the type described in document FCC 10-18 are generally deemed more welcome and less intrusive by consumers and, as such, the creation of an exemption for this category of calls would not adversely affect consumer privacy rights. Thus, the Commission's objective in proposing the creation of this exemption is to avoid imposing duplicative regulations in an area that is already extensively regulated at the Federal level and that, as a result, does not appear to give rise to the same privacy and other concerns as other types of calls.

38. The third proposed amendment would conform the Commission's rules to the FTC's Telemarketing Sales Rule by requiring that prerecorded telemarketing calls delivered to residential subscribers include an automated, interactive mechanism by which a consumer may "opt out" of receiving future prerecorded messages from the seller or telemarketer. The Commission's objective in proposing this requirement is to make the opt-out process more consumer friendly by allowing consumers to easily and immediately assert their opt-out rights, regardless of the time of day, and without having to wait to opt out until the next business day during regular business hours when an operator is available to record the opt-out request.

39. The Commission also believes that the use of an automated mechanism, as described above, may enhance the efficiency of companies' outbound telemarketing campaigns. To the extent that the FTC's Telemarketing Sales Rule, as recently amended, imposes different requirements on sellers and telemarketers in these three areas than analogous rules adopted by the Commission, the Commission seeks comment on whether it should attempt to harmonize its TCPA requirements with those of the FTC. In proposing to conform its prerecorded message rules to the Telemarketing Sales Rule in the identified areas, the Commission also identified two overarching objectives: (1) To further empower residential telephone subscribers to avoid unwanted telemarketing messages; and (2) to advance Congress's directive to maximize consistency between the Commission's TCPA rules and the FTC's Telemarketing Sales Rule. The Commission therefore seeks comment on whether these proposed revisions would benefit consumers and industry by creating greater symmetry between the two agencies' regulations and on the extent to which they would enhance the ability of residential telephone subscribers to avoid unwanted telemarketing messages.

40. The final proposed amendment would conform the Commission's rules to the FTC's Telemarketing Sales Rule by adopting a "per campaign" standard for measuring the "call abandonment rate." As noted above, the "call abandonment rate" refers to the percentage of live telemarketing calls that a telemarketer drops or "abandons" as a result of the use of predictive dialers. The Commission proposes to adopt a "per campaign" limitation based on the concern raised in the FTC's rulemaking proceeding that telemarketers would be more likely to target less-valued customers with a disproportionate share of abandoned calls in the absence of such a limitation. Because the absence of a "per campaign" limitation may leave consumers to rely on the industry's good faith that it will not engage in such practices, despite obvious economic incentives to do otherwise, the Commission seeks comment on whether it should revise its current standard for measuring the three percent call abandonment rate by adopting this proposed limitation.

#### *Legal Basis*

41. The legal basis for any action that may be taken pursuant to document FCC 10-18 is contained in sections 1-4, 227, and 303(r) of the Communications Act of 1934, as

amended; the Telephone Consumer Protection Act of 1991, Public Law 102-243, 105 Statute 2394; and the Do-Not-Call Implementation Act, Public Law 108-10, 117 Statute 557.

#### *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

42. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

43. In general, the Commission's rules on telephone solicitation and on the use of autodialers, or artificial or prerecorded messages apply to a wide range of entities. The proposed rules, in particular, would apply (with certain exceptions) to all persons using prerecorded or artificial voice messages for telemarketing purposes. Therefore, the Commission expects that the proposals in this proceeding potentially could have a significant economic impact on a substantial number of small entities. Determining the precise number of small entities that would be subject to the requirements proposed in document FCC 10-18, however, is not readily feasible. Therefore, the Commission invites comment on such number and, after evaluating the comments, will examine further the effect of any rule changes on small entities in the Final Regulatory Flexibility Analysis. Below, the Commission has described some current data that are helpful in describing the number of small entities that might be affected by the proposed action, if adopted.

Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations.

44. *Telemarketing Bureaus and Other Contact Centers.* According to the

Census Bureau, this economic census category “comprises establishments primarily engaged in operating call centers that initiate or receive communications for others—via telephone, facsimile, e-mail, or other communication modes—for purposes such as (1) promoting clients’ products or services, (2) taking orders for clients, (3) soliciting contributions for a client; and (4) providing information or assistance regarding a client’s products or services.” The SBA has developed a small business size standard for this category, which is: all such entities having \$7 million or less in annual receipts. According to Census Bureau data for 2002, there were 1,876 firms in this category that operated for the entire year. Of this total, 1,610 firms had annual sales of under \$5 million, and an additional 129 had sales of \$5 million to \$9,999,999. Thus, the majority of firms in this category can be considered small.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

45. The express written consent requirement proposed in document FCC 10–18 may entail additional recordkeeping requirements for covered entities to the extent that they would be required to obtain and keep records of consumers’ written consent to receive prerecorded message calls. As a practical matter, however, it appears that there would not be a significant change in this recordkeeping burden for at least two reasons.

46. First, because a seller or telemarketer placing a prerecorded telemarketing call must be prepared to provide, under the Commission’s current requirements, “clear and convincing evidence” that it received prior express consent from the called party, whether consent has been obtained orally or in writing, covered entities already are required to maintain records to demonstrate compliance with the existing express consent requirement. In addition, covered entities already maintain electronic or other records of the existence of an established business relationship in order to demonstrate compliance with current Commission requirements governing prerecorded message calls to established business relationship customers. In place of keeping records of “oral consent” or of “established business relationships” as a precondition for placing prerecorded telemarketing calls, the proposed rule change would require covered entities to maintain records of consumers’ express written agreement to receive

such calls. And because the Commission has proposed that these agreements may be obtained pursuant to the E–SIGN Act, minimal additional recordkeeping should be necessary. For these reasons, the proposed written consent requirement, as a practical matter, is unlikely to result in significant new reporting, recordkeeping or other compliance requirements for sellers and telemarketers, including small entities.

*Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

By proposing to conform the Commission’s TCPA rules to those of the FTC in the areas described in paragraphs two through six above, the actions proposed are consistent with the mandate of the DNCIA to “maximize consistency” of the Commission’s TCPA rules with the FTC’s Telemarketing Sales Rule.

48. One alternative to the proposed amendments would be to adopt no changes to the Commission’s rules on prerecorded messages and call abandonment. Although the Commission considered the option of doing nothing for each of the proposed rules, this option was outweighed by the anticipated benefits of the proposed changes, including: (1) Reducing the potential for industry and consumer confusion surrounding a telemarketer’s obligations to the extent that similarly situated entities would no longer be subject to different Federal requirements; (2) enhancing the Commission’s enforcement efforts and protecting both consumers and industry from erroneous claims that consent was or was not given, to the extent that the written consent requirement may provide more verifiable proof of consent; (3) empowering consumers to determine which prerecorded commercial solicitations they will receive via their telephones and providing a convenient and consumer-

friendly method to “opt-out” of receiving those to which they object; and (4) ensuring that telemarketers do not calculate the three percent (permissible) call abandonment rate in a way that certain communities or populations are subject to a disproportionately greater number of dropped or abandoned calls.

49. In order to reduce initial compliance costs and burdens, the Commission proposes to defer the effective date of the proposed requirement that prerecorded calls provide an automated interactive opt-out mechanism for three months, and the proposed written agreement requirement for twelve months, to ensure that the industry will have adequate time to prepare to comply. Document FCC 10–18 proposes to allow sellers and telemarketers to continue placing prerecorded calls to consumers with whom the seller has an established business relationship during the pendency of the implementation period for the written agreement requirement. In addition, by proposing that written consent agreements be obtained pursuant to any method allowed under the E–SIGN Act, the Commission’s proposed written consent requirement would afford small entities flexibility in determining the method of “written” consent that is best suited to those entities’ marketing plans and business operations. Although the Commission has determined that there may be an economic impact on small entities as a result of the proposed rules, such impact, which has been minimized to the extent possible, would appear to be minor and not unjustifiably adverse or burdensome.

50. The Commission has determined that, on balance, any such burden is outweighed by the potentially significant benefits of the proposed rules to industry and consumers, as identified in the preceding paragraph. Because these anticipated significant benefits outweigh, based on the Commission’s analysis, any minor burden the proposed rules may impose on small entities, the Commission has determined that no further discussion of alternatives to the proposed rules is warranted beyond what it has set forth.

*Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

51. As discussed above, the Telemarketing Consumer Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. 6101–6108, and the Telemarketing Sales Rule (TSR) adopted by the FTC also address certain telemarketing acts or practices.

Document FCC 10–18 identifies several aspects of the FTC’s Telemarketing Sales Rule, as recently amended, that differ from the Commission’s TCPA rules. Therefore, the Commission seeks comment in document FCC 10–18 on whether it should revise its rules to harmonize them with the FTC’s rule. Amending the Commission’s rules, as proposed above, would reduce the inconsistencies that currently exist between the two sets of rules.

### Ordering Clause

Pursuant to the authority contained in sections 1–2, 4, 201, 227, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, 227, and 403, document FCC 10–18 is adopted.

### List of Subjects

#### 47 CFR Part 64

Telecommunications, Telephone.

#### 47 CFR Part 68

Communications equipment, Telecommunications, Telephone.

### Marlene H. Dortch,

Secretary, Federal Communications Commission.

### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 64 and 68 as follows:

### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 227, and 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, and 254 (k) unless otherwise noted.

### Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

2. Section 64.1200 is amended by revising paragraph (a)(1) introductory text and (a)(2) introductory text and adding new paragraph (a)(1)(v), removing paragraph (a)(2)(iv), redesignating and revising paragraph (a)(2)(v) as newly designated paragraph (a)(2)(iv), and adding new paragraphs (a)(2)(v) and (a)(2)(vi), revising paragraphs (a)(6) introductory text, (a)(6)(i), and (b) to read as follows:

§ 64.1200 *Delivery restrictions.* (a) No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express written consent of the

called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

\* \* \* \* \*

(v) For purposes of paragraph (a)(1) of this section, a person or entity shall be deemed to have obtained prior express written consent upon obtaining from the recipient of the call an express agreement, in writing, that:

(A) The person or entity obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the delivery of calls to the recipient using an automatic telephone dialing system or an artificial or prerecorded voice;

(B) The person or entity obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(C) Evidences the willingness of the recipient of the call to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(D) Includes the telephone number to which such calls may be placed in addition to the recipient’s signature. For purposes of this provision, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable Federal law or State contract law; and

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party, unless the call;

\* \* \* \* \*

(iv) Is made by or on behalf of a tax-exempt nonprofit organization; or

(v) Delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103;

(vi) For purposes of paragraph (a)(2) of this section, a person or entity shall be deemed to have obtained prior express written consent upon obtaining from the recipient of the call an express agreement, in writing, that:

(A) The person or entity obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the delivery of calls to the recipient using an artificial or prerecorded voice;

(B) The person or entity obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(C) Evidences the willingness of the recipient of the call to receive calls

using an artificial or prerecorded voice; and

(D) Includes the telephone number to which such calls may be placed in addition to the recipient’s signature. For purposes of this provision, the term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable Federal law or State contract law; and

\* \* \* \* \*

(6) Abandon more than three percent of all telemarketing calls that are answered live by a person, or measured over a 30-day period, per marketing campaign. A call is “abandoned” if it is not connected to a live sales representative within two (2) seconds of the called person’s completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person’s completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for “telemarketing purposes.” The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6) of this section.

(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who has granted prior express written consent for the call to be made shall not be considered an abandoned call if the message begins within two (2) seconds of the called person’s completed greeting.

\* \* \* \* \*

(b) All artificial or prerecorded telephone messages shall conform to the requirements of paragraph (b)(1) or (b)(2) of this section.

(1) All artificial or prerecorded telephone messages, other than those delivered to residential telephone subscribers for telemarketing purposes, shall

(i) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the

call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(ii) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(2) All artificial or prerecorded telephone messages delivered to residential telephone subscribers for telemarketing purposes shall

(i) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call; that the purpose of the call is to sell goods or services; and the nature of the goods or services, and

(ii) Followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a do-not-call request at any time during

the message. The mechanism must automatically add the number called to the caller's company-specific do-not-call list; once invoked, immediately disconnect the call; and be available for use at any time during the message; and

(B) In the case of a call that could be answered in person by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a do-not-call request. The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that automatically adds the number called to the caller's company-specific do-not-call list; immediately thereafter disconnects the call; and is accessible at any time throughout the duration of the telemarketing campaign.

(3) Paragraph (b)(2) of this section shall not apply to a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

\* \* \* \* \*

**PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK**

3. The authority citation for subpart D of part 68 is revised to read as follows:

**Authority:** Secs. 4, 5, 227, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 227, 303).

**Subpart D—Conditions for Terminal Equipment Approval**

4. Section 68.318 is amended by revising paragraph (c) to read as follows:

**68.318 Additional limitations.**

\* \* \* \* \*

(c) *Line seizure by automatic telephone dialing systems.* Automatic telephone dialing systems which deliver a recorded message to the called party must release the called party's telephone line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls. When a residential telephone subscriber asserts a do-not-call request pursuant to § 64.1200(b)(2) of this chapter, an automatic dialing system that delivers an artificial or prerecorded message to such subscriber for telemarketing purposes must release the called party's telephone line in the manner prescribed in § 64.1200(b)(2) of this chapter.

\* \* \* \* \*

[FR Doc. 2010-6095 Filed 3-19-10; 8:45 am]

**BILLING CODE 6712-01-P**

# Notices

Federal Register

Vol. 75, No. 54

Monday, March 22, 2010

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

## DEPARTMENT OF AGRICULTURE

### National Institute of Food and Agriculture

#### Notice of Intent To Request an Information Collection

**AGENCY:** National Institute of Food and Agriculture, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to renew a currently approved information collection entitled, "4-H Youth Enrollment Report".

**DATES:** Submit comments on or before May 21, 2010.

**ADDRESSES:** Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods to Jason Hitchcock, Director, Information Policy, Planning and Training; Mail: NIFA/USDA, Mail Stop 2216, 1400 Independence Avenue, SW., Washington, DC 20250-2216; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 4217, Washington, DC 20024; or E-mail: [jhitchcock@nifa.usda.gov](mailto:jhitchcock@nifa.usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Jason Hitchcock, Director of Information Policy, Planning, and Training; Information Systems and Technology Management; NIFA/USDA, E-mail: [jhitchcock@nifa.usda.gov](mailto:jhitchcock@nifa.usda.gov).

#### SUPPLEMENTARY INFORMATION:

*Title:* 4-H Youth Enrollment Report.  
*OMB Number:* 0524-0045.

*Expiration Date of Current Approval:* 5/31/2010.

*Type of Request:* For renewal of a currently approved information collection.

*Abstract:* The mission of National 4-H Headquarters; National Institute of Food and Agriculture; United States Department of Agriculture (USDA); is to advance knowledge for agriculture, the environment, human health and well-being, and communities by creating opportunities for youth. 4-H is a complex national organization, led by 4-H National Headquarters, NIFA, USDA, with hundreds of educational curricula, activities, and events for youth ages 5 to 18. Programs originate at 106 land-grant universities (LGUs), and local programs are conducted and managed by some 3,000 professional Extension staff in 3,150 counties, with nearly 6 million youth enrolled each year. Over 500,000 volunteer leaders work directly with the 4-H youth.

The 1914 Smith-Lever Act created the Cooperative Extension System (CES) of the LGUs and their Federal partner, the Extension Service, now the National Institute of Food and Agriculture (NIFA), USDA. 4-H was already well-established, and became the first operating part of the new extension work. The Smith-Lever Act stipulated that "It shall be the duty of said colleges, annually, on or about the first day of January, to make to the Governor of the State in which it is located a full and detailed report of its operations in extension work as defined in this Act \* \* \* a copy of which report shall be sent to the Secretary of Agriculture." As a result of this requirement, annually each county sends their state 4-H office an electronic aggregated summary of their 4-H enrollment.

Information collected in the 4-H Youth Enrollment Report includes youth enrollment totals by delivery mode, youth enrollment totals by type of 4-H activity, youth enrollment totals by school grade, youth enrollment totals by gender, youth enrollment totals by place of residence, adult volunteer totals, youth volunteer totals, and youth enrollment totals by race and ethnicity.

*Need for the Information:* The Annual 4-H Enrollment Report is the principal means by which the 4-H movement can keep track of its progress, as well as emerging needs, potential problems and opportunities.

The information from this collection is used to report, as requested by the

Congress or the Administration, on rural versus urban outreach, enrollment by race, youth participation in leadership, community service, etc. It also is used to determine market share or percentage of the youth of each state by age and place of residence who are enrolled in the 4-H youth development program. The annual 4-H Youth Enrollment Report also allows oversight of all reasonable efforts by staff and volunteers to reach underserved and minority groups. Information also is available at [http://www.national4-hheadquarters.gov/library/4h\\_stats.htm](http://www.national4-hheadquarters.gov/library/4h_stats.htm).

*Estimate of the Burden:* The burden estimates have not been modified from the previous approval because there have been no significant changes to the collection.

*Estimated Number of Respondents:* 56.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden on Respondents:* 56 hours.

#### Comments:

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done in Washington, DC, this 16th day of March 2010.

**Molly Jahn,**

*Acting Under Secretary, Research, Education, and Economics.*

[FR Doc. 2010-6140 Filed 3-19-10; 8:45 am]

**BILLING CODE 3410-22-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service**

[Doc. No. AMS-NOP-10-0014; NOP-10-01]

**Nominations for Members of the National Organic Standards Board****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Notice.

**SUMMARY:** The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Allowed and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five (5) upcoming vacancies on the NOSB. The positions to be filled are: organic producer (2 positions), consumer/public interest (2 positions), and USDA accredited certifying agent (1 position). The Secretary of Agriculture will appoint a person to each position to serve a 5-year term of office that will commence on January 24, 2011, and run until January 24, 2016. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

**DATES:** Written nominations, with cover letters and resumes, must be post-marked on or before July 17, 2010.

**ADDRESSES:** Nomination cover letters and resumes should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA-AMS-TMP-NOP, 1400 Independence Avenue, SW., Room 2945-So., Ag Stop 0268, Washington, DC 20250, or via e-mail to [Katherine.benham@usda.gov](mailto:Katherine.benham@usda.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Katherine E. Benham, (202) 205-7806; E-mail: [katherine.benham@usda.gov](mailto:katherine.benham@usda.gov); Fax: (202) 205-7808.

**SUPPLEMENTARY INFORMATION:** The OFPA of 1990, as amended (7 U.S.C. Section 6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Allowed and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The NOSB made recommendations to the Secretary regarding establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following five (5) upcoming NOSB vacancies: organic producer (2 positions), consumer/public interest (2 positions), and USDA accredited certifying agent (1 position). Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic production operation, an individual who represents public interest or consumer interest groups, or an individual who is a USDA accredited organic certifying agent as identified under Section 2116 of the FACT Act. Selection criteria will include such factors as: demonstrated experience and interest in organic production; organic certification; support of consumer and public interest organizations; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; and such other factors as may be appropriate for specific positions.

To nominate yourself or someone else please submit, at a minimum, a cover letter stating your interest and a copy of the nominee's resume. You may also submit a list of endorsements or letters of recommendation, if desired.

Nominees will be supplied with an AD-755 background information form that must be completed and returned to USDA within 10 working days of its receipt. Resumes and completed background information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been

previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505-0001.

Dated: March 16, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010-6188 Filed 3-19-10; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF COMMERCE**

[Docket T-1-2010]

**Foreign-Trade Zones Board****Foreign-Trade Zone 22; Temporary/Interim Manufacturing Authority; LG Electronics Mobilecomm USA, Inc. (Cell Phones); Notice of Approval**

On January 13, 2010, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Illinois International Port District, grantee of FTZ 22, requesting temporary/interim manufacturing (T/IM) authority, on behalf of LG Electronics Mobilecomm USA, Inc. (LGEMU), to process cell phone kits under FTZ procedures within FTZ 22—Site 12, in Bolingbrook, Illinois.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/04) and 1480 (71 FR 55422, 9/22/06), including notice in the **Federal Register** inviting public comment (75 FR 4344, January 27, 2010). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, effective this date, until March 12, 2012, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: March 12, 2010.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010-6272 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****Bureau of the Census****Renewal of the Census Advisory Committees on the Race and Ethnic Populations**

**AGENCY:** Bureau of the Census, Department of Commerce.



**ACTION:** Notice of advisory committee renewal.

**SUMMARY:** Notice is hereby given that the Secretary of Commerce has determined that the renewal of the Census Advisory Committee on the African American Population, Census Advisory Committee on the American Indian and Alaska Native Populations, Census Advisory Committee on the Asian Population, Census Advisory Committee on the Hispanic Populations and Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Population are in the public interest in connection with the performance of duties imposed by law on the U.S. Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Contact Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Washington, DC 20233, telephone 301-763-2075, [Jeri.Green@Census.gov](mailto:Jeri.Green@Census.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of the Federal Advisory Committee Act, Title 5 United States Code App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, Title 41 Code of Federal Regulations Part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee on the African American Population, Census Advisory Committee on the American Indian and Alaska Native Populations, Census Advisory Committee on the Asian Population, Census Advisory Committee on the Hispanic Populations and Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Population are in the public interest in connection with the performance of duties imposed by law on the U.S. Department of Commerce.

These committees were established in 1970 to obtain expertise relating to major programs, such as the decennial census and American Community Survey. Meeting the standards set forth in Executive Order 12838, in that its charter is of compelling national interest and that other methods of obtaining public participation have been considered, the committees were rechartered in March 2002, February 2004, February 2006, and again in February 2008.

These committees will consist of nine members with a substantial interest in the conduct and outcome of the Census Bureau's communication, decennial, demographic, geographic, Information Technology, and other programs. The

committees include representatives from the public and private sectors, community-based organizations, academic institutions, and the public-at-large, which are further diversified by ethnicity, life experience, geographic area, and other variables.

These committees will function solely as advisory bodies and in compliance with provisions of the Federal Advisory Committee Act. Copies of the revised charters are filed with the appropriate committees of Congress and with the Library of Congress.

Dated: March 16, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2010-6247 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Socioeconomic Research and Monitoring for the Gray's Reef National Marine Sanctuary

**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 May 21, 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](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be sent to Dr. Vernon Leeworthy, 301-713-7261 or [Bob.Leeworthy@noaa.gov](mailto:Bob.Leeworthy@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The purpose of this information collection is to obtain socioeconomic information in the Grays Reef National Marine Sanctuary (GRNMS). The GRNMS has recently revised its

management plan. Two issues emerged as top priorities leading to efforts to change management strategies and regulations: (1) Prohibition of spear fishing and (2) research only area. Information was obtained to assess the potential socioeconomic impacts of the prohibition of spear fishing and research only area alternatives. Preferred alternatives have been chosen and the regulatory process to implement the regulations is underway. The study involves surveys of recreational user groups, which are potentially impacted by the regulations, to assess their knowledge, attitudes and perceptions of the management strategies and regulations and how they were actually impacted post implementation, and to guide education and outreach efforts.

Information will be collected on spatial use for all user groups to assess the extent of potential displacement of activity from the research only area alternative.

For business operations, costs and earnings will be obtained to assess the impact of regulatory alternatives on business profits. Socioeconomic/demographic information on owners/operators and number of employees and family members of owners/operators will also be obtained.

For members of households that participate in recreational fishing or recreational SCUBA diving, information will be collected on socioeconomic/demographic profiles, spending associated with their activity, economic user value associated with their activity, and knowledge, attitudes and perceptions about GRNMS management strategies and regulations.

##### II. Method of Collection

Interviews will generally be used. For business operations, a team will go to the business establishment and work with the business owner/staff to compile the information requested. Questionnaire forms and maps will be used to guide the information collection. For members of private households engaging in recreational activities, combinations of face-to-face, mail and Internet surveys will be conducted.

##### III. Data

*OMB Control Number:* None.  
*Form Number:* None.  
*Type of Review:* Regular submission.  
*Affected Public:* Individuals or households; business or other for-profit organizations.

*Estimated Number of Respondents:* 360.

*Estimated Time Per Response:* Recreational fishing charter/party boat

operations, 2 hours; members of private households participating in recreational activities, 30 minutes; and dive charter/guide operations, 2 hours.

*Estimated Total Annual Burden Hours:* 195.

*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: March 16, 2010.

#### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010-6070 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 12, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

*Docket Number: 10-004.* Applicant: State University of New York College at Geneseo, Erwin Hall 218, 1 College Circle, Geneseo, NY 14454. Instrument: MultiView 2000TS Microscope System. Manufacturer: Nanonics Imaging Ltd., Israel. Intended Use: This instrument will be used, among other things, to study the folding structure of A-beta proteins around nanostructures. This instrument combines an optical microscope with a scanning probe imaging system. Specifically, this instrument can perform near-field scanning optical microscopy. A pertinent feature of this instrument is the ability to switch between scanning the tip and the sample stage. It is also well suited for soft materials than other instruments, as it detects the probe coming close to the sample surface by monitoring a frequency shift in a nano-tuning fork. Other unique features include the ability to use conventional AFM type silicon cantilevers as well as cantilevered optical fiber probes with exposed probe geometry, providing normal force sensing; the capability to image side walls with an exposed tip glass AFM probe and the ability to image in both NSOM and AFM with AC operating modes. Justification for Duty-Free Entry: No instruments of same general category are believed to be manufactured in the United States. Application accepted by Commissioner of Customs: March 10, 2010.

Dated: March 16, 2010.

#### Christopher Cassel,

*Director, IA Subsidies Enforcement Office.*

[FR Doc. 2010-6255 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 12, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications

may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

*Docket Number: 09-067.* Applicant: West Virginia University, One Waterfront Place, PO Box 6024, Morgantown, WV 26506. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used to study the microstructure and chemistry of a variety of metallic, ceramic and semiconductor materials. This instrument is capable of imaging crystal structure and defects from the micron to atomic scale using TEM and HREM. A unique feature of this instrument is an analytical pole piece for high resolution work while maintaining high tilting capability. Justification for Duty-Free Entry: There are no domestic manufacturers of this type of electron microscope. Application accepted by Commissioner of Customs: December 17, 2009.

*Docket Number: 10-003.* Applicant: St. Lawrence University, 23 Romoda Drive, Canton, NY 13617. Instrument: Electron Microscope. Manufacturer: FEI, Czech Republic. Intended Use: This instrument will be used in the advanced study of diverse fields such as geochemistry, sedimentology and neurophysiology. This instrument has several SE detectors that are optimized for use in high-vacuum, low-vacuum and ultra-low vacuum environments and can be freely switched between these three modes. This allows for the investigation of conductive, non-conductive and high vacuum incompatible specimens. Justification for Duty-Free Entry: No instruments of same general category are manufactured in the United States. Application accepted by Commissioner of Customs: March 3, 2010.

Dated: March 16, 2010.

#### Christopher Cassel,

*Director, IA Subsidies Enforcement Office.*

[FR Doc. 2010-6259 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 0907081109-010-05]

RIN 0648-ZC10

#### Availability of Grant Funds for Fiscal Year 2010; Amendment

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of funding availability; amendment

**SUMMARY:** NOAA publishes this notice to amend the solicitation "Financial Assistance to Establish five NOAA Cooperative Centers at Minority Serving Institutions Announcement" (Federal Funding Opportunity Number NOAA-SEC-OED-2010-2002243), originally announced in the **Federal Register** on Tuesday, January 19, 2010. This notice announces that the NOAA Educational Partnership Program (EPP) will accept Letters of Intent. Please consult both the **Federal Register** Notice and the Full Funding Opportunity documents that will be available spring 2010 for the application deadline.

**DATES:** Applicants interested in submitting a Letter of Intent (LOI), may submit the LOI to NOAA EPP no later than April 5, 2010.

**APPLICATION DEADLINE:** Please consult both the **Federal Register** Notice and the Full Funding Opportunity documents that will be available spring 2010.

**ADDRESSES:** Letters of Intent may be e-mailed to [jacqueline.j.rousseau@noaa.gov](mailto:jacqueline.j.rousseau@noaa.gov) or [meka.laster@noaa.gov](mailto:meka.laster@noaa.gov). Hard copies may be sent to Jacqueline Rousseau (Federal Program Officer) or Meka Laster, NOAA Office of Education (OEd), Educational Partnership Program (EPP), 1315 East-West Highway, Silver Spring, MD 20910. The LOI may be faxed to 301-713-9465 and directed to Jacqueline Rousseau or Meka Laster. In the Letters of Intent please include the following information: (1) The name of the Minority Serving Institution per the Department of Education web pages (see eligibility below); (2) the full name of the Ph.D.-granting institution; and, (3) the NOAA Line Office with which the Center will partner.

**FOR FURTHER INFORMATION CONTACT:** For administrative and technical questions, please contact Jacqueline Rousseau (Federal Program Officer), telephone 301-713-9437 ext. 124, fax 301-713-9465, or e-mail [jacqueline.j.rousseau@noaa.gov](mailto:jacqueline.j.rousseau@noaa.gov). The alternative technical contact is Meka Laster, telephone 301-713-9437 ext. 147, fax 301-713-9465 or [meka.laster@noaa.gov](mailto:meka.laster@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NOAA publishes this notice to inform the public of an amendment to the solicitation "Financial Assistance to Establish five NOAA Cooperative Centers at Minority Serving Institutions Announcement" that was included in the January 19, 2010 **Federal Register** Notice. The January 19, 2010 **Federal**

**Register** Notice incorrectly stated the Letter of Intent deadline. NOAA EPP will accept Letters of Intent no later than April 5, 2010. The January 19, 2010 **Federal Register** Notice also incorrectly stated the application deadline as July 19, 2010. Please consult both the **Federal Register** Notice and the Full Funding Opportunity documents that will be available spring 2010 for the application deadline.

This document makes no other amendments to the January 19, 2010 **Federal Register** Notice. The program description of EPP may be found on the Web site: [www.epp.noaa.gov](http://www.epp.noaa.gov). Please consult both the **Federal Register** Notice (FRN) and the Federal Funding Opportunity announcement that will be available spring 2010. Letters of Intent (LOI) are not required. However, interested parties applicants who would like to submit a Letter of Intent (LOI), may submit the LOI to NOAA EPP no later than April 5, 2010. The LOIs will assist NOAA in determining the number and locations for programmatic informational sessions. NOAA plans to announce dates of the programmatic information sessions in the spring 2010 FRN.

#### Classification

##### *Limitation of Liability*

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2010 program is contingent upon the availability of Fiscal Year 2010 appropriations.

##### *Universal Identifier*

Applicants should be aware they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, (67, FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711 or via the Internet at <http://www.dunandbradstreet.com>.

#### National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or

proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, [http://www.nepa.noaa.gov/NAO216\\_6\\_TOC.pdf](http://www.nepa.noaa.gov/NAO216_6_TOC.pdf), and the Council on Environmental Quality implementation regulations, [http://ceq.eh.doe.gov/nepa/regs/ceq/toc\\_ceq.htm](http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on: October 30, 2002 (67 FR 66109); December 30, 2004 (69 FR 78389); and February 11, 2008 (73 FR 7696) are applicable to this solicitation.

##### *Paperwork Reduction Act*

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044,

0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

*Executive Order 12866*

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

*Executive Order 13132 (Federalism)*

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

*Administrative Procedure Act/  
Regulatory Flexibility Act*

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: March 15, 2010.

**Tammy L. Journet,**

*Deputy Director, Acquisition and Grants.*

[FR Doc. 2010-6249 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-12-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XV33**

**Endangered Species; File No. 14949**

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Carlos Diez, Bureau of Fisheries and Wildlife, San Juan, PR 00906-6600, has applied in due form for a permit to take hawksbill (*Eretmochelys imbricata*) and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before April 21, 2010.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov/>, and then selecting File No. 14949 from the list of available applications. These documents are also 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 Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: File No. 14949.

**FOR FURTHER INFORMATION CONTACT:** Kate Swails or Carrie Hubbard (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The purpose of the research is to provide information on the ecology and population dynamics of hawksbill and green turtles inhabiting the waters surrounding Puerto Rico and the adjacent islands including Mona, Monito, Desecheo, Caja-de-Muertos, Vieques, the Culebra Archipelago, and the Tres Palmas reserve. In addition, researchers would monitor the prevalence of fibropapillomatosis, a debilitating disease known to occur in green turtle foraging aggregations in

Puerto Rico. Researchers would annually capture up to 320 hawksbill and 252 green sea turtles by hand or entanglement net. Turtles would be measured, weighed, tagged, and blood or skin biopsy sampled. A subset of up to 10 hawksbill and 10 green sea turtles per year would be satellite tagged. A subset of up to 10 green turtles per year from the Culebra study sites may undergo fibropapillomatosis tumor removal surgery and subsequent rehabilitation.

In the case of a green turtle evidencing severe internal tumors, the turtle may be euthanized; this is not expected to apply to more than 2 turtles per year. The permit is requested for 5 years.

Dated: March 16, 2010.

**P. Michael Payne,**

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

[FR Doc. 2010-6250 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**[Order No. 1667]**

**Foreign-Trade Zones Board**

**Expansion of Foreign-Trade Zone 33: Pittsburgh, PA**

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 Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, submitted an application to the Board for authority to remove 21 acres and add an additional 27 acres to Site 1, to include Sites 4 and 5 on a permanent basis, and to add proposed Sites 6-17 in the Pittsburgh, Pennsylvania, area, adjacent to the Pittsburgh Customs and Border Protection port of entry (FTZ Docket 13-2009, filed 04/07/09);

*Whereas*, notice inviting public comment was given in the **Federal Register** (74 FR 17453, 4/15/09), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, Therefore*, the Board hereby orders:

The application to expand FTZ 33 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on February 28, 2015 for Sites 6–17 where no activity has occurred under FTZ procedures.

Signed at Washington, DC, February 23, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2010–6276 Filed 3–19–10; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–896**

#### **Magnesium Metal from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review**

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

**EFFECTIVE DATE:** March 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On April 1, 2009, the Department of Commerce (“the Department”) published in the **Federal Register** a notice for an opportunity to request an administrative review of the antidumping duty order on magnesium metal from the People's Republic of China (“PRC”).<sup>1</sup> Respondent, Tianjin Magnesium International Co., Ltd. (“TMI”), requested a review on April 27, 2009, and Petitioner, US Magnesium LLC (“US Magnesium”), requested a review of TMI on April 30, 2009. The Department published in the **Federal Register** a notice of initiation of an administrative review of TMI for the period April 1, 2008, through March 31,

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 14771 (April 1, 2009).

2009.<sup>2</sup> On December 23, 2009, we extended the deadline for issuing the preliminary results of review for 75 days until March 16, 2010.<sup>3</sup> As explained in the memorandum regarding “Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm” from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The current revised deadline for the preliminary results of this review is now March 23, 2010.<sup>4</sup>

#### **Extension of Time Limit of Preliminary Results**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondent's sales practices, factors of production, and to issue and review responses to supplemental questionnaires. Therefore, we require additional time to complete these preliminary results. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by an additional 21 days until April 13, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 25711 (May 29, 2009).

<sup>3</sup> See *Magnesium Metal from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 68227 (December 23, 2009).

<sup>4</sup> 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.

Dated: March 16, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010–6261 Filed 3–19–10; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–570–501)**

#### **Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order**

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

**SUMMARY:** On November 2, 2009, the Department of Commerce (“the Department”) initiated a sunset review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China (“PRC”) pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See *Initiation of Five-year (“Sunset”) Review*, 74 FR 56593 (November 2, 2009) (“Sunset Initiation”); see also *Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 5580 (February 14, 1986) and *Amended Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 51 FR 8342 (March 11, 1986) (“Order”). Based on the notice of intent to participate and adequate response filed by the domestic interested parties, and the lack of response from any respondent interested party, the Department conducted an expedited (120 day) sunset review of the Order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the Order would likely lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Review” section of this notice, *infra*.

**EFFECTIVE DATE:** March 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Moats, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5047.

**SUPPLEMENTARY INFORMATION:** On November 2, 2009, the Department

published the notice of initiation of the third sunset review of the order on natural bristle paint brushes and brush heads pursuant to section 751(c) of the Act. *See Sunset Initiation*, 74 FR 56593. On November 17, 2009, the Department received a timely and complete notice of intent to participate in the sunset review from the Paint Applicators Trade Action Coalition ("PATAC"), a trade association whose members are the Wooster Brush Company, True Value Manufacturing, and Elder and Jenks, Inc., as domestic interested parties, pursuant to 19 CFR 351.218(d)(1). On December 2, 2009, pursuant to 19 CFR 351.218(d)(3), PATAC filed a timely and complete substantive response within 30 days after the date of publication of the *Sunset Initiation*. The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Order*.

#### Scope of the Order:

The merchandise covered by the order are natural bristle paintbrushes and brush heads from the PRC. Excluded from the order are paint brushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of the merchandise is dispositive.

#### Analysis of Comments Received:

A complete discussion of all issues raised in this sunset review is addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. *See* "Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China," from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrent with this notice ("I&D Memo"). The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the Order was revoked. Parties can obtain a public

copy of the I&D Memo on file in the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete public version of the I&D Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the I&D Memo are identical in content.

#### Final Results of Review:

The Department determines that revocation of the order on natural bristle paint brushes and brush heads would likely lead to continuation or recurrence of dumping at the rates listed below:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Hebei Animal By-Products Import/Export Corp. ....	351.92
Hunan Provincial Native Produce and Animal By-Products Import/Export Corp..	351.92
Peace Target, Inc. ....	351.92
PRC-Wide Entity .....	351.92

#### Notification Regarding Administrative Protective Order:

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 9, 2010.

**Ronald K. Lorentzen,**  
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-6298 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-580-816)

#### Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review

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

**SUMMARY:** On September 8, 2009, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review for certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea). *See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 46110 (September 8, 2009) (*Preliminary Results*). This review covers seven manufacturers and exporters (collectively, the respondents) of the subject merchandise: LG Chem., Ltd. (LG Chem), Haewon MSC Co. Ltd. (Haewon), Dongbu Steel Co., Ltd., (Dongbu), Hyundai HYSCO (HYSCO), Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group), and Union Steel Manufacturing Co., Ltd. (Union) (collectively, respondents).<sup>1</sup> The period of review (POR) is August 1, 2007, through July 31, 2008.

As a result of our analysis of the comments received, these final results differ from the *Preliminary Results*. For our final results, we find that HYSCO, the POSCO Group, and Union, made sales of subject merchandise at less than normal value (NV). In addition, based on the final results for the respondents selected for individual review, we have determined a weighted-average margin for those companies that were not selected for individual review.

**EFFECTIVE DATE:** March 22, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Dennis McClure (Union), Christopher Hargett (HYSCO) and Victoria Cho (the POSCO Group, and non-selected companies), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-5973,

<sup>1</sup> As noted in the *Preliminary Results*, the Department selected HYSCO and Union as mandatory respondents in this review. *See* Memorandum from Christopher Hargett, International Trade Compliance Analyst, through James Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled "2007-2008 Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review," dated December 8, 2008. On July 8, 2009, we reconsidered our resources and found it practicable to review the POSCO Group as a voluntary respondent. *See* Memorandum from James Terpstra to Melissa Skinner entitled "2007-2008 Antidumping Duty Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of POSCO as a Voluntary Respondent," dated July 8, 2009.

(202) 482-4161, and (202) 482-5075, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 8, 2009, the Department published the *Preliminary Results*. In the Preliminary Results, the Department determined that HYSCO, the POSCO Group, and Union made sales of subject merchandise at less than NV during the POR. In addition, based on the preliminary results for the respondents selected for individual review, the Department calculated a weighted-average margin for those companies that were not selected for individual review. On November 16, 2009, the Department extended the time limits for the final results of this review until no later than March 8, 2010. See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review*, 74 FR 58945 (November 16, 2009).

##### Comments from Interested Parties

We invited parties to comment on our *Preliminary Results*. On January 20, 2010, United States Steel Corporation (US Steel) filed its case briefs concerning all three mandatory respondents. On the same day, the three mandatory respondents filed case briefs. On January 27, 2010, US Steel, and Nucor Corporation (Nucor) filed rebuttal briefs concerning all of the mandatory respondents. The three mandatory respondents filed rebuttal briefs on the same day. The Department conducted a public hearing on January 28, 2010.

##### Scope of the Order

This order covers cold-rolled (cold-reduced) carbon steel flat-rolled carbon steel products, of rectangular shape,

either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling") - for example, products which have been beveled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin

and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

##### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

##### Final Results of Review:

We determine that the following weighted-average margins exist:

Manufacturer/exporter	Percent margin
HYSCO .....	3.29%
The POSCO Group .....	0.01% ( <i>de minimis</i> )
Union .....	14.01%
Review-Specific Average Rate Applicable to the Following Companies <sup>2</sup> : LG Chem, Haewon, and Dongbu .....	8.65%

<sup>2</sup> This rate is a simple average percentage margin (based on the two reviewed companies with an affirmative deposit rate) for the period August 1, 2007, through July 31, 2008, and normally does not include zero and *de minimis* rates or any rates based solely on the facts available.

##### Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total antidumping duties

calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue appropriate assessment instructions directly to CBP 15 days

after publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies

did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 17.70 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

#### Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

#### Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 15, 2010.

**Kim Glas,**

*Acting Deputy Assistant Secretary for Import Administration.*

#### Appendix I

List of Comments in the Accompanying Issues and Decision Memorandum:

##### A. General Issues

*Comment 1:* Treatment of "Negative Dumping Margins" (Zeroing)

*Comment 2:* Comment 2: Home Market Revenue for the POSCO Group (Freight and Interest) and HYSCO (Interest)

*Comment 3:* Use of Quarterly Cost Methodology

*Comment 4:* Laminated Products

##### B. Company-Specific Issues

*Hyundai HYSCO*

*Comment 5:* Date of Sale

*Comment 6:* Liquidations Instructions

*Comment 7:* Major Input Adjustments

*The POSCO Group*

*Comment 8:* Inadvertent Omission of Certain U.S. Sales from POSCO's Margin Calculations in the Post-Preliminary Analysis

*Comment 9:* The Treatment of Certain SAS Programming for the POSCO Group

*Comment 10:* The Department's Calculation of POCOS' Loans in the Calculation of the Home Market Interest Rate

*Comment 11:* The Department's Calculation of POSCO America Corporation (POSAM)'s Indirect Selling Expense

*Comment 12:* Financial Expense Ratio Calculation

*Comment 13:* Margin Calculation Error for Applying General and Administrative Expense Ratio Union

*Comment 14:* Window Period Sales

*Comment 15:* The Treatment of Overrun

*Comment 16:* Union's General and Administrative and Financial Expense Ratios

[FR Doc. 2010-6258 Filed 3-19-04; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-840]

#### Certain Frozen Warmwater Shrimp From India: Initiation of Antidumping Duty Changed-Circumstances Review

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

**DATES:** *Effective Date:* March 22, 2010.

**SUMMARY:** The Department of Commerce (the Department) has received information sufficient to warrant the initiation of a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from India. Specifically, based on a request filed by R.D.R. Exports, the Department is initiating a changed circumstances review to determine whether R.D.R. Exports is the successor-in-interest to Jaya Satya Marine Exports Pvt. Ltd. (Jaya Satya).

**FOR FURTHER INFORMATION CONTACT:** Blaine Wiltse; AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6345.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (Feb. 1, 2005) (*Shrimp Order*).

On January 25, 2010, R.D.R. Exports informed the Department that it purchased the packing plant formerly owned and operated by Jaya Satya, and provided certain documentation related to this claim. Additionally, R.D.R. Exports requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to confirm that R.D.R. Exports is the successor-in-interest to Jaya Satya for purposes of determining antidumping duty cash deposits and liabilities.

Normally, the Department will initiate a changed circumstances review within 45 days of the date on which the request is filed. See 19 CFR 351.216(b). However, as explained in the memorandum from the Deputy Assistant Secretary for Import



Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for initiating this review is now March 18, 2010. 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.

### Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>1</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of

shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

### Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by R.D.R. Exports includes evidence sufficient to warrant

initiating a changed circumstances review. In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. See, e.g., *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 69941 (Nov. 18, 2005); and *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (Jan. 2, 2002). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (Mar. 1, 1999). Thus, if the record evidence demonstrates that, with respect to the production and sale of subject merchandise, the new company operates as the same business entity as the predecessor company, the Department will accord the new company the same antidumping treatment as its predecessor. *Id.* at 9980.

Based on the information provided in its submission, R.D.R. Exports has provided sufficient evidence to warrant a review to determine if it is the successor-in-interest to Jaya Satya. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review. However, although R.D.R. Exports has provided information regarding the transfer of packing facilities from Jaya Satya to R.D.R. Exports, we require additional time to solicit further information related to the four successor-in-interest factors listed above. Accordingly, we have determined that it would be inappropriate for the Department to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). As a result, the Department is not issuing preliminary results for this changed circumstances review at this time.

The Department will issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice

<sup>1</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: March 16, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010-6253 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### Census Advisory Committees

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of the Census (Census Bureau) is giving notice of a joint meeting of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Census, including the Integrated Communications Campaign, 2010 Partnerships, and other decennial activities. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on April 28-30, 2010. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

**DATES:** April 28-30, 2010. On April 28, the meeting will begin at approximately 1 p.m. and end at approximately 5 p.m. On April 29, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:30 p.m. On April 30, the meeting will begin at approximately 8:30 a.m. and end at approximately 1:30 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

**FOR FURTHER INFORMATION CONTACT:** Jeri Green, *Jeri.Green@census.gov*, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301-763-6590. For TTY callers, please use the Federal Relay Service 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The committees provide an outside-user perspective and advice on research and design plans for the 2010 Census, the American Community Survey, and other related programs particularly as they pertain to an accurate count of these communities. The committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on April 30. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301-763-3231 upon arrival at the Census Bureau on the day of the meeting. A valid photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: March 16, 2010.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2010-6251 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-07-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On March 11, 2010, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively "Mexinox"), filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Results of the 2007-2008 Antidumping Duty Administrative Review, made by the International Trade Administration, respecting Stainless Steel Sheet and Strip in Coils from Mexico. This determination was published in the **Federal Register** (75 FR 6627), on February 10, 2010. The NAFTA Secretariat has assigned Case Number USA-MEX-2010-1904-01 to this request.

**FOR FURTHER INFORMATION CONTACT:** Marsha Iyomasa, Acting United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of

the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 11, 2010, requesting a panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 12, 2010);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 26, 2010); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 16, 2010.

**Marsha Iyomasa,**

*Acting United States Secretary, NAFTA Secretariat.*

[FR Doc. 2010-6138 Filed 3-19-10; 8:45 am]

BILLING CODE 3510-GT-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-878

#### Saccharin from the People's Republic of China: Preliminary Results of the 2008-2009 Antidumping Duty Administrative Review

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on saccharin from the People's Republic of China ("PRC") covering the period July 1, 2008, through June 30, 2009. This administrative review covers one exporter of the subject merchandise, *i.e.*, Kaifeng Xinhua Fine Chemical Factory ("Kaifeng").

We preliminarily determine that Kaifeng does not qualify for a separate rate and is instead part of the PRC entity. If these preliminary results are

adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise exported by Kaifeng during the period of review ("POR"). We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** March 22, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8173 or (202) 482-0650, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 9, 2003, the Department published in the **Federal Register** the antidumping duty order on saccharin from the PRC.<sup>1</sup> On June 8, 2009, the Department published in the **Federal Register** the continuation of antidumping duty order on saccharin from the PRC.<sup>2</sup> On July 1, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on Saccharin from the PRC.<sup>3</sup> In accordance with 19 CFR 351.213(b)(1), the following requests were made regarding the POR July 1, 2008, through June 30, 2009: (1) on July 31, 2009, Shanghai Fortune Chemical Co., Ltd. ("Shanghai Fortune"), a Chinese producer and exporter of subject merchandise, requested that the Department conduct an administrative review of its exports; (2) on July 31, 2009, Kinetic Industries, Inc. ("Kinetic"), a domestic producer of saccharin, requested that the Department conduct an administrative review of Kaifeng's exports to the United States. Pursuant to this request, the Department published a notice of initiation with respect to Shanghai Fortune and Kaifeng.<sup>4</sup>

In accordance with 19 CFR 351.213(d)(1), on August 28, 2009, Shanghai Fortune timely withdrew its request for an administrative review of its own exports (*i.e.*, within 90 days of

<sup>1</sup> See *Notice of Antidumping Duty Order: Saccharin from the People's Republic of China*, 68 FR 40906 (July 9, 2003) ("Saccharin Order").

<sup>2</sup> See *Continuation of Antidumping Duty Order on Saccharin from the People's Republic of China*, 74 FR 27089 (June 8, 2009).

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 31406 (July 1, 2009).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 42873 (August 25, 2009).

the publication of the notice of initiation of this review). No other party requested an administrative review of Shanghai Fortune's exports to the United States. Therefore, on November 3, 2009, the Department rescinded the administrative review of saccharin with respect to Shanghai Fortune.<sup>5</sup>

Regarding Kaifeng, the Department issued an antidumping duty questionnaire on October 2, 2009. On October 14, 2009, we confirmed that Kaifeng signed for and received our mailing of the antidumping duty questionnaire. On January 6, 2009, the Department placed the FedEx International Air Waybill receipt and delivery confirmation for the questionnaire issued to Kaifeng on the record of this administrative review to confirm that we mailed, and Kaifeng signed for and received, the questionnaire.

#### Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry 128-44-44); (2) calcium saccharin (CAS Registry 6485-34-34); (3) acid (or insoluble) saccharin (CAS Registry 81-07-07); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

#### Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME") country. In

<sup>5</sup> See *Saccharin from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 56792 (November 3, 2009).

accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (“Act”), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Because no interested party in this case has contested such treatment, the Department continues to treat the PRC as an NME country.

#### PRC-Wide Rate and Use of Facts Available

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of subject merchandise, subject to review in an NME country, a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate.<sup>6</sup> We have determined that Kaifeng does not qualify for a separate rate and is instead subject to the PRC-wide rate.

In relevant part, section 776(a) of the Act provides that the Department shall apply “facts otherwise available” (“FA”) if “(1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested,” or “(B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act.” Further, section 776(b) of the Act provides that the Department may make an adverse inference in applying the facts otherwise available when a party “has failed to cooperate by not acting to the best of its ability to comply with a request for information.” Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>7</sup> Finally, according to section 776(b) of the Act and 19 CFR 351.308(c)(1), such an adverse inference may include reliance on information derived from the petition, the final determination, a

previous administrative review, or other information placed on the record.

On October 2, 2009, the Department issued an antidumping duty questionnaire to Kaifeng. We confirmed that the questionnaire was delivered and signed for on October 14, 2009.<sup>8</sup> Because Kaifeng did not respond to the Department’s questionnaire, we are unable to determine if Kaifeng is eligible for a separate rate. Kaifeng has not rebutted the presumption of government control and is, therefore, presumed to be part of the PRC-wide entity. Further, in accordance with sections 776(a)(2)(A) and (B) of the Act, because the PRC-entity (including Kaifeng) failed to cooperate to the best of its ability by not responding to our questionnaire, we find it appropriate to use adverse facts available. As a result, in accordance with the Department’s practice, we have preliminarily assigned to the PRC-entity (including Kaifeng) a rate of 329.94 percent, the highest rate determined in the current, or any previous, segment of this proceeding.<sup>9</sup>

#### Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than information obtained in the course of a review, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. According to the Statement of Administrative Action, secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>10</sup> To “corroborate” means that the Department will satisfy itself that the secondary information has probative value. The Department will, to the extent practicable, examine the reliability and relevance of the secondary information used.<sup>11</sup> Further,

<sup>8</sup> See Memorandum Regarding: 2008-2009 Antidumping Administrative Review of Saccharin from the PRC: Kaifeng Questionnaire Delivery Confirmation on the Record, dated January 6, 2010 (“Delivery Confirmation Memo”).

<sup>9</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People’s Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decisions Memorandum.

<sup>10</sup> See SAA at 870.

<sup>11</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392

independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.

In the instant review, we are applying to the PRC-wide entity (which includes Kaifeng) the PRC-wide rate that was corroborated in the underlying investigation of sales at less than fair value.<sup>12</sup> We find that this rate remains contemporaneous with the POR of this review, and no evidence has been presented in the current review that calls into question the reliability of this information.<sup>13</sup> Thus, the Department finds that the rate information is reliable.

Additionally, regarding relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate, the Department will disregard the margin and establish an appropriate margin. Similarly, the Department does not apply a margin that has been discredited.<sup>14</sup> No unusual circumstances are present here. Since the LTFV investigation, no new information has indicated that this rate is invalid or uncharacteristic of the saccharin industry. Further, this rate has been used as the PRC-wide rate in other segments of this proceeding. Therefore, we find that this rate has probative value.

As the PRC-wide entity rate from the LTFV investigation is both reliable and relevant, we determine that this rate, the

(November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>12</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People’s Republic of China*, 68 FR 27530 (May 30, 2003) (“LTFV Final Determination”); as amended by *Notice of Amended Final Determination of Sales at Less Than Fair Value*, 68 FR 35383 (June 13, 2003) (“The PRC-wide rate of 329.94 percent . . . is the correct PRC-wide rate, rather than the rate of 329.33 percent published in the [LTFV Final Determination].”); see also *Saccharin Order* (establishing 329.94 percent as the PRC-wide rate).

<sup>13</sup> See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304, 41308 (July 11, 2003) (where the Department relied on the corroboration memorandum from the LTFV Investigation to assess the reliability of the petition rate as the basis for an adverse facts available rate in the administrative review).

<sup>14</sup> See *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

<sup>6</sup> See, e.g., *Honey from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 74764, 74765 (December 16, 2005); unchanged in *Honey from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review* 71 FR 34893 (June 16, 2006).

<sup>7</sup> See Statement of Administrative Action (≥SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, Vol. 1, at 870 (1994).

highest rate from any segment of this administrative proceeding (*i.e.*, the rate of 329.94 percent), is in accord with section 776(c) of the Act, which requires that secondary information be corroborated. Thus, the Department finds that the LTFV investigation rate is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC-wide entity based on Kaifeng's failure to cooperate to the best of its ability in this administrative review.

#### Preliminary Results of the Review

We preliminarily find that the following weighted-average dumping margin exists for the period July 1, 2008, through June 30, 2009:

Manufacturer/Exporter	Margin (Percent)
PRC-Wide Entity* .....	329.94

\*The PRC-entity includes Kaifeng Xinhua Fine Chemical Factory

#### Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within ten days of the date of publication of this notice. See 19 CFR 351.309(c). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. See 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within ten days of publication of this notice. See 19 CFR 351.310(c). Hearing 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 a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d).

The Department will issue the final results of this administrative review, which will include its analysis of any written comments, no later than 120 days after the publication date of these preliminary results. See 19 CFR 351.213(h).

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. If these preliminary results are adopted in our final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the PRC-wide entity (which includes Kaifeng), the cash deposit rate will be the PRC-wide rate established in the final results of review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 329.94 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: March 16, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-6295 Filed 3-19-10; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-848

#### Freshwater Crawfish Tail Meat from the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part

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

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat (crawfish) from the People's Republic of China (PRC) with respect to China Kingdom (Beijing) Import & Export Co., Ltd., Shanghai Ocean Flavor International Trading Co., Ltd., Xiping Opeck Food Co., Ltd., Xuzhou Jinjiang Foodstuffs Co., Ltd., and Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng Hi-King). The period of review is September 1, 2008, through August 31, 2009. The Department is rescinding the review with respect to Yancheng Hi-King.

**EFFECTIVE DATE:** March 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3683 or (202) 482-1690, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 15, 1997, we published in the **Federal Register** an antidumping duty order on crawfish from the PRC. See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 48218 (September 15, 1997). On September 1, 2009, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on crawfish from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or*

*Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 45179 (September 1, 2009). On September 30, 2009, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the petitioner, the Crawfish Processors Alliance, requested an administrative review of the order with respect to, among others, Yancheng Hi-King, an exporter of crawfish from the PRC. On October 26, 2009, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative review of the order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956 (October 26, 2009).

#### Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, “in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.” We received a notice of withdrawal from the petitioner with respect to the review requested of Yancheng Hi-King within the 90-day time limit. See letter from the petitioner dated January 25, 2010. Because we received no other requests for review of Yancheng Hi-King, we are rescinding the review of the order with respect to Yancheng Hi-King. This rescission is in accordance with 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

#### Notification to Importer

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 10, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010-6267 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XS23**

#### Small Takes of Marine Mammals Incidental to Specified Activities; Dumbarton Bridge Seismic Retrofit Project, California

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the California Department of Transportation (Caltrans) allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to pile driving associated with the Dumbarton Bridge Seismic Retrofit Project.

**DATES:** Effective August 15, 2010, through August 14, 2011.

**ADDRESSES:** A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225 or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Daly, Office of Protected Resources, NMFS, 301-713-2289.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

## Summary of Request

On April 17, 2009, NMFS received a request from Caltrans to harass marine mammals incidental to the Dumbarton Bridge Seismic Retrofit Project. NMFS issued a notice in the **Federal Register**

on December 4, 2009 (74 FR 63724), requesting comments from the public on the proposed IHA.

The Dumbarton Bridge, located in southern San Francisco Bay (Bay), was designed in the late 1970s based on the design standards that Caltrans established in 1971. Since that time, upgraded standards have been issued, particularly Caltrans' Seismic Design Criteria of 1999, which the bridge does not meet. The Dumbarton Seismic Retrofit Project would provide a seismic upgrade of the Dumbarton Bridge to meet these current requirements. Pile driving during the project may result in harassment of harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and gray whales (*Eschrichtius robustus*) within the action area.

#### Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' proposed IHA notice (74 FR 63724) and a summary is provided here. To allow access to shallow water (<10 ft) piers which need to be retrofitted, a temporary trestle supported by 24-inch hollow steel piles must be installed; a barge will allow access to piers in deeper water. In addition, cofferdams will be created using sheet piles to pour concrete collars around pre-existing piles to strengthen the piers. Installation of the temporary steel and sheet piles necessitates use of mainly vibratory hammers, but an impact hammer may be used for proofing (i.e., tapping the piles into the ground to conduct load bearing tests) up to two piles each day. The entire retrofit project is expected to take three years to complete; however, installation of the temporary piles is expected to take approximately 4 months and installation of sheet piles could take one year.

#### Construction Process

A complete description of activities which have the potential to result in harassment to marine mammals is provided in the associated proposed IHA notice (74 FR 63724, December 4, 2009). In summary, Caltrans would construct a temporary trestle, comprised of approximately 1,000 24-in steel pipe piles, on each approach section of the bridge to gain access to shallow water piers needed to be retrofitted. No trestle will be constructed in the main channel as all work in the channel will take place from a stationary barge. In addition, cofferdams will be created around 20 piers (piers 5–15 and 32–40) by vibrating steel sheet piles into place around each pier.

Retrofitting itself involves strengthening connections between columns, pedestals, and pile caps and does not involve intense sound production. Pile driving used to construct the trestles; however, does result in elevated noise levels; therefore, this activity may impact marine mammals in the vicinity of the operating pile driver. Piles associated with the temporary trestles would only be installed in water less than 10 ft in depth and would be driven out of water whenever possible (e.g., on the mudbanks at low tide). The piles will be inserted in rows of three, with approximately 25 ft (7.6 m) between each row. Temporary trestle superstructure (decking) will then be constructed atop the support piles. An additional 16 piles will extend from the temporary work trestle to surround each existing support pier to allow construction around all sides of the pier. All temporary trestles will be less than 25 ft wide. Caltrans will install a maximum of 12 piles per day (six on each side of the Bay) using mainly a vibratory pile driving method. Vibration installation will start and continue for 5 minutes followed by an approximate 30-minute delay. The second pile will be vibrated into place for 5 minutes. Bent members and spans will then be erected, possibly taking 2 to 3 hours before the second set of piles is vibrated into place.

In total, vibratory pile driving would not occur for more than two hours per day. In order to verify load capacity of the temporary piles, approximately one in eight piles (12 percent) will be "tapped" with an impact hammer for proofing. Each pile to be tested would be tapped for a total of 10–15 seconds. No more than two piles per day would need testing. Vibratory pile driving may occur at any time during the year; however, when ESA-listed steelhead may be present (December 1st to June 14th), the re-tap or use of an impact hammer is restricted to low-tide periods only to minimize impact to salmonids.

Caltrans would also retrofit existing trestle structures on land at the east and west ends of the bridge to provide lateral strengthening. Each trestle is 600 ft long. To accomplish this, Caltrans would install of a total of 28 permanent 48-inch steel pipe piles close to the waters edge but not in the water; distance to the water is dependent upon the tidal stage. Fourteen of these piles would be placed on already paved road and fourteen would be placed into weedy ruderal vegetation enclosed by parking islands and the trestle itself. A maximum of four piles per day would be installed requiring 30–minutes

driving time. These piles would be installed between October 1 and November 30 to avoid salmon migration periods. Although these piles would be driven on land, noise from impact hammering could propagate into the water from vibration and through the air-water interface.

#### Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on December 4, 2009 (74 FR 63724). During the 30 day public comment period, the Marine Mammal Commission (Commission) provided the only comment.

*Comment:* The Commission states that it recommends that NMFS issue the requested authorization, provided that the monitoring and mitigation activities described in NMFS' **Federal Register** notices are carried out as described.

*Response:* NMFS agrees with the Commission's recommendation, and all monitoring and mitigation measured described in the previous **Federal Register** notice (74 FR 63724) are required in the current IHA.

#### Description of Marine Mammals in the Area of the Specified Activity

At least 35 marine mammal species can be found off the coast of California; however, few venture into the Bay and only Pacific harbor seals and California sea lions inhabit the southern portion of the Bay regularly. Gray whales are sighted in the Bay during their yearly migration, though most sightings tend to occur in the central Bay. Information on California sea lions, harbor seals, and gray whales was provided in the December 4, 2009 (74 FR 63724), **Federal Register** notice.

#### Potential Effects on Marine Mammals

NMFS and Caltrans have determined that exposure to noise from pile driving activities has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. A detailed description of potential impacts to marine mammals can be found in NMFS' December 4, 2009, **Federal Register** notice (74 FR 63724) and are summarized here.

Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts.

Audible distance, or received levels (RLs) will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.*, 1995). Type and significance of marine mammal reactions to noise are likely to depend on a variety of factors including, but not limited to, the behavioral state (e.g., feeding, traveling, etc.) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, and the level of the sound relative to ambient conditions (Southall *et al.*, 2007).

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid injury of marine mammals (e.g.,

PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB rms or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.*, 2007). As such, Caltrans has proposed safety zones based on hydroacoustical modeling for the pile sizes and type of hammers used for the Dumbarton Bridge project and water depth. The model simulates practical spreading (i.e., 15 log R). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and

120dB rms for non-pulse noise (e.g., vibratory pile driving), but below the aforementioned injury thresholds. Estimated distances to NMFS current threshold sound levels from pile driving during the proposed action are outlined in Table 1 below (see Chapter 7 and Appendix A in the application for further detail how these distances were derived). In-air noise calculations from pile driving for this project predict that noise levels will be reduced to approximately 83 dB re: 20 microPa at 800 m. Harbor seals or California sea lions are not known to haul-out this close to the bridge (the closest haul-out is 2.7 miles away); therefore, pinnipeds at haulouts are not expected to be affected from in-air pile driving noise.

TABLE 1: MODELED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS.

Driving Location	Pile Type	Hammer Type	Calculated Distance to Criteria Thresholds			
			190 dB	180 dB	160 dB	120 dB
Water	24" steel	Impact	60 ft (18m)	220 ft (67m)	3,300 ft (1005m)	n/a
Water	24" steel	Vibratory	n/a	10 ft (3m)	n/a	3.2 miles (5.14 km)
Water	Sheet pile	Vibratory	n/a	5 ft (1.5m)	n/a	1.4 miles (2.25 kms)
Land	48" steel	Impact	n/a	100 ft (30.5 m)	1,475 ft (500m)	n/a
Land	Steel piles	Vibratory	0	0	0	150 ft (45.7 m)

NMFS anticipates reactions of marine mammals to noise will be similar to those documented during previous Caltrans' pile driving projects and those presented in scientific literature. These include short-term behavioral disturbances such as temporary avoidance behavior around the bridge, which may affect the routes of seals and sea lions or temporary cessation of foraging. Pinnipeds are not known to pup within the action area; therefore, this behavior will not be affected. Gray whales are not known to socialize, calve, or forage within the action area; therefore, these behaviors would not be interrupted. However, some avoidance by gray whales may occur. Because pile driving would not occur continuously throughout the day, any effects from pile driving will be limited. The location of piles would be limited to shallow water (<10 ft); no piles would be placed in the channel. Therefore, adequate passage space under the bridge will be available to marine mammals. No long term impacts are expected to occur.

#### Anticipated Effects on Marine Mammal Habitat

Marine mammal habitat will be temporarily disturbed due to pile driving activities. All steel and sheet piles would be removed once the project is complete; therefore, no additional obstacles (e.g., more piles than currently present) would be permanent. Noise from pile driving may adversely impact individual fish species which serve as marine mammal prey; however, this would be limited to fish within the immediate vicinity of the pile and is not expected to substantially reduce prey availability.

#### Monitoring and Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for

certain subsistence uses. The latter does not apply here as no subsistence hunting takes place in California. The following summarizes mitigation and monitoring measures set forth in the IHA.

#### Limited Use of Impact Hammer

As a result of ESA Section 7 consultation discussions with NMFS (to reduce impacts to ESA-listed fish species), Caltrans has agreed to drive all temporary piles with a vibratory hammer with the exception of one pile per day being "proofed" with an impact hammer, which has a higher source level. Proofing requires approximately 20 blows per pile, which equates to approximately 15–20 seconds of impact hammering per day. Additionally, Caltrans would limit proofing piles to during low tide only, essentially out-of-water on the mudbanks, when ESA-listed steelhead salmon are present (December 1 to June 14). This also serves as a mitigation measure for marine mammals.



### *Establishment of Safety Zone and Shut-down Requirements*

Although the isopleths to the 190dB and 180dB harassment thresholds are modeled to be within 220 ft (67 m) of the impact pile hammer (see Table 1), Caltrans will initially shut down or delay commencement of pile driving should a marine mammal come within or approach 250 ft (76m) of the pile being driven. This safety zone may be modified, pending NMFS' approval based on sound source verification tests conducted upon commencement of pile driving (see *Acoustic Monitoring* below).

Although occurring on land, impact driving 48" piles with an impact hammer could attenuate to levels at or above NMFS Level A harassment threshold of 190 dB and 180 dB for pinnipeds and cetaceans, respectively, out to 100 ft (30.5 m) at high tide (see Table 1). Impact pile driving on land at low tide is not expected to emit harassment threshold levels into the water. As a conservation recommendation during ESA Section 7 consultation, NMFS has advised all pile driving on land close to the shoreline be done during low tide to reduce impacts to ESA listed fish. However, should land based pile driving occur during high tide, Caltrans will shut down should a marine mammal approach within 100 ft of land.

### *Soft Start to Pile Driving Activities*

A "soft start" technique will be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before impact piling reaches full energy. The soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by 1-minute waiting period. The procedure will be repeated two additional times. Due to the short duration of impact pile driving (20 seconds), the general ramp-up requirement for impact pile driving does not apply as it would actually increase the duration of noise emitted into the environment and monitoring should effectively detect marine mammals within or near the designated safety zone (initially 250 ft). If any marine mammal is sighted within or approaching the safety zone prior to pile-driving, Caltrans will delay pile-driving until the animal has moved outside the safety zone and on a path away from such zone or until after 15 minutes have elapsed since the last sighting of the marine mammal.

### *Visual Monitoring*

At least one week prior to the start of construction, the protected species observers (PSOs), trained in detection and identification of marine mammals, will conduct a survey in order to establish baseline data of marine mammal use in the project area. This effort will consist of 12 hours of monitoring during the in-water construction work window that will be used during construction (0700 to 1900 hrs).

Monitoring of the safety zone (initially 250 ft) will be conducted by PSOs 30 minutes prior to, during, and 30 minutes post all active pile driving. Pile driving will not begin until the safety zone is clear of marine mammals and will be stopped in the event that marine mammals enter the safety zone. PSOs will begin monitoring at least 30 minutes prior to the commencement of pile driving and end 30 minutes after pile driving ceases. If the time between pile driving segments is more than 30 minutes, a new 30 minute survey is unnecessary provided marine mammal monitoring continues during the interruption. Data collection will consist of: (1) a count of all pinnipeds and cetaceans sighted by species, age and sex class, where able to be determined; (2) a description of behavior (based on the Richmond Bridge Harbor Seal Survey classification system); (3) location; (4) direction of movement; (5) type of construction that is occurring; (6) any acoustic or visual reactions to specified activities; and (7) time of the observation; (8) time that pile driving begins and ends; and (9) environmental conditions such as wind speed, wind direction, visibility, temperature, tide level, current, and sea state (described using the standard Beaufort sea scale).

Monitoring of marine mammals will be conducted using high quality binoculars (e.g., Zeiss, 10 x 42 power). When possible, digital video or 35 mm still cameras will also be used to document the behavior and response of marine mammals to construction activities or other disturbances. Each monitor will have a radio for contact with other researchers or work crews if necessary, a GPS unit for determining observation location, and an electronic range finder to determine distance to marine mammals, boats, buoys and construction equipment. Most likely observers will conduct the monitoring from the Dumbarton Bridge surface or catwalks, providing a high vantage point for the observer; however, should a small vessel be used to monitor for marine mammals, PSOs will remain 50 yards from swimming pinnipeds in

accordance with NMFS marine mammal viewing guidelines (<http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>). This will prevent additional harassment to pinnipeds from the vessel.

### *Acoustic Monitoring*

Hydroacoustic monitoring will be conducted by a qualified monitor during pile driving activities when piles are being driven in water greater than 3 feet in depth. Details will be developed during work plan preparation, but might include monitoring one pile in every set of 3 piles during installation of the temporary trestles. Sound measurements will be taken as close to the source as possible and at all modeled distances to the 190 dB, 180 dB, 160 dB (impact only), and 120 dB (vibratory only). Measurements will be taken at two depths: one in mid water column and one near the bottom but at least 3 feet above the bottom, unless obstructions such as land force a variation in depth or number of measurements. Marine mammal safety zones may be adjusted, pending NMFS' approval, according to the results of this monitoring.

### **Reporting**

A final report summarizing all marine mammal monitoring data, including those parameters listed above, and construction activities will be submitted to NMFS 90 days after the IHA expires. An acoustic report analyzing underwater sound characteristics during pile driving shall also be submitted within 90 days of expiration of the IHA.

### **Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

For reasons provided in greater detail in NMFS' December 4, 2009 (74 FR 63724), **Federal Register** notice, pile driving could result in harassment of harbor seals ( $n = 1,120$ ), California sea lions ( $n = 20$ ), and gray whales ( $n = 2$ ) and would not result in more than a negligible impact on marine mammal stocks and their habitat. The number of marine mammals authorized to be taken incidental to pile driving activities is considered small when compared to the population sizes of the affected stocks (34,233; 238,000; and 18,813, respectively). That is, up to 3.3%, 0%, and 0% of the affected stocks,

respectively, may be taken by Level B harassment.

Based on the analysis contained herein on the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that pile driving associated with the Dumbarton Bridge Seismic Retrofit Project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks. There are no relevant subsistence uses of marine mammals implicated by this action; therefore, no impacts to subsistence use will occur.

#### Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area; therefore, ESA consultation on issuance of the proposed IHA was not required. However, other ESA-listed species under NMFS' jurisdiction do occur within the action area.

On January 12, 2009, NMFS received a request from the Federal Highway Administration (FHWA) to initiate consultation under section 7 of the ESA on Caltrans' proposed Dumbarton Bridge Seismic Retrofit Project as ESA-listed fish are present within the action area. NMFS issued a Biological Opinion (BiOp) on Caltran's Dumbarton Bridge Seismic Retrofit Project on August, 10, 2009. The BiOp concluded that the proposed activities were not likely to jeopardize the continued existence of Central California Coast steelhead Distinct Population Segment (DPS) or North American green sturgeon DPS and are not likely to adversely modify or destroy critical habitat for CCC steelhead DPS.

#### National Environmental Policy Act (NEPA)

On September 2, 2009, Caltrans released an Environmental Assessment (EA) and Finding of No Significant Impact for the Dumbarton Bridge project. For purposes of issuing an IHA, NMFS found the environmental analysis on marine mammal impacts lacking and determined further NEPA analysis was necessary. In the proposed IHA **Federal Register** notice for this action, NMFS preliminary determined a Categorical Exclusion memo was appropriate for issuing an IHA for the specified activities. However, after further consideration, NMFS prepared an EA analyzing the effects of the authorized on the human environment. Based on the analyses in the EA, NMFS

determined that issuance of the IHA would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required.

Dated: March 12, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2010-6252 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XU03**

#### Takes of Marine Mammals Incidental to Specified Activities; Manette Bridge Replacement in Bremerton, Washington

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received an application from the Washington State Department of Transportation (WSDOT) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction and demolition activities related to the replacement of the Manette Bridge in Bremerton, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to WSDOT to incidentally harass, by Level B Harassment only, three species of marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than April 21, 2010.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *0648-XU03@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will

generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> 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.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext 137.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-

day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

### Summary of Request

NMFS received an application on December 24, 2009, from WSDOT for the taking, by harassment, of marine mammals incidental to construction and demolition work related to the Manette Bridge replacement in Bremerton, Washington, starting in early June 2010.

The Manette Bridge is located within the Puget Sound of Washington State, at the outlet to the Port Washington Narrows. The Port Washington Narrows provides the only outlet from Dyes Inlet to Sinclair Inlet, and connection to the greater Puget Sound. The Manette Bridge is determined to be a functionally obsolete and structurally deficient bridge that requires replacement, and the WSDOT is planning to have it replaced. The proposed bridge replacement work includes the following activities:

- Construction of temporary work trestles, which involves steel pile installation using both vibratory and impact driving methods;
- Construction of new bridge piers, which involves excavation of benthic material;
- Barge anchoring and usage;
- Removal of existing bridge; and
- Removal of temporary work platforms.

Since marine mammal species and stocks in the proposed action area could be affected by the proposed bridge replacement activities, the WSDOT is seeking an IHA that would allow the incidental, but not intentional, take of marine mammals by Level B behavioral harassment during the construction of the new Manette Bridge and removal of the existing bridge. The WSDOT states that small numbers of three species of marine mammals could potentially be taken by pile driving or other construction activities associated with

the bridge replacement work. However, with the proposed mitigation and monitoring measures, the numbers and levels of marine mammal takes would be reduced to the least amount practicable.

### Description of the Specific Activity

The Manette Bridge was originally built in 1930. The bridge was constructed with five steel truss main spans on six concrete piers, elements which are still part of today's bridge. A 1949 contract replaced the original wooden deck and timber trusses in the outer spans with concrete and steel. The primary areas of structural deficiencies are in the concrete piers and the structural steel trusses, which are nearing 80 years old. The concrete in the foundations is in varying states of deterioration. Testing and analysis of concrete taken from the main piers by WSDOT from 1976 through 2003 determined that deterioration in the concrete has resulted from a process called Alkali Silica Reaction (ASR).

ASR causes deterioration of mortars and concretes due to the swelling of gel formed by the reaction of alkali in cement-based materials with reactive silica in aggregates in the presence of water. The swelling of the gel generates tensile stresses in the specimen resulting in expansion and cracks. There is no known way to mitigate and fully address the ASR problem in the concrete foundations of the six piers supporting the steel truss spans.

Overall, the WSDOT determined that the substructure components of the existing Manette Bridge are in poor condition at the main piers (built in 1930) and in satisfactory condition at the approach piers (built in 1949). Columns and pier walls at the main spans exhibit leaching cracks, rust stains, delaminations, soft concrete, and formwork holes. Exposed rebar is visible above and below the tidal zone, however mass marine growth prevents an exact detailing of this exposure.

The foundation is exposed at all piers in varying degrees. Main Piers 2 and 3 are in the worst condition with the original footing and seals now indeterminate from each other. At the corners, corroded remnants of rebar are visible where the footings have been rounded to an approximate 4-ft (1.22-m) radius. Several cofferdams have been constructed around the different piers to shore up soft concrete. Some undermining is occurring at these piers due to local scour conditions.

Contract repairs to the main concrete piers were completed in 1949 (Piers 4 and 6) and 1991 (Pier 5) and 1996 (Piers 4 and 6). These repairs attempted to

encase the deteriorating concrete in the concrete foundations but were not effective since the core concrete with ASR continues to deteriorate.

In 1993, the WSDOT Bridge Engineer identified that the bridge superstructure (trusses and deck) could be rehabilitated to provide 20 or more years of additional service life. The cost to totally rehabilitate this bridge by: encasing and repairing all the concrete main piers; replacing corroded steel including rivets and connections; repainting the entire bridge and replacing the bridge deck could exceed 50–75% of the replacement costs. However, there are no practical means to restore or prevent further deterioration in the column and footing concrete. The condition of the reinforcing steel in the highly fractured substructure concrete is an added unknown. As a result of this assessment, the WSDOT determined that replacement of the bridge is warranted and necessary.

The proposed bridge replacement project would replace the structurally deficient and functionally obsolete Manette Bridge in the City of Bremerton with a new concrete bridge. The new Manette Bridge would be built parallel to, and immediately south of, the existing bridge with roadway connections to existing city street intersections on each end of the bridge. Construction of the project is proposed to begin in 2010 and continue for approximately 3 years.

The project would occur in three main phases. Construction sequence plan sheets are included in Appendix A of the WSDOT IHA application. First, the new bridge piers and central portion of the new bridge will be constructed. Second, the outermost spans of the existing bridge will be removed and the new bridge's outermost spans and abutments will be built. This work includes the completion of stormwater facilities for the new bridge. Finally, the remaining portions of the existing bridge will be demolished and removed. The construction elements associated with these phases are summarized below.

The construction of the new bridge would require the construction of new piers and demolition of existing piers, all of which include work below the mean lower low water (MLLW) mark. An estimated 3,900 cubic yards of concrete would be placed below the MLLW mark for the new bridge piers. Temporary work trestles would be built in Port Washington Narrows as part of this project to support both the construction of the new bridge and demolition of the existing bridge. This

also would include work below the MLLW mark. Barges would be used to transport and stage equipment and materials. They would be tethered with mooring lines and temporarily anchored buoys.

The footprint of the proposed approaches and abutments is primarily located within the existing bridge footprint. However, an additional 0.75 acre of land would be temporarily disturbed during construction and 0.15 acre of land would be permanently converted to roadway.

Work trestle construction would include pile driving and falsework bents. Conceptual work/demolition trestle plan sheets are included in Appendix B and D of the WSDOT IHA application.

The proposed project would construct 1.789 acre of new impervious surface (bridge and approaches) and would remove 1.133 acres of existing impervious surface, with a net increase of 0.656 acre. Runoff from the proposed project would be treated via the City of Bremerton stormwater facilities. In addition to treating the runoff from the new bridge, the stormwater system would treat runoff from an additional 0.81 acre of existing impervious surface, the stormwater from which is currently discharged untreated into Sinclair Inlet.

The following is a description of the sequence of anticipated work activities associated with the Manette Bridge replacement project.

#### *1. Construction of Work Trestles and Falsework Towers*

Separate work trestles would be constructed for the new bridge construction and existing bridge removal processes. The south trestles for access to the new bridge site would be constructed prior to the installation of the north trestles for bridge removal. The work trestles and associated falsework towers would be supported on steel pilings with diameters of 24 to 36 in. (0.61 to 0.91 m). The construction of the work trestles is estimated to take up to 9 months. The work trestles and falsework towers would be in place throughout the project duration, approximately 3 years.

The trestles would be located a few feet above the high water mark, with the exact height determined by the contractor and work site conditions. The trestles would be supported by steel girders attached to the piles and the deck would be composed of timbers. The new bridge construction work trestle would be supported by up to 360 piles and could cover an area of up to 40,000 ft<sup>2</sup> (3,716 m<sup>2</sup>). The bridge removal work trestle will be supported

by up to 170 piles and could cover an area of up to 15,900 ft<sup>2</sup> (1,477 m<sup>2</sup>). Up to 12 additional piles may be used for project related moorage.

All piles would be installed using a vibratory hammer unless an impact hammer is needed to drive a pile through consolidated material or meet bearing. Currently, pile driving is scheduled to occur July 1 to August 20, 2010, and October 6, 2010, to January 31, 2011, with an estimated 45 minutes per pile and 410 total hours of pile driving using a vibratory hammer. Pile driving activities would occur daily two hours after sunrise to two hours before sunset between April 1 and September 15, 2010. No pile driving will occur during nighttime hours.

Pile driving activities generate intense sound underwater, which could potentially impact marine mammal species in the project vicinity. For pile driving using an impact hammer, the driver consists of a heavy hydraulic hammer that falls by gravity to drive down the piling. Intense impulsive sounds with rapid rise time are generated with each hammer strike. Although each impulse is short (lasts for dozens of milliseconds), the sound pressure levels (SPLs) are extremely high and could exceed 200 dB re 1 microPa (peak) at 1 m. The source SPLs of impact pile driving depend on the size of the hammer, diameter of the piles to be driven, and substrate. For the impact hammer that would be used in the Manette Bridge replacement activities, the WSDOT used the data from the recent Washington State Ferries impact pile driving projects and showed that the source SPLs could be as high as 214 dB re 1 microPa (peak) at 1 m. Noises generated from impact pile driving are broadband (contains a wide spectrum of frequency) but major energy is concentrated between 200 1,000 Hz with less energy at higher frequencies.

Unlike pile driving using impact hammers, vibratory pile driving is achieved by means of a variable eccentric vibrator attached to the head of the pile. The installation process begins by placing a choker around the pile and lifting it into vertical position with the crane. The pile would then be lowered into position and set in place at the mudline. The pile would be held steady while the vibratory hammer installs the pile to the required tip elevation. Measured noise levels for similar projects conducted by the California Department of Transportation (CALTRANS) and WSDOT show that source levels are around 180–195 dB re 1 μPa (peak) at 1 m. Since underwater SPLs are expressed in terms of decibel

in reference to acoustic pressure of 1 μPa, the 19 dB difference between the source levels from impact pile driving (214 dB re 1 μPa) and vibratory pile driving (195 dB re 1 μPa) translates into more than three times the difference in acoustic pressure. Therefore, vibratory pile driving is much “quieter” than impact pile driving. However, because the transient sound produced by vibratory pile driving has a longer duration than impact pile driving pulses, it is arguable that a single batch of vibratory pile driving noise could contain more acoustic energy than a single impact hammer pulse in terms of sound exposure levels (SEL).

#### *2. Barge Anchoring and Usage*

Barges would be used extensively throughout the project duration to provide access to work areas, support machinery, deliver and stage materials, and as a collection surface for spoils, construction debris, and materials from demolition. The actual number and dimensions of barges to be used would be determined by the contractor and work site conditions. However, it is estimated that up to 6 barges would be used at one time. A typical barge dimension is approximately 290 ft (88.4 m) in length and 50 ft (15.2 m) in width. Typical barge draft is 4 to 8 ft (1.22 to 2.44 m) and typical freeboard is 3 to 6 ft (0.91 to 1.83 m). Barges would be used throughout the construction period, approximately 3 years.

During working hours, barges would be attached to mooring lines, the work trestles, or to other portions of the project area, depending on the construction and access needs. Up to 6 temporary buoys may be installed to moor barges during non-working hours. These buoys would be attached to one or more anchors, which may need to be driven, or excavated, due to hard ground and strong currents in the project area. If the contractor chooses to deploy a dynamic barge positioning system, it is expected that the hours the system is in use would coincide closely with pile driving activities.

Noise produced from a moored barge is not likely to be significant enough to affect marine mammals. However, if a dynamic positioning (DP) system is applied to stabilize the barge, sound generated by the DP system could be strong enough to adversely affect marine mammals in the vicinity. The intensity of the DP system would depend on the size of the vessel and the system output, nevertheless, its loudness is not likely to surpass that from vibratory pile driving at the same distances.

### 3. Construction of New Piers

Eight piers would support the new bridge, six in-water and two upland. The existing bridge has 13 piers, nine in-water and three upland. The total footprint of the piers would be 1,416 ft<sup>2</sup> (131.6 m<sup>2</sup>). The footprint of the nine in-water piers supporting the existing bridge is 8,726 ft<sup>2</sup> (810.7 m<sup>2</sup>).

Piers 1 and 8 are the bridge abutments and are located well above the mean high water line (MHW). Piers 2 through 7 are located below the MLLW line. The construction of the in-water piers (2 through 7) would take up to 18 months. The construction of the abutment piers (1 and 8) would occur during the bridge closure period (targeted duration of 3 months). The construction of each would include excavation of up to 3 shafts to support each pier, concrete pouring of each shaft, and construction of piers on top of new shafts.

Shaft casings would be installed and the shafts will be excavated using equipment positioned on the work trestles or barges.

To create a drilled shaft, a steel casing approximately 6 to 10 ft (1.8 to 3 m) in diameter is driven into the substrate using a vibratory hammer, and the material inside the casing is excavated using an auger or a clamshell dredge. During excavation a premixed bentonite or synthetic polymer slurry is sometimes added to stabilize the walls of the shaft. Spoils from shaft excavation would be placed in a large steel containment box located on a barge or on the work trestle for offsite transport. During the drilling, polymer slurry is typically placed into the hole to keep side walls of the shaft from caving.

After completion of the excavation, a steel reinforcing cage is placed into the hole to specified elevations. Concrete is then pumped into the hole using a tremie tube placed at the bottom of the excavation. As concrete is placed the tremie tube is raised but is maintained within the concrete. As the concrete is pumped into the hole, the slurry is displaced upward and removed from the top concrete using a vacuum hose. The slurry is pumped from the hole into large tanks located on the work trestle or on a barge, which is either recycled for use in the next shaft or transported off site. This procedure would be used on all shafts at each pier.

After shafts are completed, pre-cast concrete, stay-in-place forms would be stacked on top of the shafts up to the crossbeam elevation. A steel reinforcing cage would be placed inside the concrete forms and the columns would be filled with concrete. A pre-cast

concrete crossbeam or a cast-in-place crossbeam, or some combination of both would be constructed on top of the columns. Girders would be fabricated off site and would be shipped to the site on barges. The girders would then be placed on the piers and falsework towers between piers 2 and 7.

After completion of the girder placement and casting of diaphragms connecting the girders, post-tensioning strands would be placed into ducts cast in the girders. The post-tensioning strands will then be stressed. The roadway deck would then be formed and cast between piers 2 and 7.

Noise levels and characteristics generated by coastal construction work related to excavation and drilling are not well studied. Studies on construction of offshore oil industry facilities in the Arctic provide some insights on the noise levels and characteristics from marine dredging. Dredging and drilling noises are broadband with most of their energy concentrated in the lower range of the frequency spectrum, between 20 1,000 Hz. Nevertheless, these noises are expected to be much lower than those from vibratory pile driving at source locations.

### 4. Installation of Girders and Decking

Girders and decking would be installed using the work trestles, falsework towers, and cranes deployed on work barges. The roadway deck would be made of concrete and would be poured in place. This work is expected to take 3 to 4 months. Noises from this session of work are similar to those mentioned above.

### 5. Reconfiguration of Abutments and Roadway Approaches

The existing bridge abutments would be removed, along with the associated retaining walls. New retaining walls and abutments would be constructed. These activities, and associated construction access would require the temporary disturbance of 0.75 acre of land, of which 0.15 acre are vegetated and permanent removal of 0.15 acre of vegetation. This work, all in upland areas, includes 2000 cubic yards of fill. Once the abutments are complete, the new bridge approach roadways will be constructed. Disturbed areas on the east shore of the Port Washington Narrows would be restored with a mix of native trees and shrubs including marine riparian vegetation and shoreline enhancement. Noises from this session of work are similar to those mentioned above associated with pier construction.

### 6. Demolition of Existing Bridge

The demolition of the existing bridge would occur in phases over a period of 18 months. After the central portion of the new bridge is constructed, the outermost spans and abutments of the existing bridge would be demolished. Once the new abutments and outer spans are constructed, the demolition of the remainder of the existing bridge will proceed. Conceptual demolition plan sheets are included in Appendix D of the WSDOT IHA application.

The bridge structure above the water line would be cut into manageable sections, using conventional concrete and metal cutting tools, or a wire saw, and placed on barges for transport to approved waste or recycling sites. The portions of the piers below the water line would be cut into pieces using a wire saw. All slurry from wire cutting operations above the water line would be contained and removed. All slurry from wire cutting operations below the water line would be dispersed by the current. Piers would be cut off at the ground level except for one, Pier 4. Pier 4 was built up to encapsulate original creosote treated timbers. Complete removal of the pier is not feasible and if it is cut at the ground level, many creosote treated timbers may be exposed. To minimize the risk of contamination, Pier 4 would be cut two feet above ground level.

No information is available regarding noises generated from bridge structure cutting. However, since the cutting for bridge structures would be done above the water line, noise transmitted into the water via the structure is not expected to be significant.

### 7. Removal of Falsework Towers and Work Trestles

Once the demolition of the existing bridge is complete, the falsework towers and work trestles would be removed. Decking and girders would be placed on barges for transportation off-site. Piles would be removed using vibratory hammers, based on barges. The removal of the falsework towers and work trestles is expected to occur over 4 to 6 months.

Vibratory extraction is a common method for removing steel piling. The pile is unseated from the sediments by engaging the hammer and slowly lifting up on the hammer with the aid of the crane. Once unseated, the crane would continue to raise the hammer and pull the pile from the sediment. When the pile is released from the sediment, the vibratory hammer is disengaged and the pile is pulled from the water and placed on a barge for transfer upland.

Noise levels and characteristics from pile extraction using a vibratory hammer are not well studied, however, the intensity of the noise is expected to be higher than the intensity of noise from pile installation using the same vibratory hammer.

The Manette Bridge Replacement project is scheduled to begin in June 2010 and continue for up to three years. No in-water activities will be planned between March 1 and June 14 in water bellow the ordinary high water line.

### Description of Marine Mammals in the Area of the Specified Activity

Six marine mammal species/stocks occur in the area where the proposed Manette Bridge replacement work is planned. These six species/stocks are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias ubatus*), transient and Southern Resident killer whales (*Orcinus orca*), and gray whale (*Eschrichtius robustus*). All these marine mammals have been observed in southern Puget Sound during certain periods of the year and may occur in Sinclair Inlet, Port Washington Narrows and Dyes Inlet, although direct observation in the vicinity of the Manette Bridge may not be documented. General information on these marine mammal species can be found in Caretta *et al.* (2007), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf>. Refer to that document for information on these species.

To further gather information on the occurrence of these marine mammal species in the vicinity of the proposed project area, the WSDOT contracted ten surveys between the months of July 2006 and January 2007. This time period was chosen for sampling because it represents the time period when most in-water work activities would occur. Two pinniped species and zero cetaceans were observed. Thirty four harbor seals, one California sea lion and one unidentified pinniped, likely a California sea lion, were observed over the six month period. In general, cetacean observations are infrequent in the Puget Sound (Calambokidis and Baird 1994, Jefferies 2007). During ten surveys for marine mammals in Sinclair Inlet and Port Washington Narrows between July 2006 and January 2007, no cetaceans were observed. No marine mammals were observed during two of the ten surveys. Detailed results of the surveys are provided in a final report, which is included in Appendix E of the WSDOT IHA application.

Additional information on these species, particularly in relation to their occurrence in the proposed project area, is provided below.

#### 1. Harbor Seal

Three distinct harbor seal stocks occur along the west coast of the continental U.S., the Washington inland waters stock, Oregon/Washington coastal stock, and California stock (Caretta *et al.* 2009). The Washington inland waters stock of the Pacific harbor seal is distributed in inland waters including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery (Caretta *et al.* 2007), and is expected to occur in the proposed project area.

Harbor seal is the most common pinniped and the only marine mammal species that breeds in the inland marine waters of Washington (Calambokidis and Baird 1994). Pupping and molting typically occurs between April and August.

Individual harbor seals are frequently observed in the Port Washington Narrows, Sinclair Inlet and Dyes Inlet. Harbor seals were observed during eight of ten surveys between July 2006 and January 2007. No more than six individuals were observed during any one survey period. There are no documented harbor seal haul-out areas within 3 miles (4.8 km) of the Manette Bridge. One harbor seal haul-out estimated at less than 100 animals is documented in Dyes Inlet west of the Manette Bridge. These animals must pass through the Port Washington Narrows to gain access to Sinclair Inlet and the greater Puget Sound basin.

In 1999, Jefferies *et al.* (2003) recorded a mean count of 9,550 harbor seals in Washington's inland marine waters. The estimated population for this stock is approximately 14,612 harbor seals with a correction factor to account for animals in the water which were missed during the aerial surveys (Calambokidis and Baird 1994; Carretta *et al.* 2009). From 1991 to 1996, counts of harbor seals in Washington State have increased at an annual rate of 10% (Jefferies *et al.* 1997). Harbor seals are not considered to be "depleted" under the MMPA or listed as "threatened" or "endangered" under the Endangered Species Act (ESA).

#### 2. California Sea Lion

California sea lions occur throughout the Pacific Rim and are separated into three subspecies, of which only one occurs in western North America (Caretta *et al.* 2009). The subspecies is further separated into three stocks, the United States (US) stock, the Western

Baja California stock and the Gulf of California stock (Caretta *et al.* 2009).

The U.S. stock of California sea lion is expected to occur in the vicinity of the proposed project area. They breed in California and southern Oregon between May and July, but not in Washington. Pupping occurs on the breeding ground, typically one month prior to mating. Sea lions are typically observed in Washington between August and April, after they have dispersed from breeding colonies.

There are no documented California sea lion haul outs within 3 miles (4.8 km) of the Manette Bridge. Two California sea lion haul-outs estimated at less than 10 animals are documented on bouys in Rich Passage approximately 4 miles (6.4 km) to the east. Individuals are infrequently observed in the Port Washington Narrows, Sinclair Inlet and Dyes Inlet. One California sea lion was observed during one of ten surveys between July 2006 and January 2007. An unidentified pinniped was also recorded during one survey and is believed to be a California sea lion, although positive identification was not possible.

Population estimates are calculated by conducting pup counts. Because California sea lions do not breed in Washington, accurate estimates of the non-breeding population in Washington do not exist. Estimates from the 1980s suggest the population size was just under 3,000 by the mid-1980s (Bigg 1985; Gearin *et al.* 1986). In the 1990s, the number of sea lions in Washington appears to have either stabilized or decreased (Gearin *et al.* 1988; Calambokidis and Baird 1994). The entire population of the US stock of California sea lion is estimated to be approximately 238,000 (Caretta *et al.* 2009). The California sea lions are not considered to be "depleted" under the MMPA or listed as "threatened" or "endangered" under the ESA.

#### 3. Steller Sea Lion

Steller sea lion occur along the north Pacific Rim with the population center in the Gulf of Alaska and the Aleutian Island chain. This species is separated into two stocks, the eastern and western stocks. The Eastern stock ranges from southeast Alaska south to California (Loughlin *et al.* 1984). The Eastern stock breeds in Alaska, British Columbia, Oregon and California, but does not have breeding rookeries in Washington. Breeding typically occurs from May to July. Pupping occurs within days of returning to the breeding colony.

Individuals, especially adult males and juveniles, disperse widely and travel great distances outside of the

breeding season, including waters off and within Washington State. Individual Steller sea lions typically return to breeding grounds in May, although in 2007 and 2008 two to six individual Steller sea lions remained all summer near Nisqually (southern Puget Sound near Olympia) on the Toliva Shoals and Nisqually buoys. There was also one Steller sea lion observed at Point Defiance (near Tacoma, Washington) in July 2008. Furthermore, reports of Steller sea lions on the North Vashon, Manchester and Bainbridge Island bouys increased in winter 2007 - 2008 and spring 2008 although there are no estimates of individual numbers for these reports (WSDOT, 2009). According to Jefferies (2008) there are also records from the 1990's of 200 - 300 Steller sea lions using Navy floats at the Fox Island Acoustic Range. The majority of Steller sea lions are observed in the north Puget Sound and Strait of Juan de Fuca, although Steller sea lions are regularly observed at three haulout sites in central and southern Puget Sound. The nearest site, Shilshole Bay, is on the east side of the Puget Sound, adjacent to the city of Seattle approximately 12 miles (19.3 km) from the Manette Bridge.

Population estimates are calculated by conducting pup counts. Because Steller sea lions do not breed in Washington, accurate estimates of the non-breeding population in Washington do not exist. Using the most recent 2005 pup counts from aerial surveys across the range of the eastern stock, the total population of the eastern stock of Steller sea lion is estimated to be between 46,000 and 58,000 (Pitcher *et al.* 2007; Angliss and Allen 2009). The eastern stock of Steller sea lion is listed as "threatened" under the ESA, and is designated as a "depleted" stock under the MMPA.

#### 4. Gray Whale

The North Pacific gray whale stock is divided into two distinct stocks: the eastern North Pacific and western North Pacific stocks (Rice *et al.* 1984; Angliss and Allen 2009). The eastern North Pacific stock ranges from Alaska, where they summer, to Baja California, where they migrate to calve in the winter.

Gray whales occur frequently off the coast of Washington during their southerly migration in November and December, and northern migration from March through May (Rugh *et al.* 2001, Rice *et al.* 1984). Gray whales are observed in Washington inland waters regularly between the months of January and September, with peaks between March and May. The average tenure within Washington inland waters is 47 days and the longest stay was 112 days

(Cascadia Research Collective, unpub. report). Gray whales are reported in Sinclair Inlet, Port Washington Narrows or Dyes Inlet during migration. Between 2001 and 2007, gray whale sightings were reported during three of the years (Orca Network 2007). Reports occurred in April 2002, February, March and May 2005, and March and April 2007. The May 2005 observation was a stranding mortality at the Kitsap Naval Base in Bremerton (Orca Network 2007).

Systematic counts of the eastern North Pacific gray whales have been conducted by shore-based observers during their southbound migration along the central California coast. The most recent abundance estimate is based on counts made during the 2001-02 seasons. Based on the data, the abundance estimate for this stock of gray whale is 18,178 individuals (Angliss and Allen 2009). The eastern North Pacific gray whale was removed from the ESA-list in 1994, due to steady increases in population abundance. Therefore, it is not considered "endangered" or "threatened" under the ESA.

#### 5. Killer Whale

Two distinct forms, or ecotypes, of killer whales "residents" and "transients" are found in the greater Puget Sound. These two ecotypes are different populations of killer whales that vary in morphology, ecology, behavior, and genetics. Both ecotypes of killer whales are not known to intermix with one another.

Resident Killer Whales are noticeably different from both transient and offshore forms. The dorsal fin is rounded at the tip and falcate (curved and tapering). Resident whales have a variety of saddle patch pigmentations with five different patterns recognized. They've been sighted from California to Alaska. Resident whales primarily eat fish.

The "resident" population that could occur in the proposed project area is the Southern Resident killer whale (SRKW). This population contains three pods (or stable family-related groups) J pod, K pod, and L pod and is considered a stock under the MMPA. Their range during the spring, summer, and fall includes the inland waterways of Puget Sound, Strait of Juan de Fuca, and Southern Georgia Strait. Their occurrence in the coastal waters off Oregon, Washington, Vancouver Island, and more recently off the coast of central California in the south and off the Queen Charlotte Islands to the north has been documented. Little is known about the winter movements and range of the Southern Resident stock. Resident

killer whales feed exclusively on fish such as salmon (Calambokidis and Baird 1994).

Southern resident killer whale presence is possible but unlikely in the proposed project area. They were last seen in the vicinity of the proposed project area in 1997. Nineteen members of L pod (subpod L-25) arrived on October 21, 1997 and stayed in Dyes Inlet for 30 days (WSDOT 2009). A fall chum run has been suggested as the reason for the extended stay. The only access to Sinclair Inlet is to the north (Agate Passage) or south (Rich Passage) of Bainbridge Island.

The Southern Resident killer whale population is currently estimated at about 86 whales (Carretta *et al.* 2009), a decline from its estimated historical level of about 200 during the mid- to late 1800s. Beginning in about 1967, the live-capture fishery for oceanarium display removed an estimated 47 whales and caused an immediate decline in SRKW numbers. The population fell an estimated 30% to about 67 whales by 1971. By 2003, the population increased to 83 whales. Due to its small population size, NMFS listed this segment of the population as endangered under the Endangered Species Act (ESA). This population is also listed as depleted under the MMPA.

Transient killer whales occur throughout the eastern North Pacific, primarily in coastal waters. Individual transient killer whales have been documented as traveling great distances, reflecting a large home range. The dorsal fin of transient whales tends to be more erect (straighter at the tip) than those of resident whales. Saddle patch pigmentation of transient killer whales is restricted to two patterns. Pod structure is small (e.g., fewer than 10 whales) and dynamic in nature. Transient killer whales feed exclusively on other marine mammals such as dolphins, sea lions, and seals.

The transient killer whale population that could occur in the proposed project area is the West Coast transient stock. It is a trans-boundary stock, which includes killer whales from British Columbia. The presence of this killer whale population in the south Puget Sound is considered rare. In 2008, there were only two reports of transient orca whales in the south Puget Sound. One of these reports occurred in January just east of Maury Island and the other report of transients occurred in August in the Tacoma narrows (WSDOT 2009).

Preliminary analysis of photographic data results in a minimum of 314 killer whales belonging to the West Coast transient stock (Angliss and Allen

2009). This number is also considered the minimum population estimate of the population since no correction factor is available to provide a best estimate of the population. At present, reliable data on trends in population abundance for the West Coast transient stock of killer whales are unavailable (Angliss and Allen 2009). This stock of killer whale is not designated as "depleted" under the MMPA nor is it listed under the ESA.

### Potential Effects on Marine Mammals and Their Habitat

Anticipated impacts resulting from the Manette Bridge Replacement project include disturbance from increased human presence and marine traffic if marine mammals are in the vicinity of the proposed project area, Level B harassment by noises generated from the construction work such as pile driving and dredging activities, and the effect of the new bridge and stormwater system on water quality.

#### 1. Impacts from Anthropogenic Noise

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1  $\mu\text{Pa}^2$  1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB re 1  $\mu\text{Pa}$  (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose

dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1  $\mu\text{Pa}^2$ -s) in the aforementioned experiment (Finneran *et al.* 2002).

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Current NMFS standards for preventing injury from PTS and TTS is to require shutdown or power-down of noise sources when a cetacean species is detected within the isopleths corresponding to SPL at received levels equal to or higher than 180 dB re 1  $\mu\text{Pa}$  (rms), or a pinniped species at 190 dB re 1  $\mu\text{Pa}$  (rms). Based on the best scientific information available, these SPLs are far below the threshold that could cause TTS or the onset of PTS. Certain mitigation measures proposed by the WSDOT, discussed below, can effectively prevent the onset of TS in marine mammals, by either reducing the source levels (using an air bubble curtain system) and by shut-down and power down procedures for pile driving.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, like TS, marine mammals whose acoustical sensors or environment are being masked are also impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from the proposed bridge replacement activities, such as pile driving, vessel traffic, and dredging, is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by killer whales. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009)

and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking impacts the species at population, community, or even ecosystem levels (instead of individual levels caused by TS). Masking affects both senders and receivers of the signals and has long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, and dredging activities, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed bridge replacement is confined in an area of inland waters that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerrero Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray



whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic construction noise associated with bridge replacement are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1  $\mu$ Pa at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120 dB re 1  $\mu$ Pa for continued noises (vibratory pile driving and dredging).

As far as airborne noise is concerned, as mentioned before, the nearest pinniped haulout (harbor seal) is in Dyes Inlet, which is approximately 3 miles (4.8 km) west of the proposed project area. NMFS does not expect that airborne noise from pile driving would reach harassment levels at this distance.

## 2. Impacts from Presence of Human Activities

In addition to noise induced disturbances and harassment, the increased human presence and vessel traffic associated with the bridge replacement construction is also expected to have adverse impacts to marine mammals in the vicinity of the proposed project.

Some of the expected impacts could result from work trestles and barge anchoring. The construction and demolition work trestles would cover up to 55,900 square feet (5,193 m<sup>2</sup>) of the Port Washington Narrows throughout the construction period, a duration of approximately three years, although neither trestle would be in place for that entire period. The size of these trestles has been reduced to the greatest extent practicable according to WSDOT. The demolition trestle would be installed during the in-water work window immediately prior to initiation of bridge demolition activities occurring from this trestle and both trestles would be removed as soon as practicable following the completion of construction and demolition activities. Barge anchoring would occur adjacent

to the construction and demolition work trestles creating a passage the width of the shipping channel between the Port Washington Narrows and Sinclair Inlet. Killer whales, if they happen to be present in the vicinity of the area, could become confined by psychological barriers such as nets or low walls that they can physically cross, but for unknown reasons do not. Such was the case in 1994 in Barnes Lake near Ketchikan, Alaska, when 10 killer whales entered following salmon but then refused to leave until human intervention chased them out of the lake (Anonymous 1995; Bain 1995). In 1997, 19 members of the L pod of the Southern Resident killer whales entered Dyes Inlet near Bremerton, Washington, which is approximately 3 miles (4.8 km) west of the proposed project area and is surrounded by urban and residential development, and stayed there for nearly 30 days (Wiles 2004; NMFS 2008). The long length of residence of killer whales in this area was highly unusual and the reason is unclear, but may have been related to food abundance since it was coincidence to a strong run of chum salmon into Chico Creek between late October and November, or a reluctance by the whales to depart the inlet because of the physical presence of a bridge crossing the Port Washington Narrows and associated road noise (Wiles 2004; NMFS 2008). The work trestles and barges may present a similar situation that would discourage or prevent killer whales from exiting Dyes Inlet or Port Washington Narrows and returning to more open water if the whales happen to enter the inlet. However, as mentioned before, the occurrence of killer whales in the vicinity of proposed project area is not frequent.

## 3. Impacts from Water Quality

Marine mammals are especially vulnerable to contaminants because their apex trophic levels in the ecosystem promote bioaccumulation of contaminants. Water quality conditions will generally improve as a result of the construction of stormwater treatment facilities associated with the project. Currently, stormwater from the existing roadway and bridge is discharged, untreated, into the Port Washington Narrows. The WSDOT states that post project, all stormwater leaving the bridge would receive treatment by the city of Bremerton. Therefore, the impact from water quality is expected to be reduced as the result of the proposed bridge replacement project.

## Proposed Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Manette Bridge replacement project, the WSDOT worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the construction activities.

### 1. Overall Construction Activities

The WSDOT states that all its construction is performed in accordance with the current WSDOT Standard Specifications for Road, Bridge, and Municipal Construction. Special Provisions contained in contracts are used in conjunction with, and supersede, any conflicting provisions of the Standard Specifications.

WSDOT activities are subject to state and local permit conditions. WSDOT states that it uses the best guidance available (e.g., best management practices and conservation measures) to accomplish the necessary work while avoiding and minimizing environmental impacts to the greatest extent possible.

The WSDOT contractor is expected to be responsible for the preparation of a Spill Prevention, Control, and Countermeasures plan to be used for the duration of the project. The plan would be submitted to the WSDOT Project Engineer prior to the commencement of any construction activities. A copy of the plan with any updates will be maintained at the work site by the contractor. A detailed discussion of the plan is provided in the WSDOT's IHA application.

### 2. Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to marine mammals, all the construction equipment would comply with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

### 3. Timing Windows

Timing restrictions are used to avoid construction activities that generate relatively intense underwater noises

(i.e., pile driving, dredging, and dynamic positioning) when ESA-listed species are most likely to be present. If an ESA-listed marine mammal species is detected in the vicinity of the project area, pile driving and dredging operations will be halted and stationing construction vessels will turn off dynamic positioning systems. WSDOT states that it will comply with all in-water timing restrictions as determined through the MMPA take authorization. Pile driving activities would only be conducted during daylight hours. If the safety zone (see below) is obscured by fog or poor lighting conditions, impact pile driving will not be initiated until the entire safety zone is visible. In addition, no in-water work would be conducted between March 1 and June 14 in water below the ordinary high water line.

#### 4. Establishment of Zones of Safety and Influence

For impact pile driving, the safety zones are defined as the areas where received SPLs from noise source exceed 180 dB re 1  $\mu$ Pa (rms) for cetaceans or 190 dB re 1  $\mu$ Pa (rms) for pinnipeds. Repeated and prolonged exposure to SPLs above these values may cause TTS to cetaceans and pinnipeds, respectively. The radii of the safety zones would be determined through empirical measurements of acoustic data. Prior to acquiring acoustic data, the safety zones shall be established based on the worst-case scenario measured from impact pile driving of 36-inch (0.91 m) steel pile conducted elsewhere, such as the Anacortes or Mukiteo ferry terminals. Acoustic measurements indicate that source levels are approximately 201 dB re 1  $\mu$ Pa (rms) at 10 m for both pile driving activities for Anacortes and Mukiteo ferry terminal constructions when the 36-inch (0.91 m) piles were hammered in (Laughlin 2007; Sexton 2007). Approximation of the received levels of 180 and 190 dB re 1  $\mu$ Pa (rms) by using an acoustic propagation spreading model between spherical and cylindrical propagation,

$$TL = 15 \log(R_{RL}/R_{SL}),$$

where TL is the transmission loss (in dB), RRL is the distance at received levels (either 180 or 190 dB), and RSL is the distance (10 m) at source level (201 dB). The results show that the distances for received levels 180 and 190 dB re 1  $\mu$ Pa (rms) are approximately 251 m and 54 m, respectively. NMFS expects that the modeled safety zones are reasonably conservative as the propagation model does not take into consideration other transmission loss factors such as sound absorption in the water column.

Once impact pile driving begins, NMFS requires that the contractor adjust the size of the safety zones based on actual measurements of SPLs at various distances to determine the most conservative (the largest) safety zones at which the received levels are 180 and 190 dB re 1  $\mu$ Pa (rms).

Since the source levels for vibratory pile driving are expected to be under 180 dB re 1  $\mu$ Pa (rms) at 10 m, no safety zones would be established for vibratory pile driving.

In addition, WSDOT and its contractor shall establish zones of influence (ZOIs) at received levels of 160 and 120 dB re 1  $\mu$ Pa (rms) for impulse noise (noise from impact pile driving) and non-impulse noise (such as noise from vibratory pile driving and dynamic positioning system), respectively. These SPLs are expected to cause Level B behavioral harassment to marine mammals. The model based approximation for the distance at 160 dB received level is 5,412 m from pile driving based on the most conservative measurements from the Anacortes or Mukiteo ferry terminal construction (201 dB re 1  $\mu$ Pa (rms) at 10 m; Laughlin 2007; Sexton 2007), using the same spreading model discussed above. Once impact pile driving starts, the contractor shall conduct empirical acoustic measurements to determine the most conservative distance (the largest distance from the pile) where the received levels begin to fall below 160 dB re 1  $\mu$ Pa (rms).

As far as non-pulse noises are concerned, for which the Level B behavioral harassment is set at a received level of 120 dB re 1  $\mu$ Pa, no simple modeling is available to approximate the distance (though direct calculation using the spreading model puts the 120 dB received level at 100 km, this simple approximation no longer works at this long distance due to range-dependent propagation involving complex sound propagation behavior that cannot be ignored). NMFS uses the empirical underwater acoustic measurements from vibratory pile driving of 42 48-inch (1.06 1.22 m) diameter piles at the San Francisco-Oakland Bay Bridge construction as a model and expects that the distance at a received level of 120 dB is less than 1,900 m from the pile (CALTRANS 2009). Likewise, WSDOT and its contractor shall conduct empirical acoustic measurements to determine the actual distance of 120 dB re 1  $\mu$ Pa (rms) from the pile.

All safety and influence zones shall be monitored for marine mammals prior to and during construction activities. Please refer to the Monitoring and

Reporting Measures section for a detailed description of monitoring measures.

#### 5. Shutdown Measures

To prevent marine mammals from exposure to intense sounds that could potentially lead to TTS (i.e., received levels above 180 dB and 190 dB re 1  $\mu$ Pa (rms) for cetaceans and pinnipeds, respectively), no impact pile driving shall be initiated when marine mammals are detected within these safety zones. In addition, during impact driving, when a marine mammal is detected within the respective safety zones or is about to enter the safety zones, impact pile driving shall be halted and shall not be resumed until the animal is seen to leave the safety zone on its own, or 30 minutes has elapsed until the animal is last seen.

WSDOT also agrees that pile driving and dredging activities would be suspended when ESA-listed marine mammals (Steller sea lion and killer whale) are detected within the zone of behavioral harassment (160 dB re 1  $\mu$ Pa for impulse sources and 120 dB re 1  $\mu$ Pa for non-impulse sources) and that all vessels' dynamic positioning systems would be turned off. Therefore, no take of ESA-listed marine mammal species or stocks is expected.

#### 6. "Soft Start" Impact Pile Driving or Ramp-up

Although marine mammals will be protected from Level A harassment by establishment of an air-bubble curtain during impact pile driving and marine mammal observers monitoring a safety zone, monitoring may not be 100 percent effective at all times in locating marine mammals. Therefore, WSDOT proposes to use a 'soft-start' technique at the beginning of each day's in-water pile driving activities or if pile driving has ceased for more than one hour to allow any marine mammal that may be in the immediate area to leave before pile driving reaches full energy.

For vibratory pile driving, the soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a one minute waiting period. The procedure will be repeated two additional times. If an impact hammer is used on a pile greater than 10 inches in diameter, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a one minute waiting period, then two subsequent 3-strike sets. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any

pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

### 7. Sound Attenuation Measures

Specific to pile driving, the following mitigation measures are proposed by WSDOT to reduce impacts to marine mammals to the greatest extent practicable.

All steel piles would be installed using a vibratory hammer until an impact hammer is needed for bearing or if a pile encounters consolidated material. If vibratory installation is not possible due to the substrate, an impact pile driver would be used. An air bubble curtain(s) will be employed during impact installation of all steel piles. Detailed description and specification of the air bubble curtain system is provided in Appendix C of the WSDOT's IHA application.

WSDOT will provide bubble curtain performance criteria to the contractor, which include:

- Piling shall be completely engulfed in bubbles over the full depth of the water column at all times when an impact pile driver is in use.

- The lowest bubble ring shall be in contact with the mud line for the full circumference of the ring. The weights attached to the bottom ring shall ensure complete mud line contact. No parts of the ring or other objects shall prevent the full mud line contact.

- Bubblers shall be constructed of minimum 2-inch (5.1-cm) inside diameter aluminum pipe with 1/16-inch (0.16-cm) diameter bubble release holes in four rows with 3/4-inch (1.9-cm) spacing in the radial and axial directions. Bubblers shall be durable enough to withstand repeated deployment during pile driving and shall be constructed to facilitate underwater setup, knockdown, and reuse on the next pile.

- One or more compressors shall be provided to supply air in sufficient volume and pressure to self-purge water from the bubblers and maintain the required bubble flux for the duration of pile driving. Compressors shall be of a type that prevents the introduction of oil or fine oil mist by the compressed air into the water. If there is presence of oil film or sheen on the water surface in the vicinity of the operating bubbler, the contractor shall immediately stop work until the source of oil film or sheen is identified and corrected.

- The system shall provide a bubble flux of 3.0 cubic meters (m<sup>3</sup>) per minute per linear meter of pipe in each layer (32.91 cubic feet, or 0.93 m<sup>3</sup>, per minute per linear foot of pipe in each layer). The total volume of air per layer is the

product of the bubble flux and the circumference of the ring:

$Vt=3.0 \text{ m}^3/\text{min}/\text{m} \times \text{Circum of the aeration ring in meters.}$

or

$Vt=32.91 \text{ ft}^3/\text{min}/\text{ft} \times \text{Circum of the aeration ring in meters.}$

- The bubble ring manifold shall incorporate a shut off valve, flow meter, and a throttling globe valve with a pressure gauge for each bubble ring supply.

- Prior to first use of the bubble curtain during pile driving, the fully-assembled system shall be test-operated to demonstrate proper function and to train personnel in the proper balancing of the air flow to the bubblers. The test shall also confirm the calculated pressures and flow rates at each manifold ring. The Contractor shall submit an inspection/performance report to WSDOT within 72 hours following the performance test.

- The WSDOT Office of Air Quality and Noise has prepared a noise monitoring plan for the Manette Bridge Replacement Project (Appendix H). To comply with the provisions of the plan, the State will conduct hydroacoustic monitoring during construction to evaluate in water noise levels.

### 8. Ensure Regulation Compliance

Finally, WSDOT policy and construction administration practice is to have a WSDOT inspector on site during construction. The role of the inspector is to ensure contract compliance. The inspector and the contractor each have a copy of the Contract Plans and Specifications on site and are aware of all requirements. The inspector is also trained in environmental provisions and compliance.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- the proven or likely efficacy of the specific measure to minimize adverse impacts as planned
- the practicability of the measure for applicant implementation, including

consideration of personnel safety, practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Proposed Monitoring and Reporting Measures

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present. The proposed monitoring and reporting measures for the Manette Bridge replacement project are provided below.

#### 1. Marine Mammal Observers

WSDOT proposes that a minimum of two qualified and NMFS-approved marine mammal observers (MMOs) would be present on site at all times during steel pile driving. In order to be considered qualified, WSDOT lists the following requirements for prospective MMOs:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. MMOs shall use binoculars to correctly identify the target.

- Advanced education in biological science, wildlife management, mammalogy or related fields (Bachelors degree or higher is preferred).

- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).

- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds), including the identification of behaviors.

- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.

- Writing skills sufficient to prepare a report of observations.
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

## 2. Marine Mammal Monitoring

WSDOT has developed a monitoring plan (Appendix G of the WSDOT IHA application) in conjunction with NMFS that will collect sighting data for each distinct marine mammal species observed during the proposed Manette Bridge replacement construction activities that generate intense underwater noise. These activities include, but are not limited to, impact and vibratory pile driving, use of dynamic positioning system by construction and supporting vessels, and sediment dredging. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle will also be included. An example of a marine mammal sighting form is included in Appendix I of the WSDOT's IHA application.

In addition, for impact pile driving, WSDOT proposes the following Marine Mammal Monitoring Plan and shut down procedures:

- At least two MMOs will be on site to monitor the safety and influence zones by using a range finder or hand held global positioning system (GPS) device. The zone will be monitored by driving a boat along and within the radius while visually scanning the area, and or monitoring from shore if there is a vantage point that will allow full observation of the zone.
- If the safety zone is obscured by fog or poor lighting conditions, pile driving will not be initiated until the entire safety zone is visible.
- The safety zone will be monitored for the presence of marine mammals for 30 minutes prior to impact pile driving, during pile driving, and 20 minutes after pile driving activities.
- No impact pile driving will be started if a marine mammal is detected within the respective safety zones. Pile driving may begin if a marine mammal is seen leaving the safety zone, or 30 minutes has elapsed since the marine mammal is last seen inside the safety zone.
- If marine mammals are observed, their location in relation to the safety and influence zones, and their reaction (if any) to pile driving activities will be documented.

- Monitoring of the safety zone will continue for 20 minutes following the completion of pile driving.

## 3. Reporting

WSDOT shall submit weekly marine mammal monitoring reports from the time when in-water construction activities are commenced to NMFS Office of Protected Resources (OPR). These weekly reports would include a summary of the previous week's monitoring activities and an estimate of the number of marine mammals that may have been disturbed as a result of in-water construction activities.

In addition, if an IHA is issued to WSDOT for the incidental take of marine mammals from the proposed Manette Bridge replacement project, WSDOT shall provide NMFS OPR with a draft final report within 90 days after the expiration of the IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to the construction activities. If no comments are received from NMFS OPR within 30 days, the draft final report will be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

## Estimated Take by Incidental Harassment

As mentioned earlier in this document, the potential effects to marine mammals from the proposed activities include disturbance from increased human presence and marine traffic and from noises generated from the construction work such as pile driving and dredging activities. The proposed mitigation measures of using air bubble curtain systems would prevent marine mammals from onset of TTS by impact pile driving and reduce Level B behavioral harassment due to the effective attenuation by the air bubble systems. Therefore, the following analyses focus on potential noise impacts that could cause Level B behavioral harassment, based on the WSDOT contracted surveys for the entire proposed project area (WSDOT 2009).

### 1. Harbor Seal

There are no harbor seal haulouts within 3 miles (4.8 km) of the project. The nearest haulout is in Dyes Inlet and animals must move through the Port Washington Narrows to access Sinclair Inlet and the greater Puget Sound. Individual harbor seals moving between Sinclair and Dyes Inlets would be exposed to project activities.

A total of 34 harbor seals were detected during ten surveys conducted during the same time of year pile driving will occur, between July and January. The age, sex and reproductive condition of the animals was not determined. For the proposed Manette Bridge replacement activities, it is reasonable to assume that similar numbers of animals would be encountered during an average 10-day period. WSDOT anticipates that for every day of construction activities, between 3 and 4 harbor seals may be encountered, although it is possible that some of these animals will be the same individuals. If in-water construction activities occur every day of the year (258 days between June 15 and February 28), approximately 877 harbor seals (or about 6% of the Washington inland waters stock of harbor seals) could be encountered in the vicinity of the proposed bridge replacement work. However, it is not likely that every harbor seal would be taken by Level B behavioral harassment since not every animal would be exposed to received levels above 160 dB re 1  $\mu$ Pa (rms) from an impulse source (such as impact pile driving) or above 120 dB re 1  $\mu$ Pa (rms) from a non-impulse source (such as vibratory pile driving or dredging). Likewise, not every single harbor seal would respond to the sight of human or vessel traffic in the vicinity of the project area. Therefore, the estimated number of 877 represents the upper-limit of the number of harbor seals that could be affected by Level B behavioral harassment as a result of exposure to Manette Bridge replacement related construction activities.

### 2. California Sea Lion

There are no California sea lion haulouts within three miles of the project. The nearest haulout is in Rich Passage, east of the Port Washington Narrows in more open water. Individual California sea lions moving between Sinclair and Dyes Inlets could be exposed to project activities.

A total of one, possibly two California sea lions were detected during ten surveys conducted during the same time of year pile driving would occur, between July and January. The age, sex and reproductive condition of the animals was not determined. For the proposed Manette Bridge replacement activities, it is reasonable to assume that similar numbers of animals would be encountered during an average 10-day period. WSDOT anticipates that for every 10 days of construction activities, between 1 and 2 California sea lions may be encountered, although it is possible that some of these animals will

be the same individuals. If in-water construction activities occur every day of the year (258 days between June 15 and February 28), up to 516 California sea lions (or about 0.2% of the US stock of California sea lions) could be encountered in the vicinity of the proposed bridge replacement work. However, it is not likely that every California sea lion would be taken by Level B behavioral harassment since not every animal would be exposed to received levels above 160 dB re 1  $\mu$ Pa (rms) from an impulse source (such as impact pile driving) or above 120 dB re 1  $\mu$ Pa (rms) from a non-impulse source (such as vibratory pile driving or dredging). Likewise, not every single California sea lion would respond to the sight of human or vessel traffic in the vicinity of the project area. Therefore, the estimated number of 516 represents the upper-limit of the number of harbor seals that could be affected by Level B behavioral harassment as a result of exposure to Manette Bridge replacement related construction activities.

### 3. Steller Sea Lion

As stated earlier, the nearest Steller sea lion haulout is approximately 12 miles (19.3 km) northeast of the proposed project area in Shilshole Bay on the east side of the Puget Sound, adjacent to the city of Seattle. No Steller sea lions were sighted during the ten surveys contracted by WSDOT, and NMFS considers it is very unlikely that a Steller sea lion would occur in the vicinity of the proposed project area. The implementation of the aforementioned mitigation measures, including halting all pile driving and dredging activities and turning off construction vessels' dynamic positioning systems when a Steller sea lion is detected about to enter the zone of influence (received levels at or above 160 dB re 1  $\mu$ Pa (rms) for impulse noise or 120 dB re 1  $\mu$ Pa (rms) for non-impulse noise). Therefore, NMFS does not believe Steller sea lion would be affected.

### 4. Killer Whale

Killer whales (southern resident) have been documented in the project vicinity once in the last ten years (WSDOT 2009). No killer whales were sighted during the ten surveys contracted by WSDOT, and NMFS considers it rare that a killer whale would occur in the vicinity of the proposed project area. The implementation of the aforementioned mitigation measures, including halting all pile driving and dredging activities and turning off construction vessels' dynamic positioning systems when a killer whale

is detected about to enter the zone of influence (received levels at or above 160 dB re 1  $\mu$ Pa (rms) for impulse noise or 120 dB re 1  $\mu$ Pa (rms) for non-impulse noise). Therefore, NMFS does not believe killer whale would be affected.

### 5. Gray Whale

Individual gray whales have been observed near the project area in four of the last eight years (WSDOT 2009). No gray whales were sighted during the ten surveys contracted by WSDOT, and NMFS considers it rare that a gray whale would occur in the vicinity of the proposed project area. Most grays whales spend winters in their breeding/calving grounds around Baja California and summers in feeding grounds around Bering Sea and the Arctic. The few gray whales that occur in the vicinity of the proposed project area are likely the ones visiting the area on their north-south migration route. Based on past occurrence of gray whales in the area and using conservative probability estimate, NMFS considers that no more than 2 individuals of gray whales (0.01% of the Eastern North Pacific gray whale population) would be exposed to underwater construction noise SPL that could cause Level B behavioral harassment annually as a result of the proposed Manette Bridge replacement project.

### Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any

responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSDOT's specified activities have been described based on best estimates of the planned Manette Bridge replacement project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge replacement project, such as impact pile driving, are high intensity. However, WSDOT plans to use vibratory pile driving and to avoid using impact pile driving as much as possible, therefore eliminating the intense impulses that could cause TTS to marine mammals when repeatedly exposed in close proximity. In addition, WSDOT indicates that if impact pile driving is to be conducted, an air bubble curtain system would be used to attenuate the noise level. Furthermore, shutdown of pile driving would be implemented when a marine mammal is spotted within the 180 dB and 190 dB re 1  $\mu$ Pa (rms) safety zones for cetaceans and pinnipeds, respectively. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B TTS from being exposed to intense construction noise.

Animals exposed to construction noise associated with the proposed bridge replacement work would be limited to Level B behavioral harassment only, i.e., the exposure of received levels for impulse noise between 160 and 180 dB re 1  $\mu$ Pa (rms) (from impact pile driving) and for non-impulse noise between 120 and 180 dB re 1  $\mu$ Pa (rms) (from vibratory pile driving, dredging, and dynamic positioning of construction vessels). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration. The modeled 160 dB isopleths from impact pile driving is 5,412 m from the pile, and the estimated 120 dB isopleths from vibratory pile driving is approximately 1,900 m from the pile. However, the actual zone of influence from impact pile driving is expected to be much smaller due to other sound attenuation factors not considered in the spreading model. Furthermore, although in-water construction activities are expected to be conducted everyday during daylight hours between June 15 and February 28, the total duration for pile driving is expected to be approximately 410 hours, or 41 working days based on 10 hours of daylight for

each working day. WSDOT also plans to use barge anchoring instead of dynamic positioning systems for construction vessels, thus further reducing noise input into the water column. Therefore, the underwater noise impacts from the proposed Manette Bridge replacement construction is expected to have a low level of noise intensity, and be of short duration and localized. These low intensity, localized, and short-term noise exposures, when received at distances of Level B behavioral harassment (i.e., 160 dB re 1  $\mu$ Pa (rms) from impulse sources and 120 dB re 1  $\mu$ Pa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed Manette Bridge replacement project are not expected to affect marine mammal annual rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS preliminarily finds that the Manette Bridge replacement project will result in the incidental take of small numbers of Pacific harbor seals, California sea lions, and gray whales by Level B harassment only, and that the total taking from harassment will have a negligible impact on the affected species or stocks.

#### **Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action.

#### **Endangered Species Act (ESA)**

There are two marine mammal species and two fish species that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the study area: Eastern North Pacific Southern Resident killer whale, Eastern U.S. Steller sea lion, Chinook salmon, and steelhead trout. Under section 7 of the ESA, the Federal Highway Administration (FHWA) and WSDOT have consulted with NMFS Northwest Regional Office (NWRO) on the proposed Manette Bridge replacement project. In a memo issued with its August 3, 2009, Biological Opinions, NMFS NWRO stated that the proposed bridge replacement may effect, but is not likely

to adversely affect the listed marine mammal species and stocks.

The proposed issuance of an IHA to WSDOT constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. Moreover, as the effects of the activities on listed marine mammals and salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion and accompanying memo issued to the FHWA on August 3, 2009, pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA for this activity would not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

#### **National Environmental Policy Act (NEPA)**

NMFS is in the process of preparing an Environmental Assessment (EA) for the take of marine mammals incidental to the Manette Bridge replacement construction activities, and will make a final NEPA determination before issuing a final IHA.

Dated: March 16, 2010.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2010-6248 Filed 3-19-10; 8:45 am]

**BILLING CODE 3510-22-S**

---

## **DEPARTMENT OF DEFENSE**

### **Department of the Air Force**

#### **U.S. Air Force Scientific Advisory Board Notice of Meeting**

**AGENCY:** Department of the Air Force, U.S. Air Force Scientific Advisory Board.

**ACTION:** Meeting notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place on Tuesday, April 13th, 2010, at the 11th Air Force Headquarters Building, 10480 22d Street, Elmendorf Air Force Base, Alaska, 99506. The meeting will be from 8 a.m.-12:15 p.m.

The purpose of the meeting is to hold the SAB quarterly meeting to review ongoing classified FY10 studies, assess pre-decisional study material, and conduct classified discussions on Elmendorf Air Force Base missions and how capabilities are used in the field; this knowledge will be applied to current and future studies.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that all sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Anthony M. Mitchell, 301-981-7135, United States Air Force Scientific Advisory Board, 1602 California Ave., Ste. #251, Andrews AFB, MD 20762, [anthonym.mitchell@pentagon.af.mil](mailto:anthonym.mitchell@pentagon.af.mil).

**Bao-Anh Trinh, YA-3,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2010-6215 Filed 3-19-10; 8:45 am]

**BILLING CODE 5001-05-P**

**DEPARTMENT OF EDUCATION****Office of Innovation and Improvement (OII); Overview Information; Ready-to-Learn Television Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010**

Catalog of Federal Domestic Assistance (CFDA) Number: 84.295A.

*Dates:*

*Applications Available:* March 22, 2010.

*Deadline for Notice of Intent to Apply:* April 21, 2010.

*Date of Meeting for Prospective Applicants:* April 8, 2010.

*Deadline for Transmittal of Applications:* May 21, 2010.

*Deadline for Intergovernmental Review:* July 20, 2010.

**Full Text of Announcement****I. Funding Opportunity Description***Purpose of Program:*

The Ready-to-Learn Television Program is designed to: (1) Facilitate student academic achievement by supporting the development and distribution of educational video programming for preschool and elementary school children and their parents; and (2) develop and disseminate educational outreach materials and programs that are designed to promote school readiness, are interactive, and use multiple innovative technologies and digital media platforms.

*Background:*

Research shows that building and fostering numeracy and spatial thinking skills in young children are critical to eliminating differences in student achievement or student growth that tend to develop between children from low-income families and children from middle-income families during their school years.<sup>1</sup>

Authorized under section 2431 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Ready-to-Learn Television Program has in the past focused primarily on supporting the development and distribution of educational television content. Through this competition, the Secretary is encouraging applicants to use transmedia storytelling, as defined in this notice, to deliver early learning content. Individual studies show that low-income preschool children, in particular, can benefit substantially from participating in a media-rich curriculum that exposes them to educational content, and engages them

in learning activities through a variety of educational media platforms, including television, video, and online games.<sup>2</sup> To ensure that the transmedia content benefits the widest audience possible, we encourage applicants to provide access to the early learning content through open educational resources.

Section 2431 of the ESEA requires that projects funded under this program provide educational outreach at the local level. To ensure that low-income children benefit from the early learning content developed under this program, the Ready-to-Learn Television Program seeks to support a variety of content-related activities where programming and outreach are blended and reach high-need communities. To carry out these activities, applicants may wish to consider partnering with persistently lowest achieving schools (as defined in the final requirements for the School Improvement Grants program, 74 FR 65618; 75 FR 3375), a media production program within an accredited postsecondary institution, and a teacher preparation program within an accredited postsecondary institution that focuses on early childhood education.

The Secretary also encourages applicants to consider developing rigorous research and evaluation strategies to increase the body of knowledge about the impact of educational technology on improving school readiness and success for low-income children.

*Statutory Requirements:*

As set forth in section 2431 of the ESEA, to be eligible to receive a cooperative agreement under the Ready-to-Learn Television Program, an applicant must:

(1) Develop, produce, and distribute educational and instructional video programming for preschool and elementary school children and their parents in order to facilitate student academic achievement;

(2) Facilitate the development, directly or through contracts with producers of children and family educational television programming, of educational programming for preschool and elementary school children, and the accompanying support materials and services that promote the effective use of such programming;

(3) Facilitate the development of programming and digital content containing Ready-to-Learn-based children's programming and resources for parents and caregivers that is specially designed for nationwide distribution over public television stations' digital broadcasting channels and the Internet;

(4) Contract with entities (such as public telecommunications entities) so that programs developed under this section are disseminated and distributed to the widest possible audience appropriate to be served by the programming, and through the use of the most appropriate distribution technologies; and

(5) Develop and disseminate education and training materials, including interactive programs and programs adaptable to distance learning technologies, that are designed—

(i) To promote school readiness; and

(ii) To promote the effective use of materials developed under paragraphs (2) and (3) among parents, teachers, Head Start providers, Even Start providers, providers of family literacy services, child care providers, early childhood development personnel, elementary school teachers, public libraries, and after-school program personnel caring for preschool and elementary school children.

*Priorities:* This competition contains two invitational priorities and one competitive preference priority.

*Invitational Priorities:* Under this competition we are particularly interested in applications that address the following priorities. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

*Invitational Priority 1.* Applications that provide for the development of high-quality, age-appropriate educational content in reading and/or mathematics that is designed to increase the literacy and/or numeracy skills of low-income children ages two to eight years old. This invitational priority encourages applicants to deliver early learning content through the well-planned and coordinated use of multiple media platforms, commonly known as transmedia storytelling, as defined in this notice. Applicants are also encouraged to develop effective outreach strategies, activities, and materials that are designed to

<sup>1</sup> National Research Council. 1998. Preventing Reading Difficulties in Young Children.

<sup>2</sup> Penuel, W. R., Pasnik, S., Bates, L., Townsend, E., Gallagher, L. P., Llorente, C., & Hupert, N. (2009). Preschool teachers can use a media-rich curriculum to prepare low-income children for school success: Results of a randomized controlled trial. New York and Menlo Park, CA: Education Development Center, Inc., and SRI International.

supplement and enhance early learning content and improve the reading literacy and/or mathematics skills and early learning outcomes of low-income children.

**Invitational Priority 2.** Applications that provide for the development and dissemination of products and results through open educational resources (OER). OER are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others. This invitational priority encourages applications that describe how the applicants will make their Ready-to-Learn products and resources freely available through various media platforms in an effort to share content, proven teaching strategies, and lessons learned in implementing Ready-to-Learn properties and resources with other early childhood and early elementary school educators.

**Note:** Each applicant addressing this priority is encouraged to include plans for how the applicant will disseminate resources, for example through a Web site that is freely available to all users. Each applicant is also encouraged to include plans specifying how the project will identify quality resources, including content and/or outreach activities, for presentation to other educators and parents.

**Competitive Preference Priority:** This priority is from the notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586). For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 20 points to an application, depending on how well an application meets this priority. These points are in addition to any points the application earns under the selection criteria.

When using the priority to give competitive preference to an application, we will review the applications using a two-stage review process. In the first stage, we will review the applications based on the selection criteria without taking the competitive priority into account. In the second stage of the process, we will review the applications rated highest in the first stage of the process to determine whether they will receive the competitive preference points. We will consider awarding competitive preference points only to those

applicants with top-ranked scores based on the selection criteria.

This priority is:

The Secretary establishes a priority for projects proposing an evaluation plan that is based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, when feasible, the project must use an experimental design under which participants—e.g., students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—e.g., students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and participation in the intervention is determined by a specified cut-off point on a quantified continuum of scores, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will

collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

Points awarded under this priority will be determined by the quality of the proposed evaluation method. In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If matched comparison, include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. An independent evaluator does not have any authority over the project and is not involved in its implementation.

In general, depending on the implemented program or project, under a competitive preference priority, random assignment evaluation methods will receive more points than matched comparison evaluation methods.

While we will not score applicants based on the invitational priorities, we encourage applicants to take advantage of the competitive preference priority if their model allows them to do so.

**Definitions:**

As used in invitational priority 1 in this notice:

**Transmedia storytelling** means conveying content and themes to audiences through the well-planned, connected use of multiple media platforms (examples include but may not be limited to: television, Web sites, cell phones, e-books, electronic games, handheld devices, and other yet to be developed technologies).

As used in the competitive preference priority in this notice—

**Scientifically based research** (section 9101(37) of the ESEA, 20 U.S.C. 7801(37)):

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;



(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

*Random assignment or experimental design* means random assignment of students, teachers, classrooms, or schools to participate in a project being evaluated (treatment group) or not participate in the project (control group). The effect of the project is the difference in outcomes between the treatment and control groups.

*Quasi-experimental designs* include several designs that attempt to approximate a random assignment design.

*Carefully matched comparison groups design* means a quasi-experimental design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome.

*Regression discontinuity design* means a quasi-experimental design that closely approximates an experimental design. In a regression discontinuity design, participants are assigned to a treatment or control group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Eligible students, teachers, classrooms, or schools above a certain score ("cut score") are assigned to the treatment group and those below the score are assigned to the control group. In the case of the scores of applicants' proposals for funding, the "cut score" is established at the point where the program funds available are exhausted.

*Single subject design* means a design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population.

*Treatment reversal design* means a single subject design in which a pre-treatment or baseline outcome measurement is compared with a post-treatment measure. Treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. For example, this design might be used to evaluate a behavior modification program for disabled students with behavior disorders.

*Multiple baseline design* means a single subject design to address concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

*Interrupted time series design* means a quasi-experimental design in which the outcome of interest is measured multiple times before and after the treatment for program participants only.

*Program Authority:* 20 U.S.C. 6775.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priority for Scientifically Based Evaluation Methods, published in the **Federal Register** on January 25, 2005 (70 FR 3586).

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

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

## II. Award Information

*Type of Award:* Cooperative agreements.

*Estimated Available Funds:* \$26,884,000.

*Estimated Range of Awards:* \$3,500,000–\$5,000,000 for the first year of the project. Funding for the second, third, fourth, and fifth years is subject to availability of funds and the approval of continuation awards (see 34 CFR 75.253).

*Estimated Average Size of Awards:* \$4,250,000.

*Estimated Maximum Size of Awards:* \$5,000,000.

*Estimated Number of Awards:* 5–7.

*Maximum Award:* We will reject any application that proposes a budget exceeding \$5,000,000 for a single budget period of 12 months. The Assistant Deputy Secretary for the Office of Innovation and Improvement may change the maximum amount through a notice published in the **Federal Register**.

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

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* To receive a cooperative agreement under this competition, an entity must be a public telecommunications entity that is able to demonstrate each of the following:

(A) A capacity to develop and nationally distribute educational and instructional television programming of high quality that is accessible by a large majority of disadvantaged preschool and elementary school children.

(B) A capacity to contract with the producers of children's television programming for the purpose of developing educational television programming of high quality.

(C) A capacity, consistent with the entity's mission and nonprofit nature, to negotiate such contracts in a manner that returns to the entity an appropriate share of any ancillary income from sales of any program-related products.

(D) A capacity to localize programming and materials to meet specific State and local needs and to provide educational outreach at the local level.

**Note:** The term *public telecommunications entity* means any enterprise which (a) is a public broadcast station or a noncommercial telecommunications entity; and (b) disseminates public telecommunications services to the public. (20 U.S.C. 6775)

**Note:** If more than one public telecommunications entity wishes to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 75.129 of EDGAR.

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

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://www.ed.gov/fundgrant/apply/grantapps/index>. To obtain a copy from

ED Pubs, write, fax, or call the following: U.S. Department of Education—ED Pubs-NTIS, PO Box 22207, Alexandria, VA 22304. Telephone (toll free): 1-877-433-7827. FAX: (703) 605-6791. If you use a telecommunications device for the deaf (TDD), call, toll free: 1-877-576-7734.

You can contact ED Pubs at its Web site, also: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.295A.

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

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

**Notice of Intent to Apply:** The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this program. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit. The e-mail notification should be sent to Joe Caliguro at [readytolearn@ed.gov](mailto:readytolearn@ed.gov).

Applicants that fail to provide this e-mail notification may still apply for funding. **Meeting for Prospective Applicants:** The Ready-to-Learn program will hold a webinar for prospective applicants on April 8, 2010 from 2:00 p.m.–3:00 p.m. Washington, DC time. The conference will offer information about how to apply for a Ready-to-Learn cooperative agreement. For information and to register, please send an e-mail to [joseph.caliguro@ed.gov](mailto:joseph.caliguro@ed.gov).

**Page Limit:** The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applications are strongly encouraged to limit the application narrative (Part III) to the equivalent of no more than 50 single-sided pages using the following standards:

A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the program narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

**3. Submission Dates and Times:**  
**Applications Available:** March 22, 2010.

**Deadline for Notice of Intent to Apply:** April 21, 2010.

**Date of Meeting for Prospective Applicants:** April 8, 2010.

**Deadline for Transmittal of Applications:** May 21, 2010.

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

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

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

**Deadline for Intergovernmental Review:** July 20, 2010.

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

**5. Funding Restrictions:** An entity that receives a Ready-to-Learn grant, contract, or cooperative agreement may not use more than five percent of the amount received under the grant for administrative purposes. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

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

**a. Electronic Submission of Applications.**

Applications for grants under the Ready-to-Learn Television Program—CFDA Number 84.295A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: <http://e-grants.ed.gov>.

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

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

Please note the following:

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

- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday

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

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

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

- Your electronic application must comply with any page limit requirements described in this notice.

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

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

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

- Print SF 424 from e-Application.

- The applicant's Authorizing Representative must sign this form.

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

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

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

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

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

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

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

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

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either

- (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

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

- You do not have access to the Internet; or

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

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

Address and mail or fax your statement to: Joe Caliguro, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W214, Washington, DC 20202-5980. FAX: (202) 205-5720.

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

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.295A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202-4260.

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

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

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

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

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

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

- (1) A private metered postmark.

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

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

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

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

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.295A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260. The Application Control Center accepts hand deliveries daily between 8:00 a.m.

and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

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

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

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

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from section 34 CFR 75.210. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. The *Note* following selection criterion (6) is guidance to help applicants in preparing their applications and is not required by statute or regulations. The selection criteria are as follows:

(1) *Need for project (15 points).* The Secretary considers the need for the proposed project by considering the following factors:

(a) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance (10 points).* The Secretary considers the significance of the proposed project by considering the following factor:

The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(3) *Quality of the project design (25 points).* The Secretary considers the quality of the design of the proposed project by considering the following factors:

(a) The extent to which the design of the proposed project reflects up-to-date

knowledge from research and effective practices.

(b) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(4) *Quality of project personnel (10 points).* The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the following factor.

The qualifications, including relevant training and experience, of key project personnel.

(5) *Quality of the management plan (20 points).* The Secretary considers the quality of the management plan for the proposed project by considering the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(c) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(6) *Quality of the project evaluation (20 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project by considering the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

**Note on Factors Applicants May Wish To Consider in Developing an Evaluation Plan:**

The quality of the evaluation plan is one of the selection criteria by which applications in this competition will be judged. A strong evaluation plan should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The evaluation plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning, or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when these instruments will be developed; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

## VI. Award Administration Information

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

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

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

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

3. *Grant Administration:* Applicants should budget for a three-day meeting for project directors to be held in Washington, DC.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The

Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the Ready-to-Learn Television Grant Program: (1) the percentage of Ready-to-Learn programming and educational content deemed to be of high quality and (2) the percentage of Ready-to-Learn outreach products deemed to be of high quality.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

#### VII. Agency Contact

*For Further Information Contact:* Joe Caliguro, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W214, Washington, DC 20202-5980. Telephone: (202) 205-5449 or by e-mail: [readytolearn@ed.gov](mailto:readytolearn@ed.gov).

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

#### VIII. Other Information

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

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

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

Dated: March 17, 2010.

**James H. Shelton, III**,  
*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2010-6289 Filed 3-19-10; 8:45 am]

**BILLING CODE 4000-01-P**

#### DEPARTMENT OF EDUCATION

##### Centers for Independent Living Program—Training and Technical Assistance

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed priority.

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.400B.*

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority under the Centers for Independent Living Program—Training and Technical Assistance (CIL-TA program). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010, using American Recovery and Reinvestment Act of 2009 (ARRA) funds appropriated for the Centers for Independent Living program (CIL program) authorized under title VII, chapter 1, part C of the Rehabilitation Act of 1973, as amended (the Act), and competitions in later years. We take this action to improve outcomes for individuals with significant disabilities by enhancing the quality of independent living (IL) services provided to those individuals and the efficiency of the delivery of those services by CILs funded through the CIL program.

**DATES:** We must receive your comments on or before April 21, 2010.

**ADDRESSES:** Address all comments about this notice to Sue Rankin-White, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Room 5013, Washington, DC 20202-2800.

If you prefer to send your comments by e-mail, use the following address: [sue.rankin-white@ed.gov](mailto:sue.rankin-white@ed.gov). You must include the term "CIL-TA program" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Sue Rankin-White. Telephone: (202) 245-7312 or e-mail: [sue.rankin-white@ed.gov](mailto:sue.rankin-white@ed.gov).

If you use a telecommunications device for the deaf (TDD), call, toll free, (866) 889-6737.

#### SUPPLEMENTARY INFORMATION:

*Invitation To Comment:* We invite you to submit comments regarding this notice.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5013, PCP, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Purpose of Program:* The purpose of the CIL program is to maximize independence, productivity, empowerment, and leadership of individuals with disabilities and integrate these individuals into the mainstream of society.

CILs are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within a local community by individuals with disabilities and provide an array of IL services to individuals with significant disabilities, including the core services of information and referral, IL skills training, peer counseling, and individual and systems advocacy.

Each State has established a Statewide Independent Living Council (SILC) that jointly develops and signs the State Plan for Independent Living with the designated State unit, monitors, reviews, and evaluates the implementation of the State plan, and coordinates activities with the State Rehabilitation Council and other organizations related to issues that affect individuals with disabilities. A majority of a SILC's members are individuals with disabilities. Other members include CIL representatives and State agency representatives, as well as other appropriate individuals.

Through the ARRA, Congress has appropriated \$87,500,000 for the CIL

program to be obligated by FY 2010. Under section 721(b)(1) of the Act, the Department is required to reserve between 1.8 and 2 percent of the funds appropriated for the CIL program to provide training and technical assistance to CILs, agencies eligible to become CILs, and SILCs with respect to planning, developing, conducting, administering, and evaluating CILs.

**Program Authority:** 29 U.S.C. 796f(b).

**Applicable Program Regulations:** 34 CFR part 366.

### Proposed Priority

This notice contains one proposed priority.

#### *Centers for Independent Living (CILs) Community-Based Training and Technical Assistance Project*

**Background:** Under the CIL-TA program, the Department currently funds three training and technical assistance grants: one is in its final year and supports training and technical assistance to CILs and SILCs on the issue of service delivery to young people with disabilities as they transition from school to living independently, and two provide general, comprehensive training and technical assistance to CILs and SILCs, respectively.

The training and technical assistance needs of CILs are ongoing and evolve as new centers are funded, and existing centers add and reassign personnel, expand, and change. The Department identifies the training and technical assistance needs of CILs and SILCs through its review of responses to a survey in their annual performance reports and through its monitoring and technical assistance efforts.

Based on this annual survey and on our ongoing monitoring and technical assistance activities, we have determined that a significant proportion of CILs would benefit from training and technical assistance to improve their efforts: to develop strategies to address the needs of underserved populations and underserved geographic areas within the center's service area; to promote community-based alternatives to institutionalization; to assist youths with disabilities in their transition from school to postsecondary education, employment, and IL; and to better serve individuals with disabilities residing in rural areas.

For this reason, we intend to use this priority to award a grant to provide targeted training and technical assistance to CILs on one or more of the following topics:

- *Developing Strategies to Address the Needs of Underserved Populations*

#### *and Underserved Geographic Areas.*

Although CILs provide IL services to individuals with significant disabilities within a defined geographical area, CILs have acknowledged that often there are barriers to serving certain populations and certain areas within the center's service area. For example, cultural mores of particular ethnic populations may not be supportive of interventions by "outsiders" to provide independent living to individuals with significant disabilities, and, in isolated, rural areas, it may be physically difficult to access the consumers who live in that area in order to provide services. Providing technical assistance to CILs so that they can implement better strategies to overcome barriers and reach out to serve underserved populations and geographic areas will result in centers that are truly community-based and that adequately serve the entire community they were intended to serve.

- *Promoting Community-based Alternatives to Institutionalization.* CILs play a critical role in assisting individuals with significant disabilities to move from institutional settings to community-based living, or to prevent institutionalization in the first place, by helping these individuals obtain the accessible housing, transportation, assistive technology, and IL skills they need to leave nursing homes and other institutional settings. Providing technical assistance and training in this area and sharing effective practices among CILs will enhance their current efforts to promote community-based alternatives to institutionalization.

- *Assisting Transition-age Youths to Live Independently.* CILs are working with an increasing number of transition-age youths with significant disabilities exiting secondary schools and entering postsecondary institutions or the labor market. Training and technical assistance in this area will help CILs work collaboratively with the elementary and secondary education system, colleges and universities, employers, and vocational rehabilitation agencies to ensure that transition-age youths with significant disabilities and their families have the information, resources, and services they need to ensure their success as adults.

- *Providing IL Services in Rural Settings.* Individuals with significant disabilities who need IL services and live in rural settings pose difficult challenges to CILs. For example, it is not unusual in rural States for the CIL's cost of travelling to meet with the consumer to exceed the cost of the services that are eventually provided to that individual. Training and technical assistance in this area will help CILs to

utilize efficient outreach practices, including the use of information technology whenever possible, to provide IL services effectively in rural settings.

**Proposed Priority:** This proposed priority supports a Training and Technical Assistance Project to assist CILs in one or more of the following important and challenging areas: developing strategies to address the needs of underserved populations and underserved geographic areas; promoting community-based alternatives to institutionalization; assisting transition-age youths to succeed after secondary school; and providing IL services in rural settings.

To meet this priority, applicants must demonstrate all of the following in their applications:

(a) Evidence that the project team includes staff members with expertise in each of the priority topic areas on which the applicant is proposing to provide training and technical assistance;

(b) A sound plan for providing training and technical assistance and materials that (1) is based on rigorous research, where available; (2) utilizes a broad range of available, accessible technologies and methodologies; and (3) is sufficient to provide training and technical assistance to as many CILs as possible.

(c) An assurance that the applicant will coordinate and collaborate with other training projects funded by the Department to ensure that its training activities are complementary and non-duplicative and that its dissemination activities are effective and efficient. At a minimum, the Training and Technical Assistance Project must coordinate with RSA's CILs Training and Technical Assistance Center.

**Types of Priorities:** When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

**Absolute priority:** Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

**Competitive preference priority:** Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

*Final Priority:* We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

*Executive Order 12866:* Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that it is not “significant” under the terms of that Executive order.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code

of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: March 17, 2010.

**Alexa Posny,**  
*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010-6229 Filed 3-19-10; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services Overview Information; Migrant and Seasonal Farmworkers Program

#### *Correction*

In notice document 2010-5976 beginning on page 13106 in the issue of Thursday, March 18, 2010 make the following correction:

On page 13106, in the second column, under the *Applications Available*: heading, in the first line, “April 2, 2010” should read “March 18, 2010”.

[FR Doc. C1-2010-5976 Filed 3-19-10; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM07-10-002]

#### Transparency Provisions of Section 23 of the Natural Gas Act; Notice of the Agenda for Form No. 552 Technical Conference

March 15, 2010.

In a “Notice of Technical Conference” issued on February 22, 2010 in the above-referenced proceeding, the Commission stated that this conference, to be held on March 25, 2010, will address select issues identified by staff. Those issues include: (1) Inconsistencies in reporting upstream transactions in the natural gas supply chain on Form No. 552, and whether these transactions contribute to wholesale price formation; (2) whether transactions involving balancing, cash-out, operational, and in-kind transactions should be reported on Form No. 552; and (3) whether the units of measurement (TBtu) currently used for reporting volumes in the form are appropriate. The Agenda for this Technical Conference is attached to this notice.

Specific questions to each panel are on the attached Agenda. Each panelist will be given the opportunity to provide

a brief introductory statement on these questions.

**Kimberly D. Bose,**  
*Secretary.*

### March 25, 2010: Commission Meeting Room

9 a.m.–9:10 a.m.—Opening Remarks.  
9:10 a.m.–10:45 a.m.—Upstream transactions in the natural gas supply chain.

1. How has your company addressed the reporting of unprocessed gas on Form No. 552?

2. Are there unreported volumes of unprocessed physical natural gas (between the wellhead and any processing plant) that use, contribute to, or might they contribute to the formation of daily or monthly gas price indices? Are the volumes associated with these transactions material?

3. What effect, if any, will the development of nontraditional gas sources have on the reporting on unprocessed gas?

4. Is the current reporting measurement (TBtus) an appropriate measurement? Would reporting volumes in decatherms be more appropriate?

#### Panelists

- John Poe, Manager, Regulatory Affairs, ExxonMobil Gas & Power Marketing Company (Natural Gas Supply Association).
- William E. Shanahan, Marketing Manager, Chaparral LLC, (Natural Gas & Energy Association of Oklahoma).
- Mary Nelson, Manager, Regulatory Affairs, Devon Energy Corp. (Natural Gas Supply Association).
- Katie Rice, Director, Regulatory Affairs, DCP Midstream LLC.
- Representative, Independent Producers Association of America.

10:45 a.m.–11 a.m.—Break  
11 a.m.–12:15 p.m. Cashouts, Imbalances and Operational Volumes

1. How has your company addressed the reporting of cashouts, imbalance makeup and operational volumes on the Form No. 552 in relation to the total volumes of physical natural gas reported?

2. Are the volumes associated with these transactions material? Please quantify.

3. Is the current reporting measurement (TBtus) an appropriate measurement? Would reporting volumes in decatherms be more appropriate?

#### Panelists

- Scott Brewer, Director, North American Energy, Terra Industries, Inc. (Process Gas Consumers).
- Katie Rice, Director, Regulatory Affairs, DCP Midstream LLC.

- Matt Kerec, Assistant Commodity Manager, Alcoa, Inc. (Process Gas Consumers).

- Michael E. Novak, Assistant General Manager, Federal Regulatory Affairs, National Fuel Gas Distribution Corp. (on behalf of the American Gas Association).

- John Poe, Manager, Regulatory Affairs, ExxonMobil Gas & Power Marketing Company (Natural Gas Supply Association).

- Dena Wiggins, Partner, Ballard Spahr LLP (Process Gas Consumers Group).

12:15 p.m.–1:15 p.m.—Lunch

1:15 p.m.–1:45 p.m.—Question and Answer Period

1:45 p.m.–2 p.m.—Closing Remarks

[FR Doc. 2010–6163 Filed 3–19–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP10–82–000]

#### Northern Natural Gas Company, Southern Natural Gas Company, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, Enterprise Field Services, LLC; Notice of Application

March 16, 2010.

Take notice that on March 5, 2010, Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed on behalf of itself and other owners, Southern Natural Gas Company, Florida Gas Transmission Company, LLC, Transcontinental Gas Pipe Line Company, LLC, and Enterprise Field Services, LLC in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon in place certain facilities, located onshore Texas and offshore Texas in state and federal waters, known as the Matagorda Offshore Pipeline System (MOPS). Northern Natural states that operation of MOPS has become uneconomical due to increasing costs of maintenance and repairs compared to falling revenues, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing 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 at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, or phone at (402)398–7103, or e-mail at [mike.loeffler@nngco.com](mailto:mike.loeffler@nngco.com).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* April 6, 2010.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2010–6232 Filed 3–19–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP10–76–000]

#### Eastern Shore Natural Gas Company; Notice of Application

March 15, 2010.

Take notice that on March 5, 2010, Eastern Shore Natural Gas Company, (Eastern Shore), 1110 Forrest Avenue, Dover, Delaware 19904, pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, filed in Docket No. CP10–76–000, an application to construct and operate certain pipeline and ancillary facilities, with appurtenances, located in the State of Pennsylvania. Eastern Shore states that it proposes to: (1) Construct and operate approximately 8.3 miles of sixteen-inch mainline extension in the State of Pennsylvania, and (2) construct and operate a new interconnect receipt point. Eastern Shore states that such facilities are necessary to provide new firm transportation service to customers that have executed binding shipper nominations in conjunction with Eastern Shore's recent Open Season (Mainline Extension Interconnect with Texas Eastern Transmission, LP, Project), which offered its customers the opportunity for new natural gas supplies and supply diversification by accessing the Texas Eastern Transmission, LP (Texas Eastern) pipeline system in southeastern Pennsylvania. Eastern Shore estimates the cost of the facilities will be \$19,406,974, 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](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding the application should be directed to Glen DiEleuterio, Project Manager, Eastern Shore Natural Gas Company, 1110 Forrest Avenue, Dover, Delaware 19904, at (302) 734-6710, ext. 6723 or via fax (302) 734-6745 or by e-mail to [GDiElcutcrio@esng.com](mailto:GDiElcutcrio@esng.com).

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* April 5, 2010.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2010-6164 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP10-78-000]

#### CenterPoint Energy Gas Transmission Company; Notice of Application

March 15, 2010.

Take notice that on March 5, 2010, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002-5231, filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting authorization to abandon Line L, consisting of approximately 91 miles of predominately 18-inch diameter pipeline and appurtenances located in Hot Spring, Clark, Nevada, and Columbia Counties, Alabama. CEGT states that Line L has been inactive for more than 12 months and no customer service will be abandoned as a result of the proposal, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this application may be directed to Michelle Willis, Manager, Regulatory and Compliance, CenterPoint Energy Gas Transmission Company, PO Box 21734, Shreveport, Louisiana 71151, at (318) 429-3708.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* April 5, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010-6165 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13632-000]

#### Muskingum Valley Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

March 15, 2010.

On November 19, 2009, Muskingum Valley Hydro, LLC filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of the Harsha Lake Dam Project No. 13632, to be located at the existing William H. Harsha Lake Dam on the East Fork of the Little Miami River, in Clermont County, Ohio. The William H. Harsha Lake Dam is owned and operated by the U.S. Army Corps of Engineers.

The proposed project would consist of: (1) Lining an existing 4 to 10-foot-diameter, oblong conduit with steel; (2) a new approximately 20-foot-long conduit extension from the outlet works to the powerhouse; (3) three new Francis turbine-generator units with a combined capacity of 9.15 megawatts; (4) a new 50-foot-long, 30-foot-wide, and 30-foot-high powerhouse to be located downstream of the existing outlet works; (5) a new tailrace; (6) a new 17.7-kilovolt, .25-mile transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 19,500 megawatt-hours.

*Applicant Contact:* Randall Smith, 4950 Frazeyburg Road, Zanesville, OH 43701, (740) 891-5424.

*FERC Contact:* Brandon Cherry, (202) 502-8328.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>.

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13632) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010-6166 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP10-3-001; CP10-3-000; PF09-6-000]

#### Questar Overthrust Pipeline Company; Notice of Application

March 15, 2010.

Take notice that on March 12, 2010, Questar Overthrust Pipeline Company (Overthrust), 180 East 100 South, Salt Lake City, Utah 84111, filed an amended application to section 7(c) of the Natural Gas Act (NGA) seeking authority to incorporate two pipeline reroutes as part of its approximate 43.3-mile Loop Expansion Project originally filed in Docket No. CP10-3-000. Overthrust states that the reroutes are required to minimize impacts to certain mining leaseholds and minimizes the impacts of future mining activity upon the Project. The Main Line (ML) 133 Loop Expansion Project begins at the existing Rock Springs Compressor Station in Sweetwater County, Wyoming and ends at a tie-in facility called Cabin 31, located within Uinta County, Wyoming (The Main Line 133 Loop Expansion Project), all as more fully set forth in the application. This filing 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, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Specifically, The Main Line (ML) 133 Loop Expansion Project will enable Overthrust to transport up to an additional 800,000 Dth/d of natural gas from receipt points on the east end of its system, to delivery points on the west end of its system. It is further explained

that Overthrust has negotiated three firm Transportation Service Agreements with Wyoming Interstate Company, Ltd. for up to 548,457 Dth/d of incremental capacity created by the project. The estimated cost of the proposed Loop Expansion is \$94,288,239.

Any questions regarding the Main Line (ML) 133 Loop Expansion Project should be directed to L. Bradley Burton, Manager, Federal Regulatory Affairs, or Tad M. Taylor, Division Counsel, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145-0360 or at (801) 324-2459, or [brad.burton@questar.com](mailto:brad.burton@questar.com).

Overthrust states that by letter dated January 29, 2009, in Docket No. PF09-6-000, the Commission's Office of Energy Projects granted Overthrust's January 19, 2009, request to utilize the Commission's Pre-Filing Process for the planned Loop Expansion. Overthrust has also submitted an applicant-prepared Draft Environmental Assessment that was prepared during the Pre-Filing Process that was included with this application.

On January 29, 2009, the Commission staff granted Overthrust's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF09-6-000 to staff activities involving the project. Now, as of the filing of this application on October 13, 2009, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP10-3-000, as noted in the caption of this notice.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to

obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* April 5, 2010.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010-6168 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13633-000]

#### **Muskingum Valley Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications**

March 15, 2010.

On November 19, 2009, Muskingum Valley Hydro, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Paint Creek Dam Project No. 13633, to be located at the existing Paint Creek Dam on Paint Creek, in Highland County, Ohio. The Paint Creek Dam is owned and operated by the U.S. Army Corps of Engineers.

The proposed project would consist of: (1) Lining an existing 20-foot-diameter conduit with steel; (2) a new approximately 50-foot-long conduit extension from the outlet works to the powerhouse; (3) two new Francis turbine-generator units with a combined capacity of 3.3 megawatts; (4) a new 50-foot-long, 30-foot-wide, and 30-foot-high powerhouse to be located downstream of the existing outlet works; (5) a new tailrace; (6) a new 14.7-kilovolt, .5-mile transmission line; and (7) appurtenant facilities. The project would have an estimated annual generation of 5,500 megawatt-hours.

*Applicant Contact:* Randall Smith, 4950 Frazeyburg Road, Zanesville, OH 43701, (740) 891-5424.

*FERC Contact:* Brandon Cherry, (202) 502-8328.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>.

More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13633) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010-6167 Filed 3-19-10; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 12, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98-1643-017.

*Applicants:* Portland General Electric Company.

*Description:* Portland General Electric Company submits administrative revisions to its market based rate authority tariff *et al.*

*Filed Date:* 03/11/2010.

*Accession Number:* 20100312-0202.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-119-000.

*Applicants:* New York Independent System Operator, Inc.

*Description:* The New York Independent System Operator, Inc submits response to the requests for information set forth in the Deficiency Letter issued 12/23/09.

*Filed Date:* 02/22/2010.

*Accession Number:* 20100223-0019.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 22, 2010.

*Docket Numbers:* ER10-438-001.

*Applicants:* ISO New England Inc., New England Power Pool.

*Description:* ISO New England, Inc *et al.* submits Fourth Revised Sheet 7307U *et al.* to its FERC Electric Tariff 3—Section III—Market Rule 1—Standard Market Design *et al.*

*Filed Date:* 03/11/2010.

*Accession Number:* 20100312-0201.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-458-001; ER10-459-001; ER10-460-001

*Applicants:* Solios Power Trading LLC; Solios Power Mid-Atlantic Trading LLC; Solios Power Midwest Trading LLC.

*Description:* Solios Power Trading LLC *et al.* submits tariff modifications.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100312-0211.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-790-001.

*Applicants:* El Cajon Energy, LLC.

*Description:* El Cajon Energy, LLC submits Substitute Original Sheet No 2 *et al.*

*Filed Date:* 03/10/2010.

*Accession Number:* 20100311-0021.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 31, 2010.

*Docket Numbers:* ER10-855-000.

*Applicants:* South Carolina Electric & Gas Company.

*Description:* South Carolina Electric & Gas Company submits revised Network Integration Transmission Service Agreement with an effective date of 3/10/2010.

*Filed Date:* 03/10/2010.

*Accession Number:* 20100311-0022.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 31, 2010.

*Docket Numbers:* ER10-856-000.

*Applicants:* American Electric Power Service Corporation.

*Description:* American Electric Power Service Corporation submits amendments to the Open Access Transmission Tariff, on file with the Commission, FERC Electric Tariff, Third Revised Volume 6.

*Filed Date:* 03/10/2010.

*Accession Number:* 20100311-0023.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 31, 2010.

*Docket Numbers:* ER10-860-000.

*Applicants:* Puget Sound Energy, Inc. *Description:* Puget Sound Energy, Inc submits an Interconnection and Operating Agreement, dated 2/26/10,

with City of Blaine, designated as FERC Rate Schedule 179, First Revised Sheet 1 *et al.*

*Filed Date:* 03/11/2010.

*Accession Number:* 20100312-0203.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-861-000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Puget Sound Energy, Inc submits an Interconnection and Operating Agreement, dated 2/26/10, with City of Blaine, designated as FERC Rate Schedule 179, First Revised Sheet 1 *et al.*

*Filed Date:* 03/11/2010.

*Accession Number:* 20100312-0203.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-862-000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Puget Sound Energy, Inc submits an Interconnection and Operating Agreement, dated 2/26/10, with City of Blaine, designated as FERC Rate Schedule 179, First Revised Sheet 1 *et al.*

*Filed Date:* 03/11/2010.

*Accession Number:* 20100312-0203.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-863-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits the Agreement of Transmission Facilities Owners, *etc.*

*Filed Date:* 03/11/2010.

*Accession Number:* 20100312-0030.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-864-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits fully executed Network Integration Transmission Service Agreement dated as of 2/9/2010 *etc.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100312-0209.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-865-000.

*Applicants:* Rocky Road Power, LLC.

*Description:* Rocky Road Power, LLC submits Rate Schedule FERC 2, which sets forth the agreed upon cost-based revenue requirement for the provision of Reactive Supply and Voltage Control from Generation Sources Service *etc.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100312-0210.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES10–5–000.  
*Applicants:* System Energy Resources, Inc.

*Description:* Supplemental Information of System Energy Resources, Inc.

*Filed Date:* 03/11/2010.

*Accession Number:* 20100311–5080.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 22, 2010.

*Docket Numbers:* ES10–26–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Supplemental Information of PJM Interconnection, L.L.C.

*Filed Date:* 03/10/2010.

*Accession Number:* 20100310–5102.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 22, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in

Washington, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2010–6212 Filed 3–19–10; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 15, 2010.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC10–44–000.

*Applicants:* Crescent Ridge, LLC.

*Description:* Supplemental Information for Crescent Ridge LLC.

*Filed Date:* 03/04/2010.

*Accession Number:* 20100304–5045.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 22, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG10–17–000.

*Applicants:* Uilk Wind Farm, LLC.

*Description:* Self Certification Notice of Uilk Wind Farm, LLC.

*Filed Date:* 01/26/2010.

*Accession Number:* 20100126–5108.

*Comment Date:* 5 p.m. Eastern Time on Thursday, March 25, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER07–682–005.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Operating Companies submits compliance filing.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315–0219.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER07–956–003.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Operating Companies submits compliance filing.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315–0220.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER09–1099–003; ER07–412–004.

*Applicants:* Empire Generating Co, LLC; ECP Energy I, LLC.

*Description:* Quarterly Report of ECP Energy I, LLC, and Empire Generating Co, LLC.

*Filed Date:* 02/02/2010.

*Accession Number:* 20100202–5146.

*Comment Date:* 5 p.m. Eastern Time on Monday, April 5, 2010.

*Docket Numbers:* ER09–1192–004.

*Applicants:* Southwest Power Pool Inc.

*Description:* Southwest Power Pool, Inc submits a ministerial filing to correct bylaws effective date.

*Filed Date:* 03/10/2010.

*Accession Number:* 20100312–0213.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 31, 2010.

*Docket Numbers:* ER10–566–000.

*Applicants:* Coso Geothermal Power Holdings, LLC.

*Description:* Amendment to Application of Coso Geothermal Power Holdings, LLC.

*Filed Date:* 03/10/2010.

*Accession Number:* 20100310–5073.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 22, 2010.

*Docket Numbers:* ER10–566–000.

*Applicants:* Coso Geothermal Power Holdings, LLC.

*Description:* Substitute Organizational Chart of Coso Geothermal Power Holdings, LLC.

*Filed Date:* 03/11/2010.

*Accession Number:* 20100311–5048.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 22, 2010.

*Docket Numbers:* ER10–642–001;

ER10–643–001; ER10–310–002.

*Applicants:* Algonquin Tinker Gen Co.; Algonquin Northern Maine Gen Co.; Algonquin Energy Services Inc.

*Description:* Algonquin Tinker Gen Co. *et al.* resubmits Substitute First Revised Sheets No. 4 as Exhibits A and B to FERC Electric Tariff, Revised Volume No. 1, with revised sheet designations and effective dates.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315–0002.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10–663–001.

*Applicants:* DTE Energy Supply, Inc.

*Description:* DTE Energy Supply, Inc supplements its 1/26/2010 Notice of Succession.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315–0221.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10–852–000.

*Applicants:* Grays Ferry Cogeneration Partnership.

*Description:* Petition of Grays Ferry Cogeneration Partnership for order accepting market-based rate tariff for

filing and granting waivers and blanket approvals and request for expedited action.

*Filed Date:* 03/10/2010.

*Accession Number:* 20100311-0024.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 31, 2010.

*Docket Numbers:* ER10-853-000.

*Applicants:* Dynamic PL, LLC.

*Description:* Petition for Acceptance of Initial Tariff, Waivers and Blanket Authorization re: Dynamic PL, LLC.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0201.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-854-000.

*Applicants:* CornerStone Power Development, LLC.

*Description:* CornerStone Power Development, LLC submits Application for Order Authorizing Market Based Rates, Waivers of Regulations, Grants of Blanket Approvals, Request for Category 1 Seller Status *etc.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0228.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 24, 2010.

*Docket Numbers:* ER10-857-000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* Louisville Gas and Electric Company *et al.* submits a Notice of Cancellation of their Automatic Reserve Sharing Energy Sales Tariff *etc.* re: FERC Electric Tariff, Original Volume 4.

*Filed Date:* 03/11/2010.

*Accession Number:* 20100311-0028.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-858-000.

*Applicants:* LG&E Capital Trimble County LLC.

*Description:* LG&E Capital Trimble County, LLC submits a Notice of Cancellation of its Test Power Sales Tariff *etc.* re: Rate Schedule FERC No 1.

*Filed Date:* 03/11/2010.

*Accession Number:* 20100311-0027.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-859-000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* Louisville Gas and Electric Company submits Notice of Cancellation of its Power Sales Services Tariff *etc.* re: FERC Electric Tariff, First Revised Volume 6.

*Filed Date:* 03/11/2010.

*Accession Number:* 20100311-0026.

*Comment Date:* 5 p.m. Eastern Time on Thursday, April 1, 2010.

*Docket Numbers:* ER10-866-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits First Revised Sheet 2875 *et al.* to its FERC Electric Tariff, Fourth Revised Volume 1, to be effective 6/1/10.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0202.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-867-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff to amend Schedule 31 *etc.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0204.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-868-000.

*Applicants:* The Cleveland Electric Illuminating Company.

*Description:* The Cleveland Electric Illuminating Company submits Notice of Cancellation of First Revised Sheet 1 to its FERC Electric Tariff, Original Volume 2 to be effective 3/31/10.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0205.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-869-000.

*Applicants:* Ohio Edison Company.

*Description:* Ohio Edison Company *et al.* submits Notice of Cancellation of First Revised Sheet 1 to FERC Electric Tariff, First Revised Volume 2 to be effective 3/21/10.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0206.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-870-000.

*Applicants:* The Toledo Edison Company.

*Description:* The Toledo Edison Company submits Notices of Cancellation of FERC Electric Tariff, Original Volume 1 and FERC Electric Tariff, Original Volume 3.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0207.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-871-000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits Transmission System Interconnection Agreement with Black Hills Power, Inc, to be designated as their Rate Schedule 658 *et al.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0208.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-872-000.

*Applicants:* American Electric Power Service Corporation.

*Description:* AEP Texas Central Company submits an executed Restated and Amended Interconnection Agreement with South Texas Electric Cooperative, Inc.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0209.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-873-000.

*Applicants:* Ameren Services Company.

*Description:* Union Electric Company submits an executed service agreement for Wholesale Distribution Service with City of St. James, Missouri.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0210.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-874-000.

*Applicants:* Ameren Services Company.

*Description:* Union Electric Company submits an executed service agreement for Wholesale Distribution Service with Rolla Municipal Utilities.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0211.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-875-000.

*Applicants:* Ameren Services Company.

*Description:* Union Electric Company submits an executed Connection Construction Agreement with Rolla Municipal Utilities.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0212.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-876-000.

*Applicants:* Ameren Services Company.

*Description:* Union Electric Company submits an executed Distribution Connection Agreement with Rolla Municipal Utilities *et al.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0214.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-877-000.

*Applicants:* The Empire District Electric Company.

*Description:* The Empire District Electric Company submits its Full Requirements Electric Service Rate Schedule, including a standard form of Electric Service Agreement, designated FERC Electric Rate Schedule 4 effective 6/1/10.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0216.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-878-000.

*Applicants:* Peetz Table Wind Energy, LLC.

*Description:* Peetz Table Wind Energy, LLC submits an Amended and Restated Shared Facilities Agreement with Logan Wind Energy LLC *et al.*

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0217.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-879-000.

*Applicants:* Entergy Arkansas Inc.

*Description:* Entergy Arkansas, Inc submits the 2010 Wholesale Formula Rate Update.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0218.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

*Docket Numbers:* ER10-880-000.

*Applicants:* Saracen Merchant Energy LP.

*Description:* Saracen Merchant Energy, LP submits Notice of Cancellation of Rate Schedule FERC No. 1.

*Filed Date:* 03/12/2010.

*Accession Number:* 20100315-0229.

*Comment Date:* 5 p.m. Eastern Time on Friday, April 2, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010-6211 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

March 10, 2010.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC10-50-000.

*Applicants:* Entergy Nuclear Generation Company, Entergy Nuclear Palisades, LLC, Entergy Nuclear Power Marketing, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Power Ventures, L.P., Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Power, LLC, EWO Marketing, Inc., Entergy Nuclear Fitzpatrick, LLC, Entergy Services, Inc.

*Description:* Application of Entergy Services, Inc., *et al.*

*Filed Date:* 03/09/2010.

*Accession Number:* 20100309-5135.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 30, 2010.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER98-4590-031.

*Applicants:* Public Service Company of Colorado.

*Description:* Public Service Company of Colorado submits the Simultaneous Transmission Import Limit Studies.

*Filed Date:* 03/08/2010.

*Accession Number:* 20100310-0226.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 29, 2010.

*Docket Numbers:* ER07-1232-003; ER07-964-002; ER98-1150-011.

*Applicants:* UniSource Energy Development Company; UNS Electric, Inc.; Tucson Electric Company.

*Description:* Tucson Electric Co *et al.* submits the Triennial Market Power Update.

*Filed Date:* 03/08/2010.

*Accession Number:* 20100310-0233.

*Comment Date:* 5 p.m. Eastern Time on Friday, May 07, 2010.

*Docket Numbers:* ER08-1294-007; ER09-1656-003; ER01-1071-018; ER08-1293-007; ER08-1297-007; ER06-9-013; ER03-34-017; ER10-402-002; ER06-1261-012; ER03-1105-014; ER03-1105-014; ER09-138-005; ER08-197-011; ER09-989-006; ER09-832-007; ER98-4222-017; ER08-250-008; ER07-174-012L ER08-1296-007; ER08-1300-007; ER010-3-002; ER09-1760-002.

*Applicants:* Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Badger Windpower, LLC, Butler Ridge Wind Energy Center, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, FPL Energy Burleigh County Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Power Marketing, LLC, Hawkeye Power Partners, LLC, Lake Benton Power Partners LLC, Langdon Wind, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Story Wind, LLC

*Description:* NextEra Energy Entities Notification of Non-material Change in Status.

*Filed Date:* 03/08/2010.

*Accession Number:* 20100308-5129.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 29, 2010.

*Docket Numbers:* ER10-469-001.

*Applicants:* Western Massachusetts Electric Company.

*Description:* Western Massachusetts Electric Company submits revised Demarcation Agreement.

*Filed Date:* 03/08/2010.

*Accession Number:* 20100309-0207.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 29, 2010.

*Docket Numbers:* ER10-842-000.

*Applicants:* Energy Plus Holdings LLC.

*Description:* Energy Plus Holdings LLC submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

*Filed Date:* 03/08/2010.

*Accession Number:* 20100310-0225.  
*Comment Date:* 5 p.m. Eastern Time on Monday, March 29, 2010.

*Docket Numbers:* ER10-848-000.  
*Applicants:* Tampa Electric Company.  
*Description:* Tampa Electric Company submits the non-conforming service agreement under cost-based power sales tariff with The Energy Authority, Inc.

*Filed Date:* 03/09/2010.  
*Accession Number:* 20100310-0221.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 30, 2010.

*Docket Numbers:* ER10-849-000.  
*Applicants:* PacifiCorp.  
*Description:* PacifiCorp submits a Notice of Cancellation of First Revised Rate Schedule FERC No 241, an Interconnection Agreement with the State of California Department of Water Resources, to be effective 5/10/10.

*Filed Date:* 03/09/2010.  
*Accession Number:* 20100310-0222.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 30, 2010.

*Docket Numbers:* ER10-850-000.  
*Applicants:* Ameren Services Company.

*Description:* Central Illinois Light Company *et al.* submits a revised and redesignated Ancillary Services Tariff etc to be effective March 1, 2010.

*Filed Date:* 03/09/2010.  
*Accession Number:* 20100310-0223.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 30, 2010.

*Docket Numbers:* ER10-851-000.  
*Applicants:* Ameren Services Company.

*Description:* Central Illinois Public Service Company *et al.* submits a revised version of the Ameren Operating Companies' Open Access Transmission Tariff.

*Filed Date:* 03/09/2010.  
*Accession Number:* 20100310-0224.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 30, 2010.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES10-19-001.  
*Applicants:* KCP&L Greater Missouri Operations Company.

*Description:* Supplemental Information of KCP&L Greater Missouri Operations Company.

*Filed Date:* 03/09/2010.  
*Accession Number:* 20100309-5055.  
*Comment Date:* 5 p.m. Eastern Time on Friday, March 19, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA07-35-004.  
*Applicants:* Cleco Power LLC.  
*Description:* Cleco Power LLC submits their Operational Penalties Annual Compliance Report.

*Filed Date:* 03/08/2010.

*Accession Number:* 20100309-0206.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 29, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, 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](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2010-6210 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2355-011]

#### Exelon Generation Company, LLC; Notice of Dispute Resolution Panel Convening and Technical Conference

March 16, 2010.

On March 15, 2010, Commission staff, in response to the filing of notices of study dispute by the U.S. Department of Interior (Fish and Wildlife Service) and Pennsylvania Department of Environmental Protection on February 24, 2010, convened a single three-person Dispute Resolution Panel pursuant to 18 CFR 5.14(d).

The Panel will hold a technical conference at the time and place noted below. The session will address study disputes regarding a study that would focus on entrainment and impingement study (study 3.3 in the revised study plan.) The focus of the technical session is for the disputing agencies, applicants, and Commission to provide the Panel with additional information necessary to evaluate the disputed study. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific study or information in dispute and will focus on the applicability of such a study or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at their discretion, limit the speaking time for each participant.

#### Technical Conference

*Date:* Wednesday, March 31, 2010

*Time:* 9 a.m.-5 p.m. (EDT)

*Place:* Muddy Run Visitor Center at 172 Bethesda Church Road West, Holtwood, Pennsylvania

*Phone:* Dave Byers, 717-284-5863

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010-6231 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**



**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP10-41-000]

**Paiute Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Paiute Pipeline 2010 Expansion Project and Request for Comments on Environmental Issues**

March 16, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2010 Expansion Project involving construction and operation of facilities proposed by Paiute Pipeline Company (Paiute) in Douglas and Washoe Counties, Nevada. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on April 22, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Paiute provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for

viewing on the FERC website (<http://www.ferc.gov>).

**Summary of the Proposed Project**

On January 12, 2010 Paiute filed an application with the FERC under section 7(c) of the Natural Gas Act. The FERC issued a Notice of Application for this project on January 22, 2010.

Paiute proposes to construct and operate certain mainline natural gas facilities to enable Paiute to enhance the capacity of its South Tahoe Lateral to meet the growth requirements of its two expansion project shippers: Southwest-Northern California and Southwest-Northern Nevada.<sup>1</sup> The 2010 Expansion Project would provide about 2,265 dekatherms per day of additional firm transportation capacity from the Wadsworth Junction Receipt Point to delivery points located at or near the terminus of Paiute's South Tahoe Lateral.

The 2010 Expansion Project would consist of the following:

- Approximately 0.9 miles of new 12-inch-diameter pipeline looping<sup>2</sup> to be constructed and operated between mileposts (MP) 2.41 and 3.35 on Paiute's existing South Tahoe Lateral in Douglas County, Nevada;
- Modifications at the existing Stateline City Gate No. 4 delivery point located at MP 6.80 on the South Tahoe Lateral in Douglas County, Nevada by replacing the existing 3-inch pressure regulator and 4-inch strainer with a 6-inch filter;
- Modifications at the existing South Lake Tahoe City Gate delivery point, at MP 7.55 on the South Tahoe Lateral in Douglas County, Nevada; and
- Modifications at the existing Wadsworth Pressure Limiting Station, at MP 0.0 of the Carson Lateral, in Washoe County, Nevada;

The general location of the project facilities is shown in Appendix 1.<sup>3</sup>

**Land Requirements for Construction**

Construction of the proposed facilities would disturb a total of about 10.5 acres of land for the aboveground facilities and the pipeline combined.

<sup>1</sup> Southwest—Northern California and Southwest—Northern Nevada are affiliates of Paiute Parent Company.

<sup>2</sup> A "loop" is a segment of new pipeline installed adjacent to an existing pipeline, and connected to the existing pipelines on both ends, that allows more natural gas to follow through that segment.

<sup>3</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at <http://www.ferc.gov> using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Approximately 4.5 acres would be retained as part of Paiute's permanent operational easement, after construction. The remaining acreage would be restored to its former condition and uses.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us<sup>4</sup> to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Cultural resources;
- Land use and recreation;
- Air quality and noise; and
- Safety and reliability

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to

<sup>4</sup> "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section below.

### Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for the section 106 process, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.<sup>5</sup> We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before April 22, 2010.

For your convenience, there are three methods which you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You may file your comments electronically by using the Quick Comment feature, which is located at <http://www.ferc.gov> under the link called "Documents and Filings." A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "Documents and Filings" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "Sign up" or "eRegister." You will be

asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

### Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

### Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site at <http://www.ferc.gov> using the "eLibrary" link. Click on the eLibrary

link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, CP10-41). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2010-6236 Filed 3-19-10; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER10-852-000]

### Grays Ferry Cogeneration Partnership; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 16, 2010.

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

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

<sup>5</sup> The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, § 800.2(d).

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is April 5, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2010-6234 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER10-854-000]

#### Cornerstone Power Development, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 16, 2010.

This is a supplemental notice in the above-referenced proceeding of Cornerstone Power Development, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 2, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2010-6235 Filed 3-19-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP10-97-000]

#### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 16, 2010.

Take notice that on March 12, 2010, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP10-97-000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon a compressor station and appurtenant facilities, located in Finney County, Kansas, 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](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Specifically, Northern proposes to abandon in-place the Holcomb Compressor Station and appurtenant facilities. Northern states that the Holcomb Compressor Station has not been operated in the previous twelve months and therefore has not provided service in the previous twelve months. Northern asserts that no service to existing customers will be impacted nor will Northern's operations be adversely impacted as a result of the proposed abandonment.

Any questions regarding the application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398-7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398-7140.

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 Natural Gas Act (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. 2010-6233 Filed 3-19-10; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2006-0745; FRL-9128-9]

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reformulated Gasoline Commingling Provisions (Renewal); EPA ICR No. 2228.03, OMB Control No. 2060-0587

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before April 21, 2010.

**ADDRESSES:** Submit your comments, referencing docket ID No. EPA-HQ-OAR-2006-0745, to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Air Docket, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Geanetta Heard, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-343-9017; fax number: 202-343-2801; e-mail address: [heard.geanetta@epa.gov](mailto:heard.geanetta@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 6, 2009, (74 FR 51272), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2006-0745, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

**Title:** Reformulated Gasoline Commingling Provisions (Renewal).

**ICR Numbers:** EPA ICR No. 2228.03, OMB Control No. 2060-0566.

**ICR Status:** This ICR is scheduled to expire on December 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, 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:** With this information collection request (ICR), we are seeking permission to continue to accept notifications from gasoline retailers and wholesale purchaser-consumers related to the commingling of ethanol blended and non-ethanol blended reformulated gasoline (RFG) under section 1513 of the Energy Policy Act of 2005 (EPAct) and 40 CFR 80.78(a)(8)(ii)(B); and to provide for a compliance option whereby a retailer or whole sale purchaser-consumer may demonstrate compliance via test results under 40 CFR 80.78(a)(8)(iii)(A). These provisions are designed to grant compliance flexibility.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.50 hours (30 minutes) per respondent and 0.25 hours (15 minutes) per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** Gasoline retailers and wholesale purchaser-consumers.

**Estimated Number of Respondents:** 56,700.

**Frequency of Response:** Occasional.

**Estimated Total Annual Hour Burden:** 27,675 hours.

**Estimated Total Annual Cost:** \$885,600 in labor costs exclusively, with zero costs for operations and

maintenance and no capital/startup costs.

*Changes in the Estimates:* There is a decrease of \$1,079,325 in the estimated total annual cost compared with that identified in the previous ICR. This change is due to the use of a more appropriate Bureau of Labor Statistics table reflecting costs for the gasoline retail station industry.

Dated: March 16, 2010.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2010-6241 Filed 3-19-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2010-0175; FRL-9128-8]

### Clean Water Act Section 303(d): Notice of Call for Public Comment on 303(d) Program and Ocean Acidification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Request for Public Comment.

**SUMMARY:** This notice solicits public comment on the effects of Ocean Acidification (OA) as it relates to the listing of impaired waters under Section 303(d) of the Clean Water Act (CWA). Under Section 303(d) of the CWA, States, Territories, and authorized Tribes are required to develop lists of impaired waters and develop Total Maximum Daily Loads (TMDLs) for the pollutant(s) causing the impairment. By this notice, EPA is soliciting input from the public on what considerations EPA should take into account when deciding how to address listing of waters as threatened or impaired for ocean acidification under the 303(d) program. Should EPA decide to issue guidance regarding the listing of waters as threatened or impaired for ocean acidification under the 303(d) program, EPA is using this opportunity to seek public comment on the specific assessment, monitoring and other elements under CWA that EPA should consider, as well as input on how EPA can take into account other Federal ocean acidification programs and initiatives when deciding how to approach ocean acidification under the 303(d) program.

**DATES:** Comments must be received on or before May 21, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2010-0175 by one of the following methods:

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

- *Mail:* Clean Water Act Section 303(d): Notice of Call for Public Comment on 303(d) Program and Ocean Acidification, Environmental Protection Agency, Mailcode: 4503-T, 1200 Constitution Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OW-2010-0175. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Clean Water Act Section 303(d): Notice of Call for Public Comment on 303(d) Program and Ocean Acidification/EPA Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1744. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Christine Ruf, Ecologist, Assessment and Watershed Protection Division, Watershed Branch (4503-T) Environmental Protection Agency, 1301 Constitution Ave, NW. (MC 4503-T) Washington, DC; telephone number: (202) 566-1220; fax number: (202) 566-1437; e-mail address: [WatershedProgram-OWOW@epa.gov](mailto:WatershedProgram-OWOW@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does This Action Apply to Me?

1. This information may be useful to Federal, State, Tribal, and Territorial managers of water quality programs, including the Total Maximum Daily Load [Clean Water Act 303(d)] program, and assessment and monitoring programs.

2. This information may be useful to scientists and researchers involved in measuring and studying ocean acidification impacts.

3. This information may be useful to ocean and coastal managers who are identifying effective strategies for Federal, State, and local officials to use to address the potential impacts of ocean acidification.

###### B. What Should I Consider as I Prepare My Comments for EPA?

Information submitted in response to this FR Notice should address the issue of ocean acidification and the CWA Section 303(d) program, including whether EPA should issue guidance regarding the listing of waters as threatened or impaired for ocean acidification, and what that potential guidance might entail. Commenters should also address any other implications that ocean acidification may have for the 303(d) program. Detailed information about the 303(d)

program can be found at: <http://www.epa.gov/OWOW/tmdl/>. EPA is also soliciting scientific information, data and ideas for effective strategies for Federal, State, and local officials to use to address the potential impacts of ocean acidification through the 303(d) program. Specifically, EPA is requesting comment on the following:

1. What considerations should EPA take into account when deciding how to address the listing of waters as threatened or impaired for ocean acidification under the 303(d) program?

2. If EPA issues guidance regarding the listing of waters as threatened or impaired for ocean acidification under the 303(d) Program, what are the specific elements that EPA should consider? Should the Agency specifically consider the following:

a. What surface water monitoring methods and programs are available to States to measure ocean acidification impacts?

i. Are there emerging remote sensing technologies that might be particularly suited to gathering information about acidification of ocean waters?

ii. Are there new programs for collecting information about acidification of marine waters off the U.S. coasts that could provide information useful to EPA or States in the next few years?

b. What assessment methodologies are available for States to make attainment determinations consistent with water quality standards related to ocean acidification?

c. How can States incorporate additional information on ocean acidification beyond site-specific measurements? (e.g. offshore and global surveys, experiments and field studies on representative species or ecosystems, models for ocean acidification and carbon dioxide emission trends, etc.)

d. What other data and information is available for States to use in making decisions regarding whether waters are threatened or impaired for ocean acidification?

3. How can States or EPA otherwise aid in monitoring ocean acidification and its impacts on marine life and ecosystems?

4. If waters were determined to be threatened or impaired for ocean acidification under 303(d), what issues should EPA and States take into account when considering how to address TMDL development for such waters?

5. What other Federal ocean acidification programs and initiatives (e.g. National Ocean Policy, Subcommittee on Integrated Ocean Resources (SIMOR), Joint Subcommittee on Ocean Science and Technology

(JSOST), National Research Council report on Marine pH) should EPA take into account when deciding how to approach ocean acidification under the 303(d) program?

## II. Background Information on the 303(d) Program

CWA Section 303(d) and supporting regulations (40 CFR 130.2 and 130.7) establish the Impaired Waters Listing and TMDL Program. The Impaired Waters Listing and TMDL Program is primarily a State-driven process with EPA oversight. Key stakeholders include the States, the NPDES regulated community, agricultural community, environmental organizations, watershed groups, municipalities, local government, Tribal agencies, and Federal land management agencies. Under this program, States, Territories, and authorized Tribes (collectively referred to in the CWA as "States") are required to develop lists every two years of water quality-limited waters needing a TMDL (e.g., 2008, 2010) and submit the lists to EPA. These are waters for which technology-based regulations and other required controls are not stringent enough to meet applicable water quality standards.

In developing these lists, regulations at 40 CFR 130.7(b)(5) specify that each State shall assemble and evaluate all existing and readily available water quality related data and information to develop the list. At a minimum, "all existing and readily available water quality-related data and information" includes but is not limited to all of the following categories:

(i) Waters identified in the most recent CWA Section 305(b) report as "partially meeting" or "not meeting" designated uses, or as threatened;

(ii) Waters for which dilution calculations or predictive models indicate nonattainment of applicable water quality standards;

(iii) Waters for which water quality problems have been reported by local, State, or Federal agencies; members of the public; or academic institutions; and

(iv) Waters identified by the State as impaired or threatened in a nonpoint assessment submitted to EPA under Section 319 of the CWA.

EPA is required to approve or disapprove a State's impaired waters list. If EPA disapproves a list, EPA must identify the impaired waters that should be listed. States are also required to establish priority rankings for waters on the lists and develop TMDLs for these waters. To date, about 44,000 waters are listed nationwide as impaired ([http://iaspub.epa.gov/waters10/attains\\_nation\\_cy.control?p\\_report\\_type=T](http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T)).

A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet applicable water quality standards, and an allocation of that amount to the pollutant's point (wasteload allocation) and nonpoint (load allocation) sources. States develop TMDLs for each waterbody/pollutant combination identified on the impaired waters list and submit the TMDLs to EPA. CWA Section 303(d) and supporting regulations do not specify a timeframe for States to develop TMDLs. However, EPA recommends that States develop TMDLs within 8 to 13 years from the time the waterbody/pollutant combination was initially listed on the State's impaired waters list. EPA is required to approve or disapprove the State's TMDLs. If EPA disapproves a TMDL, EPA must establish its own TMDL. To date, about 41,000 TMDLs have been developed nationwide ([http://iaspub.epa.gov/waters10/attains\\_nation\\_cy.control?p\\_report\\_type=T](http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T)).

Under the TMDL Program, approved wasteload allocations for point sources must be implemented in applicable National Pollutant Discharge Elimination System (NPDES) permits. Load allocations for nonpoint sources are implemented through a wide variety of State, local, and Federal programs, which are primarily voluntary or incentive-based.

## III. Background on Ocean Acidification

Ocean acidification refers to the decrease in the pH of the Earth's oceans caused by the uptake of carbon dioxide (CO<sub>2</sub>) from the atmosphere. Ocean acidification is not a climate process, but instead directly affects ocean chemistry as seawater absorbs carbon dioxide from the atmosphere. Oceans have been absorbing about one-third of the anthropogenic CO<sub>2</sub> emitted into the atmosphere since pre-industrial times (Sabine *et al.*, 2009). Ocean acidification presents a suite of environmental changes that would likely negatively affect ocean ecosystems, fisheries, and other marine resources (Feely, 2001; Hendriks 2010; Wootton, 2008; and **Federal Register**, USEPA, 12/15/2009). Calcifying marine organisms may be adversely affected by future ocean acidification if declining carbonate saturation influences their ability to produce shells and skeletons out of calcium carbonate (Ridgwell, 2010). For instance, ocean acidification would likely reduce calcification rates in corals, and may affect shellfish species such as oysters, clams, and crabs (Cooper, 2008; Hoegh-Guldberg, 2007; and Gao, 2009).

Ocean acidification has emerged as a top priority within various Federal and international programs. Examples of a few key actions are described below. President Obama created an Interagency Ocean Policy Task Force on June 12, 2009, to better meet our Nation's stewardship responsibilities for the oceans, coasts and Great Lakes (White House Memo, June 12, 2009, online at [http://www.whitehouse.gov/sites/default/files/page/files/2009ocean\\_mem\\_rel.pdf](http://www.whitehouse.gov/sites/default/files/page/files/2009ocean_mem_rel.pdf)). The Task Force, on which EPA is playing a key role, is charged with developing recommendations within the next several years that include a national policy for our oceans and coasts, a framework for improved Federal policy coordination, and an implementation strategy to meet the objectives of a national ocean policy (<http://www.whitehouse.gov/administration/eop/ceq/initiatives/oceans>).

The group is planning to release a final report that will recommend a new national ocean policy and will address nine "action" categories, including ocean acidification. On December 14, 2009, the Task Force released its *Interim Framework for Effective Coastal and Marine Spatial Planning* (Interim Framework) for a 60-day public review and comment period. The Interim Framework offers a comprehensive, integrated approach to planning and managing uses and activities, and includes a number of important provisions that would significantly overhaul the Federal Government's approach to coastal and marine planning (<http://www.whitehouse.gov/administration/eop/ceq/initiatives/oceans/interim-framework>).

Second, on April 15, 2009, the Environmental Protection Agency (EPA) published a Notice of Data Availability (NODA) in the **Federal Register** requesting data and information regarding ocean acidification and the adequacy of EPA's existing recommended marine pH criterion ([http://www.us-ocb.org/EPA\\_OA\\_FR\\_Notice.pdf](http://www.us-ocb.org/EPA_OA_FR_Notice.pdf)). EPA is reviewing the comments that were submitted, and expects to determine whether to revise marine pH criterion in the spring of 2010. Third, in June 2008 the Interagency Working Group on Ocean Observations (IWGOO) was established by the Joint Subcommittee on Ocean Science and Technology (JSOST) of the National Science and Technology Council (NSTC) Committee on Environment and Natural Resources (CENR). The purpose of the IWGOO is to advise and assist the JSOST on matters related to ocean observations (<http://www.ocean.us/IWGOO>).

Fourth, the National Research Council is scheduled to release a report in 2010, that will address research, monitoring and assessment of ocean acidification (<http://www8.nationalacademies.org/cp/projectview.aspx?key=49047>). Finally, the Federal Ocean Acidification Research and Monitoring Act ("FOARAM Act") (Spring 2009), mandates interagency collaboration to achieve national priorities related to ocean acidification.

EPA is also directly involved in a number of other studies and partnerships to address ocean acidification, including:

- EPA released "Stony Coral Rapid Bioassessment Protocol" (RBP) on July 2007 (<http://www.epa.gov/bioiweb1/pdf/EPA-600-R-06-167StonyCoralRBP.pdf>).
- EPA is developing a technical guidance framework to aid States and Territories in their development, adoption, and implementation of coral reef biocriteria in their respective water quality standards.
- EPA supported the development of the Coral Mortality and Bleaching Output (COMBO) model to project the effects of climate change on coral reefs by calculating impacts from changing sea surface temperature and CO<sub>2</sub> concentration, and from episodic high temperature bleaching events (R.W. Buddemeier, 2008).
- EPA's National Coastal Research and Monitoring Strategy (<http://www.epa.gov/ged/crc/epa620r-00-005u.pdf>).
- EPA's National Coastal Condition Report (NCCR III) (<http://www.epa.gov/owow/oceans/nccr/>).

#### IV. Why Is EPA Requesting Comment on Ocean Acidification and the 303(d) Program at This Time?

The Center for Biological Diversity (CBD) filed a complaint against EPA on May 14th, 2009 challenging EPA's approval of Washington State's 2008 303(d) list citing failure to include coastal waters as impaired for marine pH [*CBD v. EPA*, No. 2:09cv670 (W. D. Wash)]. In addition, CBD has sent letters to 14 States and 2 Territories requesting that they list under CWA Section 303(d) all ocean waters impaired by ocean acidification, and revise their marine pH criteria. In response to this complaint, EPA is issuing this **Federal Register** notice seeking comments addressing ocean acidification under the CWA Section 303(d) program, including comments on whether EPA should issue guidance regarding the listing of waters as threatened or impaired for ocean acidification, and what that potential guidance might entail. EPA expects to

make a decision by November 15, 2010, about how to proceed with regard to the interplay between ocean acidification and the 303(d) program based on information received from this FR notice as well as information from other ongoing Federal efforts that are taking place on issues related to ocean acidification, described above.

#### V. References Related to 303(d) Program and Ocean Acidification

- Benjamin S. Halpern, *et al.*, *A global map of human impact on marine ecosystems*. *Science* 319, 948 (2008).
- Buddemeier, R.W., *et al.*, *A modeling tool to evaluate regional coral reef responses to changes in climate and ocean chemistry*. *Limnology and Oceanography Methods*, 6:395-411 (2008).
- Caldeira, K. Wickett M.E., *Anthropogenic carbon and ocean pH*. *Nature* 425:365 (2003).
- Cooper, T.F., *et al.*, *Declining coral calcification in massive Porites in two nearshore regions of the northern Great Barrier Reef*. *Global Change Biology* 14, 529-538 (2008).
- Federal Register**, Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act. Vol. 74, No. 239, December 15, 2009. Available online at: <http://www.epa.gov/climatechange/endangerment.html>.
- Federal Register**, Notice of data availability (NODA) on Ocean acidification and marine pH water quality criteria. Vol. 74, No. 71, April 15, 2009. Available online at: [http://www.us-ocb.org/EPA\\_OA\\_FR\\_Notice.pdf](http://www.us-ocb.org/EPA_OA_FR_Notice.pdf).
- Feely R.A., *et al.*, *Evidence for upwelling of corrosive "acidified" water onto the continental shelf*. *Science* 320:1490 (2008).
- Feely, R.A., *et al.*, *Impact of anthropogenic CO<sub>2</sub> on the CaCO<sub>3</sub> system in the oceans*. *Science*, 305: pp 362-366 (2004).
- Gao, K., *et al.*, *Ocean acidification exacerbates the effect of UV radiation on the calcifying phytoplankter *Emiliania huxleyi**. *Journal of the American Society of Limnology and Oceanography*, 54(6), 1855-1862 (2009).
- Hendriks, I.E., *et al.*, *Vulnerability of marine biodiversity to ocean acidification: A meta-analysis*. *Estuarine, Coastal and Shelf Science* 86 157-164 (2010).
- Hoegh-Guldberg, O. *Coral reefs under rapid climate change and ocean acidification*. *Science*, 318, 14 (2007).

National Oceanic and Atmospheric Administration (NOAA) *State of the science: Ocean acidification*, May 2008. Online: Accessed November 3, 2009. Available at: <http://www.pmel.noaa.gov/co2/OA/OceanAcidification%20FINAL.pdf>.

Obama, B., Memorandum for the Heads of Executive Departments and Agencies: National Policy for the Oceans, Our Coasts and the Great Lakes, Washington, DC, June 12, 2009 Available online: [http://www.whitehouse.gov/sites/default/files/page/files/2009ocean\\_mem\\_rel.pdf](http://www.whitehouse.gov/sites/default/files/page/files/2009ocean_mem_rel.pdf).

Ridgwell, A. et al., *Past constraints on the vulnerability of marine calcifiers to massive carbon dioxide release*, Nature Geoscience, Advance online publication, February 14, 2010. Available online at: <http://www.nature.com/naturegeoscience>.

Sabine, C. et al., *The oceanic sink for anthropogenic CO<sub>2</sub>*, *Science*, 305(5682), 367–371 (2004).

United States Environmental Protection Agency (USEPA), Office of Water (OW). National Water Program Strategy: Response to Climate Change. September 2008. Available online at: <http://www.epa.gov/water/climatechange/strategy.html>.

United States Environmental Protection Agency (USEPA). Watershed Branch, AWP, OWOW. Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act. July 29, 2005. Available online at: <http://www.epa.gov/owow/tmdl/2006IRG/report/2006irg-report.pdf>.

United States Environmental Protection Agency (USEPA). Watershed Branch, AWP, OWOW. Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) and 314 of the Clean Water Act. July 21, 2003. Available online at: [http://www.epa.gov/owow/tmdl/tmdl0103/2004rpt\\_guidance.pdf](http://www.epa.gov/owow/tmdl/tmdl0103/2004rpt_guidance.pdf).

Washington State Department of Ecology. Assessment of Water Quality for the Clean Water Act Sections 303(d) and 305(b) Integrated Report. September 2006. Available online at: <http://www.ecy.wa.gov/Programs/wq/303d/index.html>.

White House Council on Environmental Quality, Interim Report of The Interagency Ocean Policy Task Force. September 10, 2009. Available online at: [http://www.whitehouse.gov/assets/documents/09\\_17\\_09\\_Interim\\_Report\\_of\\_Task\\_Force\\_FINAL2.pdf](http://www.whitehouse.gov/assets/documents/09_17_09_Interim_Report_of_Task_Force_FINAL2.pdf).

White House Council on Environmental Quality, Interim Framework for Effective Coastal and Marine Spatial Planning, Interagency Ocean Policy Task Force. December 9, 2009. Available online at: <http://www.whitehouse.gov/sites/default/files/microsites/091209-Interim-CMSP-Framework-Task-Force.pdf>.

Wootton, J.T., et al., *Dynamic patterns and ecological impacts of declining ocean pH in a high-resolution multi-year dataset*. Proceedings of the National Academy of Sciences, October 2008, Volume 105, No. 48, pp 18848–18853.

Dated: March 15, 2010.

**Peter S. Silva,**

*Assistant Administrator for Water.*

[FR Doc. 2010–6239 Filed 3–19–10; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collections Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

March 16, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to

further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

**DATES:** Persons wishing to comment on this information collection should submit comments by April 21, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via e-mail to [Nicholas\\_A.Fraser@omb.eop.gov](mailto:Nicholas_A.Fraser@omb.eop.gov) and to Cathy Williams, Federal Communications Commission (FCC), via e-mail to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) and to [PRA@fcc.gov](mailto:PRA@fcc.gov). To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collections send an e-mail to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams on (202) 418–2918.

#### SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0874.

Title: FCC Form 2000 A through F, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501 – Consumer Complaint Forms: General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, and Slamming Complaints.

Form Number(s): FCC Form 2000 A through F, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit



entities; Not-for-profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 518,193 respondents and 518,193 responses.

Estimated Time per Response: 15 to 30 minutes per form on average.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 195,704 hours.

Total Annual Cost: None.

Obligation to Respond: Voluntary.

Nature and Extent of

Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB-1, "Informal Complaints and Inquiries", which became effective on January 25, 2010.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at <[http://www.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html)>. The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: The FCC Form 2000 Consumer Complaint Forms asks the complainants to provide their contact information, including address, telephone number, and e-mail address, and to briefly describe the nature of the complaint, including the communications entities against which the complaint is lodged, the consumer's account number(s), if applicable, the date(s) on which the incident(s) occurred, and the type of resolution the consumer is seeking. The Commission uses the information to resolve the consumer's informal complaint(s). The FCC Form 2000 A through F will remain unchanged.

The FCC Form 475-B Consumer Complaint Form asks complainants to provide their contact information, including address, telephone number, and e-mail address, and to describe their complaint(s) and issue(s) concerning the practices of telecommunications entities, which they believe may have aired obscene, profane, and/or indecent programming. The FCC Form 475-B will remain unchanged.

The FCC Form 1088 Consumer Complaint Form asks complainants to provide their contact information, including address, telephone number, and e-mail address, and to describe their complaints and issues regarding "Do Not Call" and "Junk Fax" as well as

other related consumer protection issues such as prerecorded messages, automatic telephone dialing systems, and unsolicited commercial e-mail messages to wireless telecommunications devices. The FCC Form 1088 A through H will remain unchanged.

The FCC Form 501 Consumer Complaint Form asks complainants to provide their contact information, including address, telephone number, and e-mail address, and to describe their complaints and issues regarding alleged slamming violations. The FCC Form 501 will remain unchanged.

All of the FCC Complaint Forms are being consolidated into this collection (and being deleted from OMB Control Number 3060-1088 and discontinued in OMB Control Number 3060-0968) in order to allow the Commission to better manage all forms used to collect informal consumer complaints.

OMB Control Number: 3060-1088.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05-338, FCC 06-42.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and Individuals or households.

Number of Respondents and Responses: 5,000,000 respondents; 5,122,500 responses.

Estimated Time per Response: 3 minutes (.05 hours) to 30 minutes (.50 hours).

Frequency of Response: Annual, monthly, and on occasion reporting requirements; recordkeeping; and third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The authorizing statutes for this information collection are: Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991); Junk Fax Prevention Act, Pub. L. No. 109-21, 119 Stat. 359 (2005).

Total Annual Burden: 3,311,250 hours.

Total Annual Cost: \$8,000,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that

Individuals and households provide personally identifiable information, which is covered

under the FCC's updated system of records notice (SORN), FCC/CGB-1, "Informal

Complaints and Inquiries," which became effective on January 25, 2010.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at [http://www.fcc.gov/omd/privacyact/Privacy\\_Impact\\_Assessment.html](http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html). The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005, CG Docket Nos. 02-278 and 05-338, FCC 06-42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act. The Report and Order and Third Order on Reconsideration contained information collection requirements pertaining to: (1) Opt-out Notice and Do-Not-Fax Requests Recordkeeping in which the rules require senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender; (2) Established Business Relationship Recordkeeping whereas the Junk Fax Prevention Act provides that the sender, e.g., a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an "established business relationship" (EBR) with the recipient; (3) Facsimile Number Recordkeeping in which the Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient; and (4) Express Invitation or Permission Recordkeeping where in the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement.

On October 14, 2008, the Commission released an Order on Reconsideration, FCC 08-239, addressing certain issues raised in petitions for reconsideration and/or clarification filed in response to the Commission's Report and Order and Third Order on Reconsideration (Junk Fax Order), FCC 06-42. In document FCC 08-239, the Commission clarified that: (1) Facsimile numbers compiled by third parties on behalf of the facsimile sender will be presumed to have been made voluntarily available for public

distribution so long as they are obtained from the intended recipient's own directory, advertisement, or Internet site; (2) Reasonable steps to verify that a recipient has agreed to make available a facsimile number for public distribution may include methods other than direct contact with the recipient; and (3) a description of the facsimile sender's opt-out mechanism on the first webpage to which recipients are directed in the opt-out notice satisfies the requirement that such a description appear on the first page of the Web site.

The Commission believes these clarifications will assist senders of facsimile advertisements in complying with the Commission's rules in a manner that minimizes regulatory compliance costs while maintaining the protections afforded consumers under the Telephone Consumer Protection Act (TCPA).

Federal Communications Commission.  
**Marlene H. Dortch**,  
*Secretary,*  
*Office of the Secretary,*  
*Office of Managing Director.*  
 [FR Doc. 2010-6139 Filed 3-19-10; 8:45 am]  
**BILLING CODE 6712-01-S**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update listing of financial institutions in liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance

Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at <http://www.fdic.gov/bank/individual/failed/banklist.html> or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: March 16, 2010.  
 Federal Deposit Insurance Corporation.

**Robert E. Feldman**,  
*Executive Secretary.*

**INSTITUTIONS IN LIQUIDATION**

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10194 .....	LibertyPointe Bank .....	New York .....	NY .....	3/11/2010
10197 .....	Old Southern Bank .....	Orlando .....	FL .....	3/12/2010
10195 .....	Park Avenue Bank, The .....	New York .....	NY .....	3/12/2010
10196 .....	Statewide Bank .....	Covington .....	LA .....	3/12/2010

[FR Doc. 2010-6143 Filed 3-19-10; 8:45 am]  
**BILLING CODE 6714-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Decision To Evaluate a Petition To Designate a Class of Employees for the De Soto Facility in Los Angeles County, CA, To Be included in the Special Exposure Cohort**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the De Soto Facility in Los Angeles County, California, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* De Soto facility.

*Location:* Los Angeles County, California.

*Job Titles and/or Job Duties:* All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors.

*Period of Employment:* January 1, 1959 through December 31, 1964.

**FOR FURTHER INFORMATION CONTACT:**

Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C-46, Cincinnati, OH 45226, Telephone 877-222-7570. Information requests can also be submitted by e-mail to [OCAS@CDC.GOV](mailto:OCAS@CDC.GOV).

**John Howard**,

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2010-6226 Filed 3-19-10; 8:45 am]

**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Decision To Evaluate a Petition To Designate a Class of Employees for the Downey Facility in Los Angeles County, CA, To Be Included in the Special Exposure Cohort**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Downey Facility in Los Angeles County, California, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Downey facility.

*Location:* Los Angeles County, California.

*Job Titles and/or Job Duties:* All employees of the Department of Energy,

its predecessor agencies, and their contractors and subcontractors.

*Period of Employment:* January 1, 1948 through December 31, 1955.

**FOR FURTHER INFORMATION CONTACT:**

Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C-46, Cincinnati, OH 45226, Telephone 877-222-7570. Information requests can also be submitted by e-mail to [OCAS@CDC.GOV](mailto:OCAS@CDC.GOV).

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2010-6224 Filed 3-19-10; 8:45 am]

**BILLING CODE 4150-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Decision To Evaluate a Petition To Designate a Class of Employees for the Simonds Saw and Steel Co., Lockport, New York, To Be Included in the Special Exposure Cohort**

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for Simonds Saw and Steel Co., Lockport, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

*Facility:* Simonds Saw and Steel Co.

*Location:* Lockport, New York.

*Job Titles and/or Job Duties:* All employees who worked in any area during the applicable covered thorium operational and residual periods.

*Period of Employment:* January 1, 1951 through December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Stuart L. Hinnefeld, Interim Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C-46, Cincinnati, OH 45226, Telephone 877-222-7570. Information requests can

also be submitted by e-mail to [OCAS@CDC.GOV](mailto:OCAS@CDC.GOV).

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2010-6221 Filed 3-19-10; 8:45 am]

**BILLING CODE 4163-19-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10315]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Patient Safety Survey Under the 9th Scope of Work: Nursing Home in Need (NHIN) *Use:* The Centers for Medicare & Medicaid Services (CMS) is requesting OMB clearance for the Nursing Homes in Need (NHIN) Survey. The NHIN is a component of the Patient Safety Theme of the Quality Improvement Organization (QIO) Program's 9th Scope of Work (SOW). The statutory authority for this scope of work is found in Part B of Title XI of the Social Security Act (the Act) as amended by the Peer Review Improvement Act of 1982. The Act established the Utilization and Quality Control Peer Review Organization Program, now known as the Quality Improvement Organization (QIO) Program.

The QIO in each State will provide special technical assistance to a small number of nursing homes in need of assistance with quality improvement efforts. This special technical assistance will be for the QIO to conduct a root cause analysis (RCA) with one nursing home in its State per year (three over three years). Under this component, it is expected that within the first quarter of the contract period, CMS will assign one nursing home to each QIO. The determination of which nursing homes are eligible under this component will be made by CMS. Some of these facilities may meet criteria for Special Focus Facilities (SFF). The intent of this component is that each State QIO will work with three nursing homes over the three-year contract period; these assignments are expected to be spaced out so that each State QIO will get one nursing home assigned approximately every 12 months.

The NHIN Survey is a new information collection to be used by CMS to obtain information on nursing home satisfaction with technical assistance strategies delivered as a component of the NHIN. The NHIN Survey will be a census of 53 nursing homes working with their respective QIOs. The survey will be conducted one time for each of the nursing homes assisted in the first two years under the 9th SOW and it will be conducted twice with nursing homes assisted in the third year. The information collected through this survey will allow CMS to help focus the NHIN task to maximize the benefit to participating nursing homes. The NHIN Survey will be administered via telephone by trained and experienced interviewers. Responses will be entered into a pre-programmed Computer-Assisted Telephone Interviewing (CATI) interface.

The NHIN Survey will include questions to determine if the QIO has conducted a root cause analysis and developed an action plan. These will be followed by questions about their satisfaction with the QIO and their perceived value of the QIO's assistance. The NHIN Survey will address the following:

- Background information;
- Current work—*information and assessment*;
- Satisfaction with QIOs;
- Value of QIO assistance;
- Sources of information; and
- Respondent comments.

All survey protocol and correspondence will be translated into Spanish and bilingual telephone interviewers will be used as needed. *Form Number:* CMS-10315 (OMB#: 0938-New); *Frequency:*

Occasionally; *Affected Public*: Businesses and other for-profit and not-for-profit institutions; *Number of Respondents*: 53; *Total Annual Responses*: 106; *Total Annual Hours*: 17.5 hours (years 1 and 2), 35 hours (year 3). (For policy questions regarding this collection contact Bob Kambic 410-786-1515. 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](mailto: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 *May 21, 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: March 15, 2010.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2010-6238 Filed 3-19-10; 8:45 am]

**BILLING CODE 4120-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10053, CMS-906 and CMS-10294]

#### **Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Paid Feeding Assistants in Long Term Care Facilities and Supporting Regulations at 42 CFR 483.160; *Use*: Section 42 CFR 483 permits long-term care facilities to use paid feeding assistants to supplement the services of certified nurse aides. If facilities choose this option, feeding assistance must complete a specified training program. In addition, a facility must maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants. This information is used as part of the process to determine facility compliance with this requirement. *Form Number*: CMS-10053 (OMB#: 0938-0916); *Frequency*: Reporting—Yearly; *Affected Public*: Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents*: 13,280; *Total Annual Responses*: 4,250; *Total Annual Hours*: 25,500. (For policy questions regarding this collection contact Susan Joslin at 410-786-3516. For all other issues call 410-786-1326.)

2. *Type of Information Collection Request*: Revision of a currently approved collection; *Title of Information Collection*: The Fiscal Soundness Reporting Requirements; *Use*: CMS is assigned responsibility for overseeing all Medicare Advantage Organizations (MAO), Prescription Drug Plan (PDP) sponsors, 1876 Cost Plans, Demonstration Plans and PACE organizations on-going financial performance. Specifically, CMS needs the requested collection of information to establish that contracting entities

within those programs maintain fiscally sound organizations. Refer to the supporting documents for a list of changes to this collection. *Form Number*: CMS-906 (OMB#: 0938-0469); *Frequency*: Reporting—Yearly and Quarterly; *Affected Public*: Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents*: 514; *Total Annual Responses*: 1,039; *Total Annual Hours*: 346. (For policy questions regarding this collection contact Robert Ahern at 410-786-0073. For all other issues call 410-786-1326.)

3. *Type of Information Collection Request*: New collection; *Title of Information Collection*: Program Evaluation of the Eighth and Ninth Scope of Work Quality Improvement Organization Program; *Use*: The statutory authority for the Quality Improvement Organization (QIO) Program is found in Part B of Title XI of the Social Security Act, as amended by the Peer Review Improvement Act of 1982. The Social Security Act established the Utilization and Quality Control Peer Review Organization Program, now known as the QIO Program. The statutory mission of the QIO Program, as set forth in Title XVIII—Health Insurance for the Aged and Disabled, Section 1862(g) of the Social Security Act—is to improve the effectiveness, efficiency, economy, and quality of services delivered to Medicare beneficiaries. The quality strategies of the Medicare QIO Program are carried out by specific QIO contractors working with health care providers in their state, territory, or the District of Columbia. The QIO contract contains a number of quality improvement initiatives that are authorized by various provisions in the Act. As a general matter, Section 1862(g) of the Act mandates that the secretary enter into contracts with QIOs for the purpose of determining that Medicare services are reasonable and medically necessary and for the purposes of promoting the effective, efficient, and economical delivery of health care services and of promoting the quality of the type of services for which payment may be made under Medicare. CMS interprets the term "promoting the quality of services" to involve more than QIOs reviewing care on a case-by-case basis, but to include a broad range of proactive initiatives that will promote higher quality. CMS has, for example, included in the SOW tasks in which the QIO will provide technical assistance to Medicare-participating providers and practitioners in order to help them improve the quality of the care they furnish to Medicare beneficiaries.

Additional authority for these activities appears in Section 1154(a)(8) of the Act, which requires that QIOs perform such duties and functions, assume such responsibilities, and comply with such other requirements as may be required by the Medicare statute. CMS regards survey activities as appropriate if they will directly benefit Medicare beneficiaries. In addition, Section 1154(a)(10) of the Act specifically requires that the QIOs “coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations, including other public or private review organizations as may be appropriate.” CMS regards this as specific authority for QIOs to coordinate and operate a broad range of collaborative and community activities among private and public entities, as long as the predicted outcome will directly benefit the Medicare program.

The purpose of the study is to design and conduct an analysis evaluating the impact on national and regional health care processes and outcomes of the Ninth Scope of Work QIO Program. The QIO Program is national in scope and scale and affects the quality of healthcare of 43 million elderly and disabled Americans. CMS will conduct an impact and process analysis using data from multiple sources: (1) Primary data collected via in-depth interviews, focus groups, and surveys of QIOs, health care providers, and other stakeholders; (2) secondary data reported by QIOs through CMS systems; and (3) CMS administrative data. The findings will be presented in a final report as well as in other documents and reports suitable for publication in peer-review journals. This request relates to the following data collections: (1) Survey of QIO directors and theme leaders; (2) Survey of hospital QI directors and nursing home administrators; (3) focus groups with Medicare beneficiaries; and (4) in-person and telephone discussions with QIO staff, partner organizations, health care providers, and community health leaders. *Form Number:* CMS-10294 (OMB# 0938-New); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits, and Medicare beneficiaries; *Number of Respondents:* 3,343; *Total Annual Responses:* 3,343; *Total Annual Hours:* 1,707. (For policy questions regarding this collection contact Robert Kambic at 410-786-

1515. 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](mailto: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 April 21, 2010.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-6974, E-mail: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

Dated: March 15, 2010.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2010-6237 Filed 3-19-10; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection

of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

#### Proposed Project: Assessment of the Town Hall Meetings on Underage Drinking Prevention—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP), is proposing a revision to the information collection regarding the Assessment of the Town Hall Meetings (THMs) on Underage Drinking (UAD) Prevention. The current data collection has approval under OMB #0930-0288, which expires on January 31, 2011. Revisions were made to the Town Hall Meeting Feedback Form, now being referred to as the Organizers Survey; the data collection method; and the number of respondents. Additionally, CSAP is adding a new data collection component titled the Participants Survey, which is the data collection instrument for the participants (or attendees) of the THM events.

#### Changes

Under the current approval, SAMHSA/CSAP distributes a brief Town Hall Meeting Feedback Form to all CBOs participating in THM events. This paper-and-pencil based form includes 14 items about the THM event, among which—

- Where, when, and who conducted the meeting;
- Number of attendees;
- Format of the meeting;
- Participants in the presentations;
- Actions planned;
- Media coverage;
- Composition of the audience;
- Responses of the attendees;
- Materials provided;
- Indications of increased awareness; and
- Indications of increased involvement.

Under this revision, SAMHSA/CSAP will provide organizers of THM events with password-protected login information to access the Organizers Survey via the Internet. The Organizers Survey includes 36 items about the THM event. Listed below is a summary of the revisions that were made—

Reworded topics/questions	New topics/questions
<ul style="list-style-type: none"> <li>• Date of THM event.</li> <li>• Location of THM event.</li> <li>• Organization(s) coordinating the THM event.</li> <li>• Format/Features of the THM event.</li> <li>• Promotion of the THM event.</li> <li>• Participants in the THM event presentations.</li> <li>• Major actions planned as a result of the THM event.</li> <li>• Overall satisfaction with the THM event.</li> <li>• Sharing of any other important features of reactions to the THM event.</li> <li>• Number/Composition of THM attendees.</li> </ul>	<ul style="list-style-type: none"> <li>• Indication of whether a THM event was not held and reason why the event was not held.</li> <li>• Venue in which THM event was held.</li> <li>• Characterization of the THM event location.</li> <li>• Duration of the THM event (in hours and minutes).</li> <li>• Youth involvement in the THM event.</li> <li>• Topic of THM event, if other than underage drinking.</li> <li>• Demographics of the participants (age, race, gender).</li> <li>• Language of the THM event.</li> <li>• Use of materials from the <a href="http://www.stopalcoholabuse.gov">http://www.stopalcoholabuse.gov</a> Web site.</li> <li>• Participation in THM-related Webinars.</li> <li>• Viewing of online training and requests for technical assistance (TA).</li> <li>• Satisfaction with training and/or TA received.</li> <li>• Improved capacity to provide effective UAD services due to training and/or TA received.</li> <li>• Implementation of training and/or TA recommendations.</li> <li>• Indication of whether data were collected about the THM event and willingness to share those data with CSAP.</li> </ul>
Deleted topics/questions	
<ul style="list-style-type: none"> <li>• Description of meeting.</li> <li>• Organization affiliation.</li> <li>• Overall response of THM event attendees.</li> <li>• Use of materials from the THM resource kit.</li> <li>• Indications of increased awareness.</li> <li>• Indications of increased involvement.</li> </ul>	

*New Data Collection Component*

SAMHSA/CSAP will provide organizers of THM events with a unique URL to make available to participants of their THM event. This unique URL provides access to the Participants Survey. The Participants Survey includes 17 items about the THM event, among which—

- When and where the THM event was held;
- Estimation of the number of attendees at the THM event;
- Perception of increased awareness;
- Indication of reach of the underage drinking prevention messages from the THM event;
- Perception of increased involvement;

- Indication of the most important underage drinking issues facing the community;
  - Perception of how well the THM event addressed those issues;
  - Appropriateness of the THM event in terms of length and duration;
  - Overall assessment of the THM event; and
  - Demographics of the participants.
- The Organizers Survey will be completed by an estimated 3,400 THM event organizers and will require only one response per respondent. It will take an average of 30 minutes (0.500 hours) to review the instructions and complete the survey. This burden estimate is based on comments from several potential respondents who reviewed the survey and provided comments on how long it would take them to complete it.

The Participants Survey will be completed by an estimated nine participants per THM event and will require only one response per respondent. The estimated number of participant respondents is based on 21 percent of the average of the sum of adult (66,519) and youth (53,554) participants, as reported on the 2008 THM events feedback forms (1,492 forms reported adults as participants and 1,316 forms reported youth as participants)  $[(120,073/2,808 = 42.76) \times 0.21 = 8.9798]$ . It will take an average of 10 minutes (0.167 hours) to review the instructions and complete the survey. This burden estimate is based on comments from several potential respondents who reviewed the survey and provided comments on how long it would take them to complete it.

Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Organizers Survey .....	3,400 .....	1	0.500	1,700.00
Participants Survey .....	30,600 (9 responses per THM event [3,400]).	1	0.167	5,110.20
Total .....	34,000 .....	.....	.....	6,810.20

SAMHSA/CSAP intends to support THM events every other year. The information collected will be used by SAMHSA/CSAP to help plan for these biennial events, to provide technical assistance and training to organizations that sponsor the events, and to comply

with the reporting requirements of the Government Performance Results Act of 1993. The information collected will also provide a descriptive picture of the nationwide initiative, and it will indicate how the THM events were received by the community and factors

that may be associated with well-received events.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail a copy to [summer.king@samhsa.hhs.gov](mailto:summer.king@samhsa.hhs.gov).

Written comments should be received within 60 days of this notice.

Dated: *March 15, 2010.*

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. 2010-6192 Filed 3-19-10; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-N-0117]

#### Agency Information Collection Activities; Proposed Collection; Comment Request: Guidance for Industry Entitled Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the guidance "Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims," which is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension.

**DATES:** Submit written or electronic comments on the collection of information by May 21, 2010.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3792, [Elizabeth.Berbakos@fda.hhs.gov](mailto:Elizabeth.Berbakos@fda.hhs.gov)

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Guidance for Industry entitled "Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims" 21 CFR 201.56 and 201.57—(OMB Control Number 0910—New)

This guidance is intended to assist applicants in developing labeling for outcome claims for drugs that are indicated to treat hypertension. With few exceptions, current labeling for antihypertensive drugs includes only the information that these drugs are indicated to reduce blood pressure; the labeling does not include information on the clinical benefits related to cardiovascular outcomes expected from such blood pressure reduction. However, blood pressure control is well established as beneficial in preventing serious cardiovascular events, and inadequate treatment of hypertension is acknowledged as a significant public health problem. FDA believes that the appropriate use of these drugs can be encouraged by making the connection between lower blood pressure and

improved cardiovascular outcomes more explicit in labeling. The intent of the guidance is to provide common labeling for antihypertensive drugs except where differences are clearly supported by clinical data. The guidance encourages applicants to submit labeling supplements containing the new language.

In the **Federal Register** of March 13, 2008 (73 FR 13546), FDA published the draft guidance entitled "Hypertension Indication: Drug Labeling for Cardiovascular Outcome Claims." The draft guidance contained no information collection subject to OMB review under the PRA. The final guidance, however, contains two new provisions that are subject to OMB review and approval under the PRA, and one new provision that would be exempt from OMB review. Under the PRA, FDA must first obtain OMB approval for this information collection before we may issue the final guidance.

(1) Section IV.C of the guidance requests that the CLINICAL STUDIES section of the Full Prescribing Information of the labeling should include a summary of placebo- or active-controlled trials showing evidence of the specific drug's effectiveness in lowering blood pressure. If trials demonstrating cardiovascular outcome benefits exist, those trials also should be summarized in this section. Table 1 in section V of the guidance contains the specific drugs for which the FDA has concluded that such trials exist. If there are no cardiovascular outcome data to cite, one of the following two paragraphs should appear:

"There are no trials of [DRUGNAME] or members of the [name of pharmacologic class] pharmacologic class demonstrating reductions in cardiovascular risk in patients with hypertension," or "There are no trials of [DRUGNAME] demonstrating reductions in cardiovascular risk in patients with hypertension, but at least one pharmacologically similar drug has demonstrated such benefits." In the latter case, the applicant's submission generally should refer to table 1 in section V of the guidance. If the applicant believes that table 1 is incomplete, it should submit the clinical evidence for the additional information to Docket No. FDA-2008-D-0150. The labeling submission should reference the submission to the docket. FDA estimates that no more than 1 submission to the docket will be made annually from 1 company, and that each submission will take approximately 10 hours to prepare and submit. Concerning the

recommendations for the CLINICAL STUDIES section of the Full Prescribing Information of the labeling, FDA regulations at §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57) require such labeling, and the information collection associated with these regulations is approved by OMB under OMB Control Number 0910-0572.

(2) Section VI.B of the guidance requests that the format of cardiovascular outcome claim prior approval supplements submitted to FDA under the guidance should include the following information:

1. A statement that the submission is a cardiovascular outcome claim supplement, with reference to the guidance and related Docket No. FDA-2008-D-0150
2. Applicable FDA forms (e.g., 356h, 3397)
3. Detailed Table of Contents
4. Revised labeling:
  - a. Include draft revised labeling conforming to the requirements in §§ 201.56 and 201.57

b. Include marked-up copy of the latest approved labeling, showing all additions and deletions, with annotations of where supporting data (if applicable) are located in the submission

FDA estimates that approximately 70 cardiovascular outcome claim supplements will be submitted annually from approximately 30 different companies, and that each supplement will take approximately 4 hours to prepare and submit. The guidance also recommends that other labeling changes (e.g., the addition of adverse event data) should be minimized and provided in separate supplements, and that the revision of labeling to conform to §§ 201.56 and 201.57 may require substantial revision to the ADVERSE REACTIONS or other labeling sections.

(3) Section VI.C of the guidance states that applicants are encouraged to include the following statement in promotional materials for the drug. “[DRUGNAME] reduces blood pressure, which reduces the risk of fatal and nonfatal cardiovascular events,

primarily strokes and myocardial infarctions. Control of high blood pressure should be part of comprehensive cardiovascular risk management, including, as appropriate, lipid control, diabetes management, antithrombotic therapy, smoking cessation, exercise, and limited sodium intake. Many patients will require more than one drug to achieve blood pressure goals.”

The inclusion of this statement in the promotional materials for the drug would be exempt from OMB review based on 5 CFR 1320.3(c)(2), which states that “The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included \* \* \*” within the definition of “collection of information.”

FDA requests public comments on the information collection provisions described previously and set forth in the following table:

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
Submission to Docket Number FDA-2008-D-0150	1	1	1	10	10
Cardiovascular Outcome Claim Supplement Submission	30	2.33	70	4	280
Total					290

Dated: March 16, 2010.  
**Leslie Kux,**  
*Acting Assistant Commissioner for Policy.*  
 [FR Doc. 2010-6173 Filed 3-19-10; 8:45 am]  
**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2010-N-0122]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups About Drug Products, as Used by the Food and Drug Administration**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain

information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on focus groups about drug products used by FDA to gauge informally public opinion, on a variety of subjects related to consumer, patient, or healthcare professional perceptions and use of drug products and related materials, including but not limited to, direct-to-consumer (DTC) prescription drug promotion, physician labeling of prescription drugs, Medication Guides, over-the-counter (OTC) drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

**DATES:** Submit written or electronic comments on the collection of information by May 21, 2010.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3792, [Elizabeth.Berbakos@fda.hhs.gov](mailto:Elizabeth.Berbakos@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in



44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### **Focus Groups About Drug Products, as Used by the Food and Drug Administration**

Focus groups provide an important role in gathering information because they allow for a more in-depth understanding of individuals' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

- To obtain information that is useful for developing variables and measures for quantitative studies,
- To better understand people's attitudes and emotions in response to topics and concepts, and
- To further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine its ideas and to help develop messages and other communications, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

FDA's Center for Drug Evaluation and Research, Office of the Commissioner, and any other centers or offices conducting focus groups about regulated drug products may need to conduct focus groups on a variety of subjects related to consumer, patient, or healthcare professional perceptions and use of drug products and related materials, including but not limited to, DTC prescription drug promotion, physician labeling of prescription drugs, Medication Guides, OTC drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

No. of Respondents	No. of Responses per Respondent	Total Annual Responses (Hours)	Hours per Response	Total Hours
1,440	1	1,440	1.75	2,520

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects about 20 focus group studies using 160 focus groups with an average of 9 persons per group, and lasting an average of 1.75 hours each. FDA is requesting this burden for unplanned focus groups so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

Dated: March 16, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010-6172 Filed 3-19-10; 8:45 am]

**BILLING CODE 4160-01-S**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Administration for Children and Families**

#### **Submission for OMB Review; Comment Request**

*Title:* ANA Project Impact Assessment Survey.

*OMB No.:* New Collection.

*Description:* The information collected by the Project Impact Assessment Survey is needed for two main reasons: (1) To collect crucial information required to report on the Administration for Native Americans' (ANA) established Government Performance and Results Act (GPRA) measures, and (2) to properly abide by ANA's congressionally-mandated

statute (42 United States Code 2991 *et seq.*) found within the Native American Programs Act of 1974, as amended, which states that ANA will evaluate projects assisted through ANA grant dollars "including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services." The information collected with this survey will fulfill ANA's statutory requirement and will also serve as an important planning and performance tool for ANA.

*Respondents:* Tribal Governments, Native American nonprofit organizations, and Tribal Colleges and Universities.

## ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ANA Project Impact Assessment Survey .....	85	1	6	510
Estimated Total Annual Burden Hours .....	.....	.....	.....	510

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address:* [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget,  
Paperwork Reduction Project,

Fax: 202-395-7285,

*E-mail:*

[OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV),

*Attn:* Desk Officer for the  
Administration for Children and  
Families.

Dated: March 16, 2010.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2010-6141 Filed 3-19-10; 8:45 am]

**BILLING CODE 4184-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

#### Office of Clinical and Preventive Services: National HIV Program

*Announcement Type:* Cooperative Agreement.

*Funding Opportunity Number:* HHS-2010-IHS-OCPS-HIV-0001.

*Catalog of Federal Domestic Assistance Number:* 93.933.

#### Key Dates

*Application Deadline Date:* April 30, 2010.

*Review Date:* May 12, 2010.

*Anticipated Start Date:* June 1, 2010.

### I. Funding Opportunity Description

#### *Statutory Authority*

The Indian Health Service (IHS) announces that competitive cooperative agreement applications are now being accepted by the IHS Office of Clinical and Preventive Services (OCPS) for the National Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Program. This program is authorized under the Snyder Act, 25 U.S.C. 13, and the Indian Health Care Improvement Act, 25 U.S.C. 1602(a)(b)(42)(43). This program is described under 93.933 in the Catalog of Federal Domestic Assistance (CFDA). There will be only one funding cycle during Fiscal Year (FY) 2010.

#### *Background*

Enhancement of HIV/AIDS testing activities in American Indian/Alaska Native (AI/AN) people is necessary to reduce the incidence of HIV/AIDS in those communities by increasing access to HIV related services, reducing stigma, and making testing routine. This open competition seeks to expand fiscal resources to increase the number of AI/AN with awareness of his/her HIV status. The cooperative agreements will provide routine HIV screening for adults as per 2006 Centers for Disease Control and Prevention (CDC) guidelines, and pre- and post-test counseling (when appropriate).

#### *Purpose*

These cooperative agreements will be used to identify best practices to enhance HIV testing, including rapid testing and/or conventional HIV antibody testing, and to provide a more focused effort to address HIV/AIDS prevention in AI/AN populations in the United States.

The nature of these projects will require collaboration to: (1) Coordinate activities with the IHS National HIV Program; and (2) submit and share non-personally identifiable (NPI) data surrounding HIV/AIDS testing, treatment and education.

These agreements are intended to encourage development of sustainable, routine HIV screening programs in Tribal health facilities that are aligned with 2006 CDC HIV screening

guidelines (<http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>). Key features include streamlined consent and counseling procedures (verbal consent, opt-out), a clear HIV screening policy, identifying and implementing any necessary staff training, community awareness, and a clear follow-up protocol for HIV positive results including linkages to care. Grantees may choose to bundle HIV tests with sexually transmitted diseases (STD) screening.

### II. Award Information

#### *Type of Awards*

Cooperative Agreement.

#### *Estimated Funds Available*

The total amount of funding identified for the current Fiscal Year (FY) 2010 is approximately \$540,000. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make additional awards under this announcement.

#### *Anticipated Number of Awards*

Approximately six cooperative agreement (CA) awards will be issued under this program announcement. Projects will be funded for annual budget periods in the amount of approximately \$90,000.

#### *Project Period*

This is a 2 year project.

#### *Programmatic Involvement*

*Limitations*—Only one CA project will be awarded per Tribe, Tribal organization, or intertribal consortium. Proposed activities that cover large populations and/or geographical areas that do not necessarily correspond with current IHS administrative areas are encouraged. In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under: (1) Recipient Activities, and IHS will be responsible for conducting activities under (2) IHS Activities.

#### 1. Recipient Activities

- Assist AI/AN communities and Tribal organizations in increasing the

number of AI/ANs with awareness of his/her HIV status. The grantee will assist and facilitate reporting of HIV diagnoses to local and State public health authorities in the region as required under existing public health statutes.

- Test at least one previously-untested (not tested in the prior five years) patient for every \$75.00 in cooperative agreement funds received, inclusive of all ancillary and indirect costs.

- Collaborate with national IHS programs by providing standardized, anonymous HIV surveillance data on a quarterly basis, and in identifying and documenting best practices for implementing routine HIV testing.

- Participate in the development of systems for sharing, improving, and disseminating aggregate HIV data at a national level for purposes of advocacy for AI/AN communities, Government Performance Results Act of 1993 (GPRA), Healthy People 2010 and other national-level activities.

- A three page mid-year report and no more than a ten page summary annual report at the end of each project year. The report should establish the impact and outcomes of various methods of implementing routine screening tried during the funding period.

## 2. IHS Activities

- Provide funded organizations with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the comprehensive program as described under Recipient Activities above. Consultation and technical assistance will include, but not be limited to, the following areas:

(a) Interpretation of current scientific literature related to epidemiology, statistics, surveillance, Healthy People 2010 Objectives, and other HIV disease control activities;

(b) Design and implementation of program components (including, but not limited to, program implementation methods, surveillance, epidemiologic analysis, outbreak investigation, development of programmatic evaluation, development of disease control programs, and coordination of activities);

(c) Overall operational planning and program management;

(d) Conduct visits to assess program progress and mutually resolve problems, as needed; and

(e) Coordinate these activities with all IHS HIV activities on a national basis.

## III. Eligibility Information

### 1. Eligibility

- Federally recognized AI/AN Tribes, as defined under 25 U.S.C. 1603(d).
- Tribal Organizations, as defined under 25 U.S.C. 1603(e).
- Consortium of two or more of those Tribes or Tribal Organizations.

### Definitions

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. 1603(d).

Tribal organization means the elected governing body or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(e).

Applicants other than Tribes must provide proof of non-profit status. Eligible consortiums must represent or propose to serve a population of at least 20,000 AI/ANs in order to be considered eligible. An intertribal consortium or AI/AN organization is eligible to receive a cooperative agreement if it is incorporated for the primary purpose of improving AI/AN health, and it is representing the Tribes or AN villages in which it is located. Collaborations with regional IHS, CDC, State, or organizations are encouraged and proof of such collaboration must be included in the application.

### 2. Cost Sharing or Matching

This program does not require matching funds or cost sharing.

### 3. Other Requirements

If application budgets exceed the stated dollar amount that is outlined within this announcement it will not be considered for funding.

Letters of Support (LoS) documentation is required with the submission of your application. LoS will be required from each Tribe that your entity will serve acknowledging this grant's activities. All letters of support must be signed by an official that is authorized to sign on behalf of the Tribe. LoS must be received by April

27, 2010, or the application will be considered incomplete, ineligible for review, and returned to the applicant without further consideration. Applicants submitting additional documentation after the initial application submission are required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.* FedEx tracking, postal return receipt, *etc.*).

## IV. Application and Submission Information

### 1. Obtaining Application Materials

The application package and instructions may be located at:

- *Grants.gov*: <http://www.grants.gov>.
- *Grants Policy Web site*: [http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp\\_funding](http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding).

### 2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

- Application forms:
  - SF-424.
  - SF-424A.
  - SF-424B.
- Budget Narrative (must be single spaced).
- Project Narrative (must not exceed 15 pages).
- Tribal Resolution or Tribal Letter of Support (Tribal Organizations only).
- Biographical sketches for all Key Personnel.
- Disclosure of Lobbying Activities (SF-LLL), if applicable.
- Documentation of current OMB A-133 required Financial Audit, if applicable. Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC Web site: <http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records>.

### Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

### Requirements for Project and Budget Narratives

A. *Project Narrative*: This narrative should be a separate Word document that is no longer than 15 pages (*see* page limitations for each Part noted below)

with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 15 pages will be reviewed. There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (no more than 3 pages)

Section 1: Needs.

Part B: Program Planning and

Evaluation (no more than 5 pages)

Section 1: Program Plans.

Section 2: Program Evaluation.

Part C: Program Report (no more than 7 pages)

Section 1: Describe major

Accomplishments over the last 24 months.

Section 2: Describe major Activities over the last 24 months.

*B. Budget Narrative:* This narrative must describe the budget requested and match the scope of work described in the project narrative. The page limitation should not exceed 3 pages.

### 3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by April 30, 2010 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding. If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail at [support@grants.gov](mailto:support@grants.gov) or at (800) 518-4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Ms. Tammy Bagley, Division of Grants Policy (DGP) ([tammy.bagley@ihs.gov](mailto:tammy.bagley@ihs.gov)) at (301) 443-5204. If assistance is needed, please be sure to contact Ms. Bagley at least ten days prior to the application deadline (April 30, 2010). Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained *before* submitting a paper application. E-mail requests are acceptable. A copy of the written

approval must be submitted along with the hardcopy that is mailed to the DGO. Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing and will be returned to the applicant and will not be considered for funding.

### 4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

### 5. Funding Restrictions

- Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 92, pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.

- The available funds are inclusive of direct and appropriate indirect costs.

- Only one grant/cooperative agreement will be awarded per applicant.

- IHS will not acknowledge receipt of applications.

### 6. Other Submission Requirements

Use the <http://www.Grants.gov> Web site to submit an application electronically and select the "Apply for Grants" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

- Paper applications are not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: <http://www.Grants.gov/CustomerSupport> or (800) 518-4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.

- If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to [GrantsPolicy@ihs.gov](mailto:GrantsPolicy@ihs.gov) with a copy to [Tammy.Bagley@ihs.gov](mailto:Tammy.Bagley@ihs.gov). Please include a clear justification for the need to deviate from the standard electronic submission process.

- If the waiver is approved, the application should be sent directly to the DGO by the deadline date of April 30, 2010.

- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGO.

- All applicants must comply with any page limitation requirements that are outlined in this Funding Announcement.

- After electronic submission of the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGO nor the OCPS Program Staff will notify applicants that the application has been received.

E-mail applications will not be accepted under this announcement.

### *Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)*

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be

assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site: <http://fedov.dnb.com/webform> or to expedite the process call (866) 705-5711.

Another important fact is that applicants must also be registered with the CCR and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at <http://www.ccr.gov>. Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: <http://www.Grants.gov>.

Applicants may register by calling 1(866) 606-8220. Please review and complete the CCR Registration worksheet located at <http://www.ccr.gov>.

## V. Application Review Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points.

### 1. Evaluation Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include all prior years of activity; information for multi-year projects should be included as an appendix (see E. "Categorical Budget and Budget Justification") at the end of this section for more information. The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the entity. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Emphasis will be placed on measures to increase testing and ensure sustainability of testing.

#### A. Understanding of the Need and Necessary Capacity (15 Points)

##### 1. Understanding of the Problem

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

##### 2. Facility Capability

a. Briefly describe the health facility and user population.

b. Describe the health facility's ability to conduct this initiative through:

- Linkages to treatment and care: partnerships established to refer out of your health facility as needed for specialized treatment, care, confirmatory testing (if applicable) and counseling services.

#### B. Work Plan (40 Points)

##### • Implementation Plan

1. Identify the proposed program activities and explain how these activities will increase and sustain HIV screening.

2. Describe policy and procedure changes anticipated for testing implementation that include:

- a. Support of CDC 2006 Revised Testing Recommendations.
- b. Community awareness of new HIV testing policy.
- c. Age and sex range of persons to be tested.
- d. Bundling of HIV tests with STD tests.

e. Type of HIV test (rapid, conventional, Western Blot) and who will perform test (in-house, contract lab).

f. Inclusion, exclusion, or phased introduction of testing in outpatient, inpatient, acute care/emergency room, specialty clinics, community-based testing.

3. Provide a clear timeline with quarterly milestones for project implementation.

4. Describe which group(s), if any, to which you cannot, because of State regulations, offer testing with verbal consent only, in an opt-out format.

5. Describe how the program will ensure that clients receive their test results, particularly clients who test positive.

6. Describe how the program will ensure that individuals with initial HIV-positive test results will receive confirmatory tests. If you do not provide confirmatory HIV testing, you must provide a letter of intent or Memorandum of Understanding with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

7. Describe the program strategies to linking potential seropositive patients to care.

8. Describe the program procedures for reporting seropositive patients to the appropriate State(s).

9. Describe the program quality assurance strategies.

10. Describe how the program will train, support and retain staff providing counseling and testing.

11. Describe how the program will ensure client confidentiality.

12. Describe how the program will ensure that your services are culturally sensitive and relevant.

13. Describe how the program will attempt to streamline procedures so as to reduce the overall cost per test administered.

#### C. Project Evaluation (20 Points)

##### 1. Evaluation Plan

The grantee shall provide a plan for monitoring and evaluating implementation of the HIV rapid test and/or standard HIV antibody test, and to identify best practices.

##### 2. Reporting Requirements

The following quantitative and qualitative measures shall be addressed:

- Required Quantitative Indicators (quantitative). Quarterly surveillance reports should be broken down by age and sex and contain only aggregate data, with no personal identifiers:

1. Number of tests performed and number of test refusals.

2. Number of clients learning of their serostatus for the first time via this testing initiative (unique patients, non-repeated tests). Number of clients tested for the first time in five years and meeting the programmatic definition of "previously untested."

3. Number of reactive tests and confirmed seropositive (actual and proportion).

4. Number of clients linked to care/treatment or referrals for prevention counseling.

5. Number of individuals receiving their confirmatory test results.

- Required Qualitative Information
- 1. Measures in place to protect confidentiality.

2. Identify barriers to implementation as well as lessons learned for best practices to share with other Tribes or Tribal organizations.

3. Sustainability plan and measures of ongoing testing in future years after grant money has been spent.

- Other quantitative indicators may be collected to improve clinic processes and add to information reported, however are not required reporting measures:

1. Number of clients who refused due to prior knowledge of status.

2. Number of rapid versus standard antibody test.

3. Number of false negatives and/or positives after confirmatory test.

#### D. Organizational Capabilities and Qualifications (20 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel

responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.
2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

3. Describe what equipment (*i.e.*, phone, Web sites, *etc.*) and facility space (*i.e.*, office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

4. List key personnel who will work on the project.

- Identify staffing plan, existing personnel and new program staff to be hired.

- In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

- Note who will be writing the progress reports.

- If a position is to be filled, indicate that information on the proposed position description.

- If the project requires additional personnel beyond those covered by the supplemental grant, (*i.e.*, IT support, volunteers, interviewers, *etc.*), note these and address how these positions will be filled and, if funds are required, the source of these funds.

- If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

#### E. Categorical Budget and Budget Justification (5 Points)

Provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on routinizing and sustaining HIV testing services as well as reducing the cost per person tested.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.

2. Budget narrative that serves as justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of allowable costs.

3. Budget justification should include a brief program narrative for the second year.

4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

#### 2. Review and Selection Process

Each application will be prescreened by the DGO staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee. Applicants will be notified by DGO, via letter, to outline the missing components of the application.

To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to these applicants. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page of the application. In addition to the above criteria/requirements, the application will be considered according to the following:

A. The Submission Deadline: April 30, 2010

Applications submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

- The applicant is eligible in accordance with this grant announcement.

- The application is not a duplication of a previously funded project.

- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Objective Review Date is May 12, 2010

The applications that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on this application. Prior to ORC review, the application will be screened to determine that programs proposed are those which the IHS has the authority to provide, either directly or through funding agreement, and that those programs are designed for the benefit of IHS beneficiaries. If an eligible entity does not meet these requirements, the application will not be reviewed. The ORC review will be conducted in accordance with the IHS Objective Review Guidelines. The application will be evaluated and rated on the basis of the evaluation criteria listed in section V. 1. The criteria are used to evaluate the quality of a proposed project and determine the likelihood of success.

#### 3. Anticipated Announcement and Award Dates

The anticipated Award Date is June 1, 2010.

### VI. Award Administration Information

#### 1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer, and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the Indian Health Service.

#### 2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The Criteria as Outlined in This Program Announcement

B. Administrative Regulations for Grants

- 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

### C. Grants Policy

- HHS Grants Policy Statement, Revised 01/07.

### D. Cost Principles

- Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87).

### E. Audit Requirements

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

### 3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Rev. 01/07 Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) <http://rates.psc.gov/> and the Department of Interior (National Business Center) <http://www.aqd.nbc.gov/indirect/indirect.asp>. For questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

### 4. Reporting Requirements

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports.

### A. Progress Report

Program progress reports are required semi-annually by the National HIV

Program in order to satisfy quarterly reports due to funding source at Minority AIDS Initiative (MAI). These reports (due mid-November, February, May, August) will include quantitative data as well as a brief comparison of actual accomplishments to the goals established for the period or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of end of the budget/project period.

- An Assessment and Evaluation Report must be submitted within 30 days of the end of each funded year.
- Participation in a minimum of two teleconferences. Teleconferences will be required semi-annually (unless further follow up is needed) for Technical Assistance to be provided and progress to be shared.
- Site visits. Tribal sites using MAI resources should be amenable to the possibility of site visits by IHS staff administering MAI funds.

### B. Financial Reports

Annual Financial Status Reports (FSR) must be submitted within 90 days after the budget period ends. Final FSRs are due within 90 days of expiration of the project period. Standard Form 269 (long form for those reporting on program income; short form for all others) will be used for financial reporting.

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management (DPM), Payment Management Branch. Please refer to the DPM Web site at: [dpm.psc.gov](http://dpm.psc.gov). Failure to submit timely reports may cause a disruption in timely payments to your organization.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

### VII. Agency Contacts

#### Grants Management Officer

Grants (Business)

Kimberly Pendleton, Grants Management Officer, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852. (301) 443–5204 or [kimberly.pendleton@ihs.gov](mailto:kimberly.pendleton@ihs.gov).

#### Program (Programmatic/Technical)

CAPT Scott Giberson, IHS National HIV Principal Consultant, 801 Thompson Ave, Reyes Building, Suite 306, Rockville, MD 20852. (301) 443–2449 or [scott.giberson@ihs.gov](mailto:scott.giberson@ihs.gov).

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of

all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: March 12, 2010.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

[FR Doc. 2010–6206 Filed 3–19–10; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–1998–N–0050] (Formerly Docket No. 1998N–0046)

### Compliance Policy Guide Sec. 540.375 Canned Salmon — Adulteration Involving Decomposition (CPG 7108.10); Withdrawal of Guidance

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal of Compliance Policy Guide Sec. 540.375 Canned Salmon — Adulteration Involving Decomposition (CPG 7108.10) (CPG Sec. 540.375). CPG Sec. 540.375 is included in FDA's Compliance Policy Guides Manual, which was listed in the Annual Comprehensive List of Guidance Documents that published on March 28, 2006.

**DATES:** The withdrawal is effective March 22, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Robert D. Samuels, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2300.

**SUPPLEMENTARY INFORMATION:** In a notice containing a cumulative list of guidances available from the agency that published in the **Federal Register** on March 28, 2006 (71 FR 15422 at 15453), FDA included the Compliance Policy Guides Manual, which includes CPG Sec. 540.375. FDA is withdrawing CPG Sec. 540.375 because it is obsolete. Current guidance to FDA staff relating to decomposition in fish and fishery products, including canned salmon, is provided in CPG Sec. 540.370 - Fish and

Fishery Products — Decomposition, which is available on the Internet at <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/ucm123201.htm>.

Dated: March 9, 2010.

**Michael A. Chappell,**

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 2010-6209 Filed 3-19-10; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-C-0077]

#### Biocompatibles UK Ltd.; Filing of Color Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Biocompatibles UK Ltd., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of C.I. Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-(3-((4,6-dichloro-s-triazin-2-yl)amino)-4-sulfoanilino)-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499-01-8) reacted with polyvinyl alcohol as a color additive in vascular embolization devices.

**FOR FURTHER INFORMATION CONTACT:** Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 301-436-1071.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 0C0288) has been filed by Biocompatibles UK Ltd., c/o John Greenbaum, Generic Devices Consulting, Inc., 20310 SW. 48th St, Southwest Ranches, FL 33332. The petition proposes to amend the color additive regulations in 21 CFR part 73, subpart D, *Medical Devices*, to provide for the safe use of C.I. Reactive Blue No. 4 [2-anthracenesulfonic acid, 1-amino-4-(3-((4,6-dichloro-s-triazin-2-yl)amino)-4-sulfoanilino)-9,10-dihydro-9,10-dioxo, disodium salt] (CAS Reg. No. 4499-01-8) reacted with polyvinyl alcohol as a color additive in vascular embolization devices.

The agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: March 5, 2010.

**Mitchell A. Cheeseman,**

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2010-6177 Filed 3-19-10; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-N-0123]

#### Impact of Dissolvable Tobacco Use on Public Health; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is establishing a public docket to provide an opportunity for interested parties to share information, research, and ideas on how use of dissolvable tobacco products may impact public health, including such use among children. This information will be used to support the work of the Tobacco Products Scientific Advisory Committee, which is charged with evaluating this issue.

**DATES:** Submit written or electronic comments by *[insert date 180 days from date of publication in the Federal Register]*.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov/>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Kathleen K. Quinn, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229, 240-276-1717, [Kathleen.Quinn@fda.hhs.gov](mailto:Kathleen.Quinn@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Tobacco products are responsible for more than 440,000 deaths each year. The Centers for Disease Control and Prevention report that every day in the United States, approximately 3,900 young people between these ages of 12 and 17 smoke their first cigarette and approximately 1,000 adolescents become daily smokers. Multiple studies

have shown that adolescents who use smokeless tobacco products are more likely to become smokers than those who do not.

Dissolvable tobacco products are a novel class of smokeless tobacco products, which are sold as thin strips, tablets, and sticks resembling toothpicks. Because some of these products look like candy, are highly flavored, and can be easily concealed, public health officials have raised concerns that dissolvable tobacco products may be particularly appealing to children and adolescents. These products also contain up to 4.0 milligrams of nicotine per unit, which could facilitate initiation of tobacco use and the development of nicotine dependence in adolescents, or even serve as a mechanism for inadvertent toxicity in children.

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) into law. The Tobacco Control Act granted FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Among its many provisions, the Tobacco Control Act added section 907(f) to the Federal Food, Drug, and Cosmetic Act (the act). This section requires FDA to refer the issue of “the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children” to a Tobacco Products Scientific Advisory Committee, which will be charged with providing FDA a report and recommendations.

We are requesting comments that will support the work of the Tobacco Products Scientific Advisory Committee in evaluating the public health impact of dissolvable tobacco products. A copy of the Tobacco Control Act is available at <http://www.fda.gov/tobacco>.

##### **II. Request for Comments and Information**

Data around the nature, impact, and use of dissolvables tobacco products will be critical to the Tobacco Products Scientific Advisory Committee in studying and reporting on their public health impact. We are therefore requesting comment, research, and data on ways in which these products might be used by individuals, including children and adolescents, how the risks of using these products are perceived by smokers and non-smokers, and how use of these products affects health. Such research may address:



- Perceptions of dissolvable tobacco products from current tobacco users and tobacco-naïve individuals, by age;
- Marketing of dissolvable tobacco products to current tobacco users and tobacco-naïve individuals, by age;
- Impact of dissolvable tobacco products on initiation of tobacco use in tobacco-naïve individuals, by age;
- Dual use of dissolvable tobacco products by current tobacco users;
- Impact of dissolvable tobacco products on cessation of tobacco use;
- Risk of accidental ingestion of dissolvable tobacco products;
- Risk of accidental nicotine toxicity through use of dissolvable tobacco products; and
- Consumer understanding of the potential toxicity of dissolvable tobacco products to children.

### III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified by the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 17, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010-6216 Filed 3-19-10; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Molecular and Cellular Neuroscience.

*Date:* April 1, 2010.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

*Contact Person:* Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892. 301-435-1203. [taupenol@csr.nih.gov](mailto:taupenol@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Virology and Viral Immunity.

*Date:* April 6-7, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Richard G. Kostriken, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892. 301-402-4454. [kostrikr@csr.nih.gov](mailto:kostrikr@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6107 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel; Eureka Meeting.

*Date:* April 15-16, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Lisa A. Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301-594-2849. [dunbarl@mail.nih.gov](mailto:dunbarl@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 12, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6112 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, LRP Reviews.

*Date:* May 7, 2010.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7682. [pateldg@nidk.nih.gov](mailto:pateldg@nidk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6120 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* May 24, 2010.

*Time:* 1 p.m. to 5:30 p.m.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892-7601, 301-435-3732. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6123 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Human Genome Research Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Human Genome Research Institute.

*Date:* June 10-11, 2010.

*Time:* June 10, 2010, 5 p.m. to 9:45 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Marriott Bethesda North Hotel Conference Center, 5701 Marinelli Road, Bethesda, MD 20825.

*Time:* June 11, 2010, 7:30 a.m. to 3:45 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 5th Floor Conference Room, Bethesda, MD 20892.

*Contact Person:* Claire Kelso, Intramural Program Specialist, Division of Intramural Research, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Building 50, Room 5222, Bethesda, MD 20892-8002, 301-435-5802, [claire@nhgri.nih.gov](mailto:claire@nhgri.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6127 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Environmental Health Sciences; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel; Career Development/Early Stage Investigator Award Review Meeting.

*Date:* April 5, 2010.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Durham Southpoint, 7007 Fayetteville Road, Durham, NC 27713.

*Contact Person:* Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P. O. Box 12233, MD EC-30/Room 3171, Research Triangle Park, NC 27709, (919) 541-0670, [worth@niehs.nih.gov](mailto:worth@niehs.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6131 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Cancer Institute; Cancellation of Meeting**

Notice is hereby given of the cancellation of the National Cancer Institute Special Emphasis Panel, April 8, 2010, 8 a.m. to April 9, 2010, 5 p.m., Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Maryland, Rockville, MD 20852 which was published in the **Federal Register** on March 5, 2010, 75FR10295.

This FRN is cancelling the meeting notification due to an administrative adjustment. A new FRN will be published to provide notification of this meeting.

Dated: March 12, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6128 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Long Term Outcomes of Infants Identified With Congenital Cytomegalovirus (CMV) Infection, Funding Opportunity Announcement (FOA) IP10-006, Initial Review**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 12 p.m.–2 p.m., June 8, 2010 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552(b)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to “Long Term Outcomes of Infants Identified with Congenital CMV Infection, FOA IP10-006.”

*For More Information Contact:* Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, GA 30333, Telephone: (404) 498-2293.

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: March 15, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010-6217 Filed 3-19-10; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2010-N-0001]

**Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Endocrinologic and Metabolic Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on May 27, 2010, from 8 a.m. to 5 p.m.

*Location:* The Inn and Conference Center, University of Maryland University College (UMUC), 3501 University Blvd. East, Adelphi, MD. The hotel telephone number is 301-985-7300.

*Contact Person:* Paul Tran, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail:

*paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512536. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory

committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda:* On May 27, 2010, the committee will discuss the safety and efficacy of new drug application (NDA) 22-505, EGRIFTA (tesamorelin acetate), sterile lyophilized powder for injection, by Theratechnologies, Inc. EGRIFTA is an analogue (a chemical compound that resembles another compound in structure) of growth hormone releasing hormone (GHRH). The proposed indication (use) for EGRIFTA in this application is to induce and maintain a reduction of excess visceral abdominal fat in human immunodeficiency virus (HIV)-infected patients with lipodystrophy (a condition in which abnormal deposits of fat are seen partly as a result of using certain drugs to treat HIV disease).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 13, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 5, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 6, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 16, 2010.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2010-6169 Filed 3-19-10; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### **Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Knowledge Synthesis Center for Evaluating Genomic Application in Practice and Prevention, GD 10-001, Initial Review**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 10 a.m.–5 p.m., May 25, 2010 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to “Knowledge Synthesis Center for Evaluating Genomic Application in Practice and Prevention, GD 10-001.”

*Contact Person for More Information:* Donald Blackman, PhD, Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K-92, Atlanta, GA 30341, Telephone: (770) 488-3023, E-mail: [DBY7@cdc.gov](mailto:DBY7@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices

pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 12, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010-6194 Filed 3-19-10; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### **Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Surveillance, Natural History, Quality of Care and Outcomes of Diabetes Mellitus With Onset in Childhood and Adolescence, RFA DP 10-001, Initial Review**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 10 a.m.–5 p.m., May 27, 2010 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of “Surveillance, Natural History, Quality of Care and Outcomes of Diabetes Mellitus With Onset in Childhood and Adolescence, RFA DP 10-001.”

*For More Information Contact:* Donald Blackman, PhD, Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K-92, Atlanta, GA 30341, Telephone: (770) 488-3023, E-mail: [DBY7@cdc.gov](mailto:DBY7@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 12, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010-6180 Filed 3-19-10; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### **Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): RFA DD 10-002 Public Health Research on Spina Bifida, RFA DD 10-003 Public Health Research on Children and Adults Living With Spina Bifida, RFA DD 10-004 Developing a Prospective Assessment of the Development, Health, and Condition Progression in Young Children With Spina Bifida, and RFA DP 10-006 Epidemiologic Study of Inflammatory Bowel Disease, Initial Review**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

*Time and Date:* 9 a.m.–4 p.m., April 15, 2010 (Closed)

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters To Be Discussed:* The meeting will include the initial review, discussion, and evaluation of “RFA DD 10-002 Public Health Research on Spina Bifida, RFA DD 10-003 Public Health Research on Children and Adults Living with Spina Bifida, RFA DD 10-004 Developing a Prospective Assessment of the Development, Health, and Condition Progression in Young Children with Spina Bifida, and RFA DP 10-006 Epidemiologic Study of Inflammatory Bowel Disease.”

*Contact Person for More Information:* Donald Blackman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K-92, Atlanta, GA 30341, Telephone: (770) 488-3023, Email: [DBY7@cdc.gov](mailto:DBY7@cdc.gov).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 12, 2010.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2010-6178 Filed 3-23-10; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Allergy and Infectious Diseases; Notice of Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council.

*Date:* May 24, 2010.

*Open:* 10:30 a.m. to 11:40 a.m.

*Agenda:* Report from the Institute Director.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Closed:* 11:40 a.m. to 12:40 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301-496-7291, [kaltmr@niaid.nih.gov](mailto:kaltmr@niaid.nih.gov).

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee.

*Date:* May 24, 2010.

*Closed:* 8:30 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

*Open:* 1 p.m. to adjournment.

*Agenda:* Program advisory discussions and reports from division staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301-496-7291, [kaltmr@niaid.nih.gov](mailto:kaltmr@niaid.nih.gov).

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council Allergy, Immunology and Transplantation Subcommittee.

*Date:* May 24, 2010.

*Closed:* 8:30 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Open:* 1 p.m. to adjournment.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Contact Person:* Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301-496-7291, [kaltmr@niaid.nih.gov](mailto:kaltmr@niaid.nih.gov).

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

*Date:* May 24, 2010.

*Closed:* 8:30 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

*Open:* 1 p.m. to adjournment.

*Agenda:* Reports from the Division Director and other staff.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

*Contact Person:* Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301-496-7291, [kaltmr@niaid.nih.gov](mailto:kaltmr@niaid.nih.gov).

Information is also available on the Institute's/Center's home page: [www.niaid.nih.gov/facts/facts.htm](http://www.niaid.nih.gov/facts/facts.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6124 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****National Institutes of Health****National Institute of Dental & Craniofacial Research; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Dental and Craniofacial Research Council.

*Date:* May 20, 2010.

*Open:* 8:30 a.m. to 12 p.m.

*Agenda:* Report of the Director, NIDCR.

*Place:* National Institutes of Health, Building 31, 6th Floor, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 1 p.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 6th Floor, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license,

or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about>, where an agenda and any additional information for the meeting will be posted when available.

Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6121 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

*Date:* June 6-9, 2010.

*Time:* June 6, 2010, 6 p.m. to 9 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Pook's Hill Marriott, 5151 Pook Hill Road, Bethesda, MD 20814.

*Time:* June 7, 2010, 8 a.m. to 6:40 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 30, 30 Center Drive, Room 117, Bethesda, MD 20892.

*Time:* June 8, 2010, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 30, 30 Center Drive, Room 117, Bethesda, MD 20892.

*Time:* June 9, 2010, 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 30, 30 Center Drive, Room 117, Bethesda, MD 20892.

*Contact Person:* Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about/CouncilCommittees.asp>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 15, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010-6119 Filed 3-19-10; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-D-0133]

#### Revised Draft Guidance for Industry on Pharmacokinetics in Patients With Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled "Pharmacokinetics in Patients With Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling." The draft guidance is intended to assist sponsors planning to conduct studies to assess the influence of renal impairment on the pharmacokinetics of an investigational drug. It provides recommendations on when studies should be conducted to assess the influence of renal impairment on the pharmacokinetics of an investigational drug, the design of such studies, and how such studies should be carried out.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft

guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by May 21, 2010.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

#### FOR FURTHER INFORMATION CONTACT:

Shiew-Mei Huang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3188, Silver Spring, MD 20993-0002, 301-796-1541, or;

Lei Zhang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3106, Silver Spring, MD 20993-0002, 301-796-1635.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a revised draft guidance entitled "Pharmacokinetics in Patients With Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling." The pharmacokinetics (PK) and pharmacodynamics of drugs primarily eliminated through the kidneys may be altered by impaired renal function to the extent that the dosage regimen needs to be changed from that used in patients with normal renal function. Although the most obvious type of change arising from renal impairment is a decrease in renal excretion of a drug or its metabolites, changes in renal metabolism can also occur. Renal impairment can also adversely affect some pathways of hepatic and/or gut drug metabolism and has been associated with other changes, such as changes in absorption, plasma protein binding, transport, and tissue distribution. These changes may be particularly prominent in patients with severely impaired renal function and have been observed even when the renal route is not the primary route of elimination of a drug. Thus, for most

drugs that are likely to be administered to patients with renal impairment, including drugs that are not primarily excreted by the kidney, PK should be assessed in patients with renal impairment to provide appropriate dosing recommendations.

This draft guidance provides recommendations on when studies should be conducted to assess the influence of renal impairment on the pharmacokinetics of an investigational drug, the design of such studies, and how such studies should be carried out.

In the **Federal Register** of May 15, 1998 (63 FR 27094), FDA announced the availability of a guidance entitled "Pharmacokinetics in Patients With Impaired Renal Function—Study Design, Data Analysis, and Impact on Dosing and Labeling." The guidance has been revised at this time to indicate that a renal impairment study will be recommended for all drugs (with a few exceptions). In the original guidance, the agency stressed the need to evaluate only drugs that are renally eliminated. A second change is that in the 1998 guidance, only the Cockcroft-Gault equation was recommended to gauge renal function. The revised draft guidance adds the Modification of Diet in Renal Disease equation as another possible gauge for renal function and for dose adjustments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on conducting PK studies in patients with impaired renal function. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 201.57 have been approved under OMB control number 0910–0572.

## III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances> or <http://www.regulations.gov>.

Dated: March 16, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–6171 Filed 3–19–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

[Docket no. MMS–2010–OMM–0008]

#### **MMS Information Collection Activity: 1010–0114, Subpart A—General, Revision of a Collection; Comment Request**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of revision of an information collection (1010–0114).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request concerns the paperwork requirements in the regulations under 30 CFR 250, subpart A, "General."

**DATES:** Submit written comments by May 21, 2010.

#### **FOR FURTHER INFORMATION CONTACT:**

Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and the forms that require the subject collection of information.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- *Electronically:* go to <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter docket ID MMS–2010–OMM–0008 then click search. Follow the instructions to submit public comments and view supporting and related materials. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals

Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0114 in your comment and include your name and return address.

#### **SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, subpart A, General. *Form(s):* MMS–132, MMS–143, MMS–1123, and MMS–1832.

*OMB Control Number:* 1010–0114.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations in the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health."

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.

This information collection request covers 30 CFR 250, Subpart A, General. This request also covers the related Notices to Lessees and Operators (NTLs) that MMS issues to clarify and provide additional guidance on some aspects of our regulations.

Requests for MMS approval may contain proprietary information related

to performance standards or alternative approaches to conducting operations different from those approved and specified in MMS regulations. We will protect this proprietary information according to the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR 2), 30 CFR 252, and 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." No items of a sensitive nature are collected. Responses are mandatory.

The MMS uses the information collected under the Subpart A regulations to ensure that operations in the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users in the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator training, rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The MMS also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.

- Review welding, burning, and hot tapping plans, procedures, and records to ensure that these activities are conducted in a safe and workmanlike manner by trained and experienced personnel.

- Provide lessees greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.

- Determine the capability of a well to produce oil or gas in paying quantities or to determine the possible need for additional wells resulting in minimum royalty status on a lease. If a well does not yield hydrocarbons in sufficient quantity to warrant continued operation and production, MMS uses the information to verify the claim and to release the lessee from lease obligations. Conversely, the information is used to extend the term of the lease if additional wells will warrant continued operation and production.

- Ensure that injection of gas promotes conservation of natural resources, prevents waste, and that

subsurface storage of natural gas does not unduly interfere with development and production operations under existing leases.

- Ensure the appropriateness of reimbursing lessees for costs incurred in reproducing geological and geophysical (G&G) data and information for submission to MMS and processing or reprocessing G&G information in a form and manner other than that normally used in the conduct of a lessee's business, or to determine the proper reimbursement of costs incurred during inspections.

- Record the designation of an operator authorized to act on behalf of the lessee and to fulfill the lessee's obligations under the OCS Lands Act and implementing regulations, or to record the local agent empowered to receive notices and comply with regulatory orders issued (Form MMS-1123).

- Determine if an application for right-of-use and easement serves the purpose specified in the grant when conducting exploration, development, and production activities or other operations on or off the lease; is maintained for such purposes; and does not unreasonably interfere with the operations of any other lessee.

- Provide for orderly development of leases through the use of information to determine the appropriateness of lessee requests for suspension of operations, including production. For example, MMS needs the information to determine that a suspension is necessary to: (1) Ensure proper lease development, (2) allow time to construct or negotiate use of transportation facilities, (3) allow reasonable time to enter into a sales contract, (4) allow for unavoidable situations, (5) avoid continued operations resulting in premature abandonment of a producing well(s) that would be uneconomic, (6) comply with the National Environmental Policy Act or to conduct an environmental analysis, (7) install equipment for safety and environmental protection, (8) allow time for inordinate delays encountered in obtaining required permits or consents, (9) comply with judicial decrees, or (10) avoid activities that pose a threat of serious, irreparable, or immediate harm.

- Improve safety and environmental protection in the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.

- Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion

of the last production. This includes reporting when lease production is initiated, resumes before the end of the 180-day period after production ceased, and when lease holding operations occur during the referenced 180-day interval. The MMS will use this information to efficiently maintain the lessee/operator lease status.

- Approve requests to cancel leases.
- Be informed when there could be a major disruption in the availability and supply of natural gas and oil due to natural occurrences/hurricanes, to advise the U.S. Coast Guard (USCG) in case of the need to rescue offshore workers in distress, to monitor damage to offshore platforms and drilling rigs, and to advise the news media and interested public entities when production is shut in and when resumed. The OCS operations produce more than one-quarter of the Nation's natural gas and more than one-sixth of its oil, and it is essential to know when production is interrupted. The Gulf of Mexico Region (GOMR) uses a reporting form for respondents to report evacuation statistics when necessary (Form MMS-132, Evacuation Statistics). It is sent to respondents at the onset of each "hurricane season" in the GOMR.

- Form MMS-143, Facility/Equipment Damage Report, assists lessees, lease operators, and pipeline right-of-way holders when reporting damage by a hurricane, earthquake, or other natural phenomenon. They are required to submit an initial damage report to the Regional Supervisor within 48 hours after completing the initial evaluation of the damage and then subsequent reports, monthly and immediately, whenever information previously submitted changes until the damaged structure or equipment is returned to service.

- Allow operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify an operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). The Subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136. However, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

- Determine that respondents have corrected all Incidents of Non-Compliance (INC)(s) identified during inspections (Form MMS-1832). The MMS issues this form to the operator.



The operator then corrects the INC(s) and returns the form to the MMS Regional Supervisor no later than 14 days.

- Review records of crane inspection, testing, maintenance, and crane operator qualifications to ensure that lessees perform operations in a safe and workmanlike manner and maintain equipment in a safe condition.

Frequency: Primarily on occasion; monthly; form MMS-132, Evacuation Statistics submitted daily during the emergency situation.

*Description of Respondents:* Federal, State, oil, gas, or sulphur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 36,739

hours. The following chart details the individual components and respective hour burden estimates of this information collection request. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden
		Non-hour cost burdens

**Authority and Definition of Terms**

104; 181; Form MMS-1832 .....	Appeal orders or decisions; appeal INCs; request hearing due to cancellation of lease.	Exempt under 5 CFR 1320.4(a)(2), (c).
-------------------------------	--	---------------------------------------

**Performance Standards**

109(a); 110 .....	Submit welding, burning, and hot tapping plans .....	2
115; 116 .....	Request determination of well producibility; make available or submit data & information; notify MMS of test.	5
118; 119; 121; 124 .....	Apply for injection or subsurface storage of gas; sign storage agreement.	10

**Cost Recovery Fees**

125; 126 .....	Cost Recovery/Service Fees; confirmation receipt etc., verbal approvals pertaining to fees (these requirements and associated items are covered individually throughout this subpart).	0
----------------	--	---

**Forms**

130-133; Form MMS-1832 .....	Submit "green" response copy of Form MMS-1832 indicating date violations (INC)s corrected.	2
143 .....	Report change of address; submit designation of local agent (requirements not considered IC under 5 CFR 1320.3(h)(1)).	0
143; 144; 145; Form MMS-1123 ....	Submit designation of operator (Form MMS-1123-15 mins. only); notice of termination; include pay.gov confirmation receipt.	1 \$164 per application.
192; Form MMS-132 .....	Daily report of evacuation statistics for natural occurrence/hurricane (Form MMS-132 in the GOMR) when circumstances warrant; inform MMS when you resume production.	1
192(b) .....	Use Form MMS-143 to submit an initial damage report to the Regional Supervisor.	4
192(b) .....	Use Form MMS-143 to submit subsequent damage reports on a monthly basis until damaged structure or equipment is returned to service; immediately when information changes; date item returned to service must be in final report.	1

**Inspection of Operations**

130-133 .....	Request reconsideration from issuance of an INC .....	2
	Request waiver of 14-day response time .....	1
	Notify MMS before returning to operations if shut-in. ....	.5
133 .....	Request reimbursement for food, quarters, and transportation provided to MMS representatives (OCS Lands Act specifies reimbursement; no requests received in many years; minimal burden).	2

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden
		Non-hour cost burdens
<b>Disqualification</b>		
135 MMS internal process .....	Submit PIP under MMS implementing procedures for enforcement actions.	40
<b>Special Types of Approval</b>		
140 .....	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	1
140(c) .....	Submit letter when stopping approved flaring with required information.	Burden covered under 1010-0041.
141; 198 .....	Request approval to use new or alternative procedures, including BAST not specifically covered elsewhere in regulatory requirements.	20
142; 198 .....	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements.	3
<b>Naming and Identifying Facilities and Wells (Does Not Include MODUs)</b>		
150; 151; 152; 154(a) .....	Name and identify facilities, artificial islands, MODUs, helo landing facilities etc., with signs.	2
150; 154(b) .....	Name and identify wells with signs .....	1
<b>Right-of-use and Easement</b>		
160; 161; 123 .....	OCS lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; including notifications.	10
160(c) .....	Establish a Company File for qualification; submit updated information, submit qualifications for lessee/bidder, request exception.	Burden covered under 1010-0006.
165; 123 .....	State lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; include pay.gov confirmation.	5 \$2,569 per state lease.
166 .....	State lessees: Furnish surety bond; additional security if required .....	Burden covered under 1010-0006.
<b>Suspensions</b>		
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operations or production; submit schedule of work leading to commencement.	10 \$1,968 per request.
	Submit progress reports on SOO or SOP as condition of approval .....	3
172(b); 177(a) .....	Conduct site-specific study; submit results. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100
177(b), (c), (d); 182; 183, 185; 194	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document, and related surveys/reports.	Burden covered under 1010-0151.
<b>Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations</b>		
180(a), (f), (g), (h), (i), (j) .....	Notify and submit report on various lease holding operations and lease production activities.	2
180(a), (b), (c) .....	When requested, submit production data to demonstrate production in paying quantities to maintain lease beyond primary term.	6
180(e) .....	Request more than 180 days to resume operations .....	5
181(d); 182(b), 183(b)(2) .....	Request termination of suspension and cancellation of lease (no requests in recent years for termination/cancellation of a lease; minimal burden).	20

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden
		Non-hour cost burdens
184 .....	Request compensation for lease cancellation mandated by the OCS Lands Act (no qualified lease cancellations in many years; minimal burden compared to benefit).	50
<b>Information and Reporting Requirements</b>		
186 .....	Submit information and reports as MMS requires .....	10
187; 188(a); 189; 190(c) .....	Report to the District Manager immediately via oral communication and written follow-up within 15 calendar days, incidents pertaining to: Fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >\$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including firefighting systems). If requested, submit copy marked as public information.	Oral .5. Written 4.
187(d) .....	Report all spills of oil or other liquid pollutants .....	Burden covered under 1010-0091.
188(a)(5) .....	Report to District Manager hydrogen sulfide (H <sub>2</sub> S) gas releases immediately by oral communication.	Burden covered under 1010-0141.
188(b); 190(a), (b) .....	Provide written report to the District Manager within 15 calendar days after incidents relating to: Injuries that result in 1 or more days away from work, on restricted work, or job transfer; gas releases that initiate equipment or process shutdown; property or equipment damage >\$25K; operations personnel to muster for evacuation not related to weather or drills; any additional information required.	4
191 .....	Submit written statement/Request compensation mileage + services for testimony re: Accident investigation.	Exempt under 5 CFR 1320.4(a)(2), (c).
193 .....	Report apparent violations or non-compliance .....	1.5
194 NTL exception requests .....	Request departures from conducting archaeological resources surveys and/or submitting reports in GOMR.	1
194(c) .....	Report archaeological discoveries (only one instance in many years; minimal burden).	10
195 .....	Notify District Manager within 5 workdays of putting well in production status (usually oral). Follow-up with either fax/email within same 5 day period (burden includes oral and written).	1
196 .....	Submit data/information for post-lease G&G activity and request reimbursement.	Burden covered under 1010-0048.
197(c) .....	Submit confidentiality agreement .....	1
101-199 .....	General departure or alternative compliance requests not specifically covered elsewhere in Subpart A.	2
<b>Recordkeeping</b>		
108(e) .....	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years.	2
109(b); 113(c) .....	Retain welding, burning, and hot tapping plan for the life of the facility; keep plan and drawings of safe-welding areas at site; designated person advises in writing that it is safe to weld.	.5
132(b)(3) .....	During inspections make records available as requested by inspectors.	2

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* The currently approved non-hour cost burden for this collection is \$810,200. We have identified three non-hour cost

burdens. Section 250.143 requires a fee for a change in designation of operator. Section 250.165 requires a State lessee applying for a right-of use and easement in the OCS to pay a cost recovery

application fee. This cost is the same as the fee for a pipeline right-of-way grant specified in 30 CFR 250.1015 and is subject to change based on that regulation. We estimate receiving only

one State lease application per year. Section 250.171 requests a fee for either a Suspension of Operations or Production Request (SOO/SOP). We have not identified any other non-hour paperwork cost burdens associated with this collection of information.

**Public Disclosure Statement:** The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

**Comments:** Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “\* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*”.

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our

submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

**Public Comment Procedures:** 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.

**MMS Information Collection Clearance Officer:** Arlene Bajusz (202) 208-7744.

Dated: March 10, 2010.

**Sharon Buffington,**

*Acting Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2010-6106 Filed 3-19-10; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

[Docket no. MMS-2010-OMM-0011]

#### **MMS Information Collection Activity: 1010-0142, Decommissioning Activities, Extension of a Collection; Comment Request**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010-0142).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart Q, “Decommissioning Activities.”

**DATES:** Submit written comments by May 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- *Electronically:* go to <http://www.regulations.gov>. In the entry titled

“Enter Keyword or ID,” enter docket ID MMS-2010-OMM-0011 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference ICR 1010-0142 in your comment and include your name and return address.

#### **SUPPLEMENTARY INFORMATION:**

**Title:** 30 CFR Part 250, Subpart Q, Decommissioning Activities.

**OMB Control Number:** 1010-0142.

**Abstract:** The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation’s energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that “operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.”

This authority and responsibility are among those delegated to the Minerals Management Service (MMS). The regulations at 30 CFR 250, Subpart Q, concern decommissioning of platforms, wells, and pipelines, as well as site clearance and platform removal and are the subject of this collection.

Regulations at 30 CFR 250, Subpart Q, implement these statutory requirements. We use the information for the following reasons:

- To determine the necessity for allowing a well to be temporarily abandoned, the lessee/operator must

demonstrate that there is a reason for not permanently abandoning the well, and the temporary abandonment will not constitute a significant threat to fishing, navigation, or other uses of the seabed. We use the information and documentation to verify that the lessee is diligently pursuing the final disposition of the well, and the lessee has performed the temporary plugging of the wellbore.

- The information submitted in “initial” decommissioning plans in the Alaska and Pacific OCS Regions will permit MMS to become involved on the ground floor planning of the world-class platform removals anticipated to occur in these OCS regions.

- Site clearance and platform or pipeline removal information ensures that all objects (wellheads, platforms, etc.) installed on the OCS are properly

removed using procedures that will protect marine life and the environment during removal operations, and the site cleared so as not to conflict with or harm other uses of the OCS.

- Decommissioning a pipeline in place is needed to ensure that it will not constitute a hazard to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects.

- The information is necessary to verify that decommissioning activities comply with approved applications and procedures and are satisfactorily completed.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, Data and

information to be made available to the public or for limited inspection. No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* On occasion.

*Description of Respondents:* Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 17,991 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart Q	Reporting requirement	Hour burden
		Non-hour cost burden
<b>General</b>		
1700 thru 1754 .....	General departure and alternative compliance requests not specifically covered elsewhere in subpart Q regulations.	3
1703; 1704 .....	Request approval for decommissioning—burden included below .....	0
1704(g); 1712; 1716; 1717; 1721(a), (d), (f), (g); 1722(a), (b), (d); 1723(b); 1743(a).	Submit form MMS–124 to plug wells; provide subsequent report; request alternate depth departure; request procedure to protect obstructions above seafloor; report within 30 days, results of trawling; certify area cleared of obstructions; remove casing stub or mud line suspension equipment and subsea protective covering; or other departures.	Burden included under 1010–0141.
<b>Permanently Plugging Wells</b>		
1711 .....	Required data if permanently plugging a well (requirement not considered IC under 5 CFR 1320.3(h)(9)).	0
1713 .....	Notify MMS 48 hours before beginning operations to permanently plug a well .....	.25
<b>Temporary Abandoned Wells</b>		
1721(e); 1722(e), (h)(1); 1741(c) .....	Identify and report subsea wellheads, casing stubs, or other obstructions; mark wells protected by a dome; mark location to be cleared as navigation hazard.	U.S. Coast Guard requirements.
1722(c), (g)(2) .....	Notify MMS within 5 days if trawl does not pass over protective device or causes damages to it; or if inspection reveals casing stub or mud line suspension is no longer protected.	.25
1722(f), (g)(3) .....	Submit annual report on plans for re-entry to complete or permanently abandon the well and inspection report.	2
1722(h) .....	Request waiver of trawling test .....	2
<b>Removing Platforms and Other Facilities</b>		
1726; 1704(a) .....	Submit initial decommissioning application in the Pacific OCS Region and Alaska OCS Region.	20
1725; 1727; 1728; 1730; 1704(b) .....	Submit final application and appropriate data to remove platform or other subsea facility structures (including alternate depth departure) or approval to maintain, to conduct other operations, or to convert to artificial reef.	20 \$4,342 applica- tion fee
1725(e) .....	Notify MMS 48 hours before beginning removal of platform and other facilities .....	.25
1729; 1704(c) .....	Submit post platform or other facility removal report; supporting documentation; signed statements, etc.	8
1731(c) .....	Request deferral of facility removal subject to RUE issued under 30 CFR 285.	
<b>Site Clearance for Wells, Platforms, and Other Facilities</b>		
1740 .....	Request approval to use alternative methods of well site, platform, or other facility clearance.	12

Citation 30 CFR 250 subpart Q	Reporting requirement	Hour burden
		Non-hour cost burden
1743(b); 1704(f) .....	Verify permanently plugged well, platform, or other facility removal site cleared of obstructions; supporting information; submit certification letter.	18
<b>Pipeline Decommissioning</b>		
1750; 1751; 1752; 1754; 1704(d) .....	Submit application to decommission pipeline in place or remove pipeline (L/T or ROW).	10
		\$1,059 L/T application fee.
		\$2,012 ROW application fee.
1753; 1704(e) .....	Submit post pipeline decommissioning report .....	3

**Estimated Reporting and Recordkeeping Non-Hour Cost Burden:** We have identified three non-hour paperwork cost burdens for this collection. Respondents pay filing fees when removing a platform or other facility under § 250.1727 for \$4,342, or for decommissioning a pipeline under § 250.1751(a)—L/T for \$1,059 or a ROW for \$2,012. The application filing fees are required to recover the Federal Government’s processing costs. We have not identified any other “non-hour cost” burdens associated with this collection of information.

**Public Disclosure Statement:** The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

**Comments:** Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “\* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting

from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

**Public Comment Procedures:** Before including your address, phone number, email 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.

**MMS Information Collection Clearance Officer:** Arlene Bajusz (202) 208-7744.

Dated: March 15, 2010.

**Sharon Buffington,**  
*Acting Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2010-6110 Filed 3-19-10; 8:45 am]

**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR**

**Minerals Management Service**

[Docket No. MMS-2010-OMM-0010]

**MMS Information Collection Activity: 1010-0043, Oil and Gas Well-Workover Operations, Renewal of a Collection; Comment Request**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of renewal of an information collection (1010-0043).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart F, “Oil and Gas Well-Workover Operations.”

**DATES:** Submit written comments by May 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

**ADDRESSES:** You may submit comments by either of the following methods listed below.

- *Electronically:* go to <http://www.regulations.gov>. In the entry titled "Enter Keyword or ID," enter docket ID MMS-2010-OMM-0010 then click search. Follow the instructions to submit public comments and view supporting and related materials. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference ICR 1010-0043 in your comment and include your name and return address.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

*OMB Control Number:* 1010-0043.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and

natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This ICR addresses the regulations at 30 CFR part 250, subpart F, Oil and Gas Well-Workover Operations and the associated

supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, Data and information to be made available to the public or for limited inspection. No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* Monthly, weekly, on occasion.

*Description of Respondents:* Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

*Estimated Reporting and Recordkeeping Hour Burden:* The currently approved annual reporting burden for this collection is 40,899 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250	Reporting requirement	Hour burden
<b>Requests</b>		
602 ..... 605; 613; 615(a), (e)(4); 616(d).	Request exceptions prior to moving well-workover equipment ..... Request approval to begin subsea well-workover operations; submit Forms MMS-124 (include, if required, alternate procedures and equipment; stump test procedures plan) and MMS-125.	1 Burden covered under 1010-0141.
612 ..... 616(a) .....	Request establishment/amendment/cancellation of field well-workover rules ..... Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	6 2
600-618 .....	General departure and alternative compliance requests not specifically covered elsewhere in subpart F regulations.	2
<b>Posting</b>		
614 .....	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	0.25
<b>Submittals/Notifications</b>		
602 .....	Notify MMS of any rig movement within Gulf of Mexico (Form MMS-144) .....	Burden covered under 1010-0150.
617(b) .....	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	6
617(c) .....	Notify MMS if sustained casing pressure is observed on a well .....	1
<b>Record/Documents</b>		
606 .....	Instruct crew members in safety requirements of operations to be performed and document meeting (weekly for 2 crews x 2 weeks per workover = 4).	1
611 .....	Perform operational check of traveling-block safety device and document results (weekly x 2 weeks per workover = 2).	.25
616(a), (b), (f), (g) .....	Perform BOP pressure tests, actuations, inspections & certifications; record results; retain records 2 years following completion of workover activities (when installed; at a minimum every 7 days x 2 weeks per workover = 2).	7
616(b)(2) .....	Test blind or blind-shear rams; document results (every 30 days during operations). (Note: this is part of BOP test when BOP test is conducted.)	2

Citation 30 CFR 250	Reporting requirement	Hour burden
616(b)(2) .....	Record reason for postponing BOP system tests .....	.5
616(c) .....	Perform crew drills and record results (weekly for 2 crews × 2 weeks per workover = 4) .....	1.5

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified no non-hour paperwork cost burdens for this collection.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “\* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for

the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

*Public Comment Procedures:* 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.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208-7744.

Dated: March 15, 2010.  
**Sharon Buffington,**  
*Acting Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2010-6109 Filed 3-19-10; 8:45 am]  
**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[LLNVS01000 L58530000.EU0000 241A; 10-08807; MO#4500012541; TAS: 14X5232]

**Notice of Extension of Public Comment Period for Draft Supplemental Environmental Impact Statement for the Upper Las Vegas Wash Conservation Transfer Area, Las Vegas, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of extension.

**SUMMARY:** The Bureau of Land Management (BLM) is extending the public comment period for the Draft Supplemental Environmental Impact Statement (SEIS) for the Upper Las Vegas Wash Conservation Transfer Area, Las Vegas, Nevada. A notice published in the **Federal Register** on January 22, 2010 (75 FR 3755) provided for a public comment period ending on March 22, 2010.

**DATES:** Several individuals and local governments have requested an extension of the comment period. The BLM has decided to act in accordance with these requests; therefore, comments on the Draft SEIS will now be accepted through May 21, 2010. Comments received or postmarked after May 21, 2010 will be considered to the extent practicable.

**ADDRESSES:** You may submit written comments by the following methods:

- *Web Site:* <http://www.blm.gov/nv/st/en/fo/lvfo.html>.
- *E-mail:*

NV\_SNDO\_Planning@blm.gov.

- *Fax:* 702-515-5023.
- *Mail:* Bob Ross, Field Manager, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130-2301.

**SUPPLEMENTARY INFORMATION:** 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 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.

**FOR FURTHER INFORMATION CONTACT:** For further information contact: Gayle Marrs-Smith, 702-515-5156, [Gayle\\_Marrs-Smith@blm.gov](mailto:Gayle_Marrs-Smith@blm.gov).

**Authority:** 40 CFR 1506.6 and 1506.10.

**Mary Jo Rugwell,**  
*District Manager.*  
[FR Doc. 2010-6337 Filed 3-18-10; 4:15 pm]  
**BILLING CODE 4310-HC-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Gettysburg National Military Park Advisory Commission**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of April 7, 2006 and October 5, 2006 Meetings.

**SUMMARY:** This notice sets forth the dates of the April 7, 2006 and October 5, 2006 meetings of the Gettysburg National Military Park Advisory Commission.



**DATES:** The public meeting will be held on April 7, 2006 and October 5, 2006 from 7 p.m. to 9 p.m.

**Location:** The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

**Agenda:** The April 7, 2006 meeting in addition to the following consist of the nomination of Chairperson and Vice-Chairperson for the 2006 year, then at both the April 7, 2006 and October 5, 2006 meetings Sub-Committee Reports from the Historical, Executive, and Interpretive Committees; Federal Consistency Reports Within the Gettysburg Battlefield Historic District; Operational Updates on Park Activities which consists of an update on Gettysburg National Battlefield Museum Foundation and National Park Service activities related to the new Visitor Center/Museum Complex, updates on the Wills House and the Train Station; Transportation which consists of the National Park Service and the Gettysburg Borough working on the shuttle system; Update on land acquisition within the park boundary or in the historic district; and the Citizens Open Forum where the public can make comments and ask questions on any park activity.

**FOR FURTHER INFORMATION CONTACT:** John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Gettysburg National Military Park Advisory Commission, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: March 12, 2010.

**John A. Latschar,**

*Superintendent, Gettysburg NMP/Eisenhower NHS.*

[FR Doc. 2010-6153 Filed 3-19-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLMT-06000-01-L10200000-PG0000]

#### Notice of Public Meeting; Central Montana Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management

Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management—Central Montana Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The meeting will be held April 13 and 14, 2010.

The meetings will be in the Bureau of Land Management—Central Montana District Office conference room (920 NE Main Street) Lewistown, Montana.

The April 13 meeting will begin at 10 a.m. with a 30-minute public comment period and will adjourn at 5:30 p.m.

The April 14 meeting will begin at 8 a.m. with a 30-minute public comment period. Following that the RAC will leave the building for a field trip. The meeting will reconvene at 1 p.m. and will adjourn at 2:30 p.m.

**SUPPLEMENTARY INFORMATION:** This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon:

RAC comments and discussions;

An update from the RAC's bison subgroup;

An update from the RAC's amenity fee subgroup;

A presentation featuring the Undaunted Stewardship program;

A status report on America Reinvestment and Recovery Act projects;

A review of the statewide public access project;

District managers' and Oil and Gas Field Station updates;

A presentation called BLM Proud;

A field trip to the Lime/Ruby Road Project;

A general review and discussion among RAC members; and

Administrative details (next meeting date, location, travel vouchers, etc.).

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

**FOR FURTHER INFORMATION CONTACT:** Gary L. "Stan" Benes, District Manager, Central Montana District Office, P.O. Box 1160, Lewistown, Montana 59457, 406/538-1900.

Dated: March 10, 2010.

**Gary L. "Stan" Benes,**

*Central Montana District Manager.*

[FR Doc. 2010-6227 Filed 3-19-10; 8:45 am]

**BILLING CODE 4310-DN-P**

## INTERNATIONAL TRADE COMMISSION

[USITC SE-10-004]

### Government in the Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** March 26, 2010 at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731-TA-776-779 (Second Review) (Preserved Mushrooms from Chile, China, India, and Indonesia)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before April 9, 2010.)
5. Outstanding action jackets:
  - (1) Document No. GC-10-028 concerning Inv. No. 337-TA-644 (Certain Composite Wear Components and Products Containing Same).
  - (2) Document No. GC-10-031 concerning Inv. No. 337-TA-568 (Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoietin).
  - (3) Document No. GC-10-034 concerning Inv. No. 337-TA-668 (Certain Non-Shellfish Derived Glucosamine and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: February 19, 2010.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2010-6304 Filed 3-18-10; 11:15 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1105-0030]

### Justice Management Division, Office of Attorney Recruitment and Management; Agency Information Collection Activities: Proposed Renewal of Previously Approved Collection; Comments Requested

**ACTION:** Correction 30-Day Notice of Information Collection Under Review:

Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

The U.S. Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget (OMB) approval is sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 5, pages 1081–1082, on January 8, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 21, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department Clearance Officer, United States Department of Justice, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: none. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The application form is submitted voluntarily once a year by law students and judicial law clerks, who will be in this applicant pool only once; the revision to this collection concerns two additional forms required to be submitted only by those applicants who were selected to be interviewed by Department components. These forms seek information in order to prepare both the official Travel Authorizations prior to the interviewees' performing pre-employment interview travel (as defined by 41 CFR 301–1.3), and the official Travel Vouchers after the travel is completed. The first new form is the Travel Survey—used by the Department in scheduling travel and/or hotel accommodations, which in turn provides the estimated travel costs required by the Travel Authorization form. The second new form is a simple Reimbursement Form—the interviewees are asked to provide their travel costs and/or hotel accommodations (if applicable) in order for the Department to prepare the Travel Vouchers required before these interviewees can be reimbursed by the Department for the authorized costs they incurred during this pre-employment interview travel.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5,000 respondents will complete the application in approximately one (1) hour per application. The revised burden would include 600 respondents who will complete the travel survey in approximately 10 minutes per form, and 600 respondents who will complete the reimbursement form in approximately 10 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated revised total

annual public burden associated with this application is 5,200 hours.

If additional information is required, contact Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 17, 2010.

**Lynn Bryant,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2010–6279 Filed 3–19–10; 8:45 am]

**BILLING CODE 4410–PB–P**

## DEPARTMENT OF JUSTICE

### Civil Rights Division

[OMB Number 1190–0001]

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** Correction 30-Day Notice of Information Collection Under Review: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ), Civil Rights Divisions (CRT) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** Volume 75, Number 5, Page 1081, on January 8, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional “thirty days” until April 21, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Robert S. Berman, U.S. Department of Justice, Voting Section, Civil Rights Division, 950 Pennsylvania Avenue, NW., 7243 NWB, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State or Local or Tribal Government. Other: None. Abstract: Jurisdictions specially covered under the Voting Rights Act are required to comply with Section 5 of the Act before they may implement any change in a standard, practice, or procedure affecting voting. One option for such compliance is to submit that change to Attorney General for review and establish that the proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,109 respondents will complete each form within approximately 10.02 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 41,172 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 17, 2010.

**Lynn Bryant,**

*Department Clearance Officer, PRA,  
U.S. Department of Justice.*

[FR Doc. 2010-6283 Filed 3-19-10; 8:45 am]

**BILLING CODE 4410-13-P**

#### DEPARTMENT OF JUSTICE

[CPCLO Order No. 001-2010]

#### Privacy Act of 1974; System of Records

**AGENCY:** Justice Management Division, DOJ.

**ACTION:** Minor modification to a system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Justice Management Division, Department of Justice, proposes to modify the Accounting Systems for the Department of Justice, Justice/DOJ-001, to update the "Record Source Categories" section of the notice. The full text of this System of Records Notice was last published at 69 FR 31406, June 3, 2004.

This minor modification does not require a comment period or notification to OMB and the Congress. The modification will be effective March 22, 2010. The modification to the system description is set forth below.

**FOR FURTHER INFORMATION CONTACT:** Robin Moss, Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, Washington, DC 20530.

Dated: March 12, 2010.

**Nancy C. Libin,**

*Chief Privacy and Civil Liberties Officer.*

#### DEPARTMENT OF JUSTICE-001

##### SYSTEM NAME:

Accounting Systems for the Department of Justice (DOJ).

\* \* \* \* \*

##### RECORD SOURCE CATEGORIES:

[Delete the current entry and substitute the following.]

Individuals covered by the system, Federal agencies, and banking/credit institutions under contract to provide financial services related to this system of records to the Department.

\* \* \* \* \*

[FR Doc. 2010-6213 Filed 3-19-10; 8:45 am]

**BILLING CODE 4410-FB-P**

#### DEPARTMENT OF JUSTICE

#### Office of Justice Programs

[OMB Number 1121-0235]

#### Agency Information Collection Activities

**ACTION:** 30-Day Notice of Information Collection Under Review: Revision of a currently approved collection; Bulletproof Vest Partnership.

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 75, Number 8, page 1812 on January 13, 2010, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 21, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806. Comments may also be submitted to M. Berry, at 202-616-6500 or by e-mail at [M.A.Berry@ojp.usdoj.gov](mailto:M.A.Berry@ojp.usdoj.gov) or by postal mail at the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile to (202) 305-1367.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. *Your comments should address one or more of the following four points:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Bulletproof Vest Partnership.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* State, Local, or Tribal Governments.

*Abstract:* The Bureau of Justice Assistance (BJA) collects this information as part of the application for federal assistance process under the Bulletproof Vest Partnership (BVP) Program. The purpose of this program is to help protect the lives of law enforcement officers by helping states and units of local and tribal governments equip their officers with armor vests. An applicant may request funds to help purchase one vest per officer per fiscal year. Federal payment covers up to 50 percent of each jurisdiction's total costs. BJA uses the information collected to review, approve, and make awards to

jurisdictions in accordance with programmatic and statutory requirements.

*Others:* None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* There are approximately 4,500 respondents who will respond once per year, for a total of 4,500 responses. Each response will require approximately 1 hour to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden hours associated with this collection is 5,000 hours.

If additional information is required contact Lynn Bryant, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 15, 2010.

**Lynn Bryant,**  
Department Clearance Officer, PRA, U.S.  
Department of Justice.

[FR Doc. 2010-6142 Filed 3-19-10; 8:45 am]

**BILLING CODE 4410-18-P**

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Labor Employment and Training Administration published a notice, **Federal Register**, Vol. 75, No. 42, Thursday, March 4, 2010, page 9955, to update the 2010 Labor Surplus Areas annual list published in the **Federal Register**, Vol. 74, No. 209, Friday, October 30, 2009, pages 56217-56239. This notice did not include the updated Labor Surplus Area list.

**DATES:** *Effective Date:* The update of the annual list of labor surplus areas was effective March 4, 2010 for all States, the District of Columbia, and Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Samuel Wright, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue, NW., Room S-4231, Washington, DC 20210. Telephone: (202) 693-2870 (this is not a toll-free number).

*Correction:* See the updated Labor Surplus Area List.

Signed at Washington, DC this 17th day of March, 2010.

**Jane Oates,**  
Assistant Secretary for Employment and Training Administration.

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Labor Surplus Area Classification Under Executive Orders 12073 and 10582**

**AGENCY:** Employment and Training Administration, Labor.

**LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010**

Eligible labor surplus areas	Civil jurisdictions included
<b>ALABAMA</b>	
Balance of Dallas County .....	Dallas County, AL.
Barbour County, AL .....	Barbour County, AL.
Bullock County, AL .....	Bullock County, AL.
Butler County, AL .....	Butler County, AL.
Chambers County, AL .....	Chambers County, AL.
Choctaw County, AL .....	Choctaw County, AL.
Clarke County, AL .....	Clarke County, AL.
Conecuh County, AL .....	Conecuh County, AL.
Coosa County, AL .....	Coosa County, AL.
Greene County, AL .....	Greene County, AL.
Lamar County, AL .....	Lamar County, AL.
Lowndes County, AL .....	Lowndes County, AL.
Monroe County, AL .....	Monroe County, AL.
Perry County, AL .....	Perry County, AL.
Prichard city, AL .....	Mobile County, AL.
Russell County, AL .....	Russell County, AL.
Selma city, AL .....	Dallas County, AL.
Sumter County, AL .....	Sumter County, AL.
Washington County, AL .....	Washington County, AL.
Wilcox County, AL .....	Wilcox County, AL.
Winston County, AL .....	Winston County, AL.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
<b>ALASKA</b>	
Aleutians East Borough, AK .....	Aleutians East Borough, AK.
Bethel Census Area, AK .....	Bethel Census Area, AK.
Dillingham Census Area, AK .....	Dillingham Census Area, AK.
Fairbanks city, AK .....	Fairbanks North Star Borough, AK.
Haines Borough, AK .....	Haines Borough, AK.
Kenai Peninsula Borough, AK .....	Kenai Peninsula Borough, AK.
Kodiak Island Borough, AK .....	Kodiak Island Borough, AK.
Lake and Peninsula Borough, AK .....	Lake and Peninsula Borough, AK.
Matanuska-Susitna Borough, AK .....	Matanuska-Susitna Borough, AK.
Nome Census Area, AK .....	Nome Census Area, AK.
Northwest Arctic Borough, AK .....	Northwest Arctic Borough, AK.
Prince of Wales-Outer Ketchikan Census Area, AK .....	Prince of Wales-Outer Ketchikan Census Area, AK.
Skagway-Hoonah-Angoon Census Area, AK .....	Skagway-Hoonah-Angoon Census Area, AK.
Southeast Fairbanks Census Area, AK .....	Southeast Fairbanks Census Area, AK.
Valdez-Cordova Census Area, AK .....	Valdez-Cordova Census Area, AK.
Wade Hampton Census Area, AK .....	Wade Hampton Census Area, AK.
Wrangell-Petersburg Census Area, AK .....	Wrangell-Petersburg Census Area, AK.
Yakutat Borough, AK .....	Yakutat Borough, AK.
Yukon-Koyukuk Census Area, AK .....	Yukon-Koyukuk Census Area, AK.
<b>ARIZONA</b>	
Apache County, AZ .....	Apache County, AZ.
Balance of Maricopa County, AZ .....	Maricopa County, AZ.
Balance of Mohave County, AZ .....	Mohave County, AZ.
Balance of Yuma County, AZ .....	Yuma County, AZ.
Maricopa city, AZ .....	Pinal County, AZ.
Navajo County, AZ .....	Navajo County, AZ.
Santa Cruz County, AZ .....	Santa Cruz County, AZ.
Yuma city, AZ .....	Yuma County, AZ.
<b>ARKANSAS</b>	
Arkansas County, AR .....	Arkansas County, AR.
Ashley County, AR .....	Ashley County, AR.
Bradley County, AR .....	Bradley County, AR.
Chicot County, AR .....	Chicot County, AR.
Clay County, AR .....	Clay County, AR.
Columbia County, AR .....	Columbia County, AR.
Cross County, AR .....	Cross County, AR.
Dallas County, AR .....	Dallas County, AR.
Desha County, AR .....	Desha County, AR.
Drew County, AR .....	Drew County, AR.
El Dorado city, AR .....	Union County, AR.
Hot Springs city, AR .....	Garland County, AR.
Independence County, AR .....	Independence County, AR.
Jackson County, AR .....	Jackson County, AR.
Lafayette County, AR .....	Lafayette County, AR.
Lawrence County, AR .....	Lawrence County, AR.
Lee County, AR .....	Lee County, AR.
Lincoln County, AR .....	Lincoln County, AR.
Mississippi County, AR .....	Mississippi County, AR.
Ouachita County, AR .....	Ouachita County, AR.
Phillips County, AR .....	Phillips County, AR.
Pine Bluff city, AR .....	Jefferson County, AR.
Poinsett County, AR .....	Poinsett County, AR.
Randolph County, AR .....	Randolph County, AR.
Sharp County, AR .....	Sharp County, AR.
St. Francis County, AR .....	St. Francis County, AR.
West Memphis city, AR .....	Crittenden County, AR.
Woodruff County, AR .....	Woodruff County, AR.
<b>CALIFORNIA</b>	
Adelanto city, CA .....	San Bernardino County, CA.
Alpine County, CA .....	Alpine County, CA.
Amador County, CA .....	Amador County, CA.
Apple Valley town, CA .....	San Bernardino County, CA.
Atwater city, CA .....	Merced County, CA.
Azusa city, CA .....	Los Angeles County, CA.
Balance of Butte County, CA .....	Butte County, CA.
Balance of Fresno County, CA .....	Fresno County, CA.
Balance of Humboldt County, CA .....	Humboldt County, CA.
Balance of Imperial County, CA .....	Imperial County, CA.
Balance of Kern County, CA .....	Kern County, CA.
Balance of Kings County, CA .....	Kings County, CA.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Madera County, CA .....	Madera County, CA.
Balance of Merced County, CA .....	Merced County, CA.
Balance of Monterey County, CA .....	Monterey County, CA.
Balance of Riverside County, CA .....	Riverside County, CA.
Balance of San Benito County, CA .....	San Benito County, CA.
Balance of San Bernardino County, CA .....	San Bernardino County, CA.
Balance of San Joaquin County, CA .....	San Joaquin County, CA.
Balance of Shasta County, CA .....	Shasta County, CA.
Balance of Stanislaus County, CA .....	Stanislaus County, CA.
Balance of Sutter County, CA .....	Sutter County, CA.
Balance of Tulare County, CA .....	Tulare County, CA.
Balance of Yolo County, CA .....	Yolo County, CA.
Baldwin Park city, CA .....	Los Angeles County, CA.
Banning city, CA .....	Riverside County, CA.
Beaumont city, CA .....	Riverside County, CA.
Bell city, CA .....	Los Angeles County, CA.
Bell Gardens city, CA .....	Los Angeles County, CA.
Bellflower city, CA .....	Los Angeles County, CA.
Calaveras County, CA .....	Calaveras County, CA.
Calexico city, CA .....	Imperial County, CA.
Carson city, CA .....	Los Angeles County, CA.
Cathedral City city, CA .....	Riverside County, CA.
Ceres city, CA .....	Stanislaus County, CA.
Chico city, CA .....	Butte County, CA.
Coachella city, CA .....	Riverside County, CA.
Colton city, CA .....	San Bernardino County, CA.
Colusa County, CA .....	Colusa County, CA.
Compton city, CA .....	Los Angeles County, CA.
Cudahy city, CA .....	Los Angeles County, CA.
Del Norte County, CA .....	Del Norte County, CA.
Delano city, CA .....	Kern County, CA.
East Palo Alto city, CA .....	San Mateo County, CA.
El Cajon city, CA .....	San Diego County, CA.
El Centro city, CA .....	Imperial County, CA.
El Monte city, CA .....	Los Angeles County, CA.
Eureka city, CA .....	Humboldt County, CA.
Fairfield city, CA .....	Solano County, CA.
Fontana city, CA .....	San Bernardino County, CA.
Fresno city, CA .....	Fresno County, CA.
Gilroy city, CA .....	Santa Clara County, CA.
Glenn County, CA .....	Glenn County, CA.
Hanford city, CA .....	Kings County, CA.
Hawthorne city, CA .....	Los Angeles County, CA.
Hemet city, CA .....	Riverside County, CA.
Hesperia city, CA .....	San Bernardino County, CA.
Highland city, CA .....	San Bernardino County, CA.
Hollister city, CA .....	San Benito County, CA.
Huntington Park city, CA .....	Los Angeles County, CA.
Imperial Beach city, CA .....	San Diego County, CA.
Indio city, CA .....	Riverside County, CA.
Inglewood city, CA .....	Los Angeles County, CA.
La Puente city, CA .....	Los Angeles County, CA.
Lake County, CA .....	Lake County, CA.
Lake Elsinore city, CA .....	Riverside County, CA.
Lancaster city, CA .....	Los Angeles County, CA.
Lassen County, CA .....	Lassen County, CA.
Lawndale city, CA .....	Los Angeles County, CA.
Lemon Grove city, CA .....	San Diego County, CA.
Lincoln city, CA .....	Placer County, CA.
Lodi city, CA .....	San Joaquin County, CA.
Lompoc city, CA .....	Santa Barbara County, CA.
Long Beach city, CA .....	Los Angeles County, CA.
Los Angeles city, CA .....	Los Angeles County, CA.
Los Banos city, CA .....	Merced County, CA.
Lynwood city, CA .....	Los Angeles County, CA.
Madera city, CA .....	Madera County, CA.
Manteca city, CA .....	San Joaquin County, CA.
Mariposa County, CA .....	Mariposa County, CA.
Maywood city, CA .....	Los Angeles County, CA.
Merced city, CA .....	Merced County, CA.
Modesto city, CA .....	Stanislaus County, CA.
Modoc County, CA .....	Modoc County, CA.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Montclair city, CA .....	San Bernardino County, CA.
Montebello city, CA .....	Los Angeles County, CA.
Monterey Park city, CA .....	Los Angeles County, CA.
Moreno Valley city, CA .....	Riverside County, CA.
Morgan Hill city, CA .....	Santa Clara County, CA.
National City city, CA .....	San Diego County, CA.
Norwalk city, CA .....	Los Angeles County, CA.
Oakland city, CA .....	Alameda County, CA.
Ontario city, CA .....	San Bernardino County, CA.
Oxnard city, CA .....	Ventura County, CA.
Palmdale city, CA .....	Los Angeles County, CA.
Paramount city, CA .....	Los Angeles County, CA.
Perris city, CA .....	Riverside County, CA.
Pittsburg city, CA .....	Contra Costa County, CA.
Plumas County, CA .....	Plumas County, CA.
Pomona city, CA .....	Los Angeles County, CA.
Porterville city, CA .....	Tulare County, CA.
Rancho Cordova city, CA .....	Sacramento County, CA.
Redding city, CA .....	Shasta County, CA.
Rialto city, CA .....	San Bernardino County, CA.
Richmond city, CA .....	Contra Costa County, CA.
Riverside city, CA .....	Riverside County, CA.
Sacramento city, CA .....	Sacramento County, CA.
Salinas city, CA .....	Monterey County, CA.
San Bernardino city, CA .....	San Bernardino County, CA.
San Jacinto city, CA .....	Riverside County, CA.
San Pablo city, CA .....	Contra Costa County, CA.
Sanger city, CA .....	Fresno County, CA.
Santa Ana city, CA .....	Orange County, CA.
Santa Maria city, CA .....	Santa Barbara County, CA.
Santa Paula city, CA .....	Ventura County, CA.
Sierra County, CA .....	Sierra County, CA.
Siskiyou County, CA .....	Siskiyou County, CA.
Soledad city, CA .....	Monterey County, CA.
South Gate city, CA .....	Los Angeles County, CA.
Stanton city, CA .....	Orange County, CA.
Stockton city, CA .....	San Joaquin County, CA.
Suisun City city, CA .....	Solano County, CA.
Tehama County, CA .....	Tehama County, CA.
Trinity County, CA .....	Trinity County, CA.
Tulare city, CA .....	Tulare County, CA.
Tuolumne County, CA .....	Tuolumne County, CA.
Turlock city, CA .....	Stanislaus County, CA.
Twentynine Palms city, CA .....	San Bernardino County, CA.
Vallejo city, CA .....	Solano County, CA.
Victorville city, CA .....	San Bernardino County, CA.
Watsonville city, CA .....	Santa Cruz County, CA.
West Sacramento city, CA .....	Yolo County, CA.
Woodland city, CA .....	Yolo County, CA.
Yuba City city, CA .....	Sutter County, CA.
Yuba County, CA .....	Yuba County, CA.
<b>COLORADO</b>	
Commerce City city, CO .....	Adams County, CO.
Conejos County, CO .....	Conejos County, CO.
Costilla County, CO .....	Costilla County, CO.
Crowley County, CO .....	Crowley County, CO.
Saguache County, CO .....	Saguache County, CO.
<b>CONNECTICUT</b>	
Ansonia city, CT .....	Ansonia city, CT.
Bridgeport city, CT .....	Bridgeport city, CT.
East Hartford town, CT .....	East Hartford town, CT.
Hartford city, CT .....	Hartford city, CT.
Meriden city, CT .....	Meriden city, CT.
New Britain city, CT .....	New Britain city, CT.
New Haven city, CT .....	New Haven city, CT.
New London city, CT .....	New London city, CT.
Waterbury city, CT .....	Waterbury city, CT.
Windham Town, CT .....	Windham Town, CT.
<b>DELAWARE</b>	
Wilmington city, DE .....	New Castle County, DE.
<b>DISTRICT OF COLUMBIA</b>	
District of Columbia .....	District of Columbia.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
<b>FLORIDA</b>	
Balance of Broward County, FL .....	Broward County, FL.
Balance of Duval County, FL .....	Duval County, FL.
Balance of Flagler County, FL .....	Flagler County, FL.
Balance of Marion County, FL .....	Marion County, FL.
Balance of Palm Beach County, FL .....	Palm Beach County, FL.
Balance of St. Lucie County, FL .....	St. Lucie County, FL.
Charlotte County, FL .....	Charlotte County, FL.
Citrus County, FL .....	Citrus County, FL.
Fort Pierce city, FL .....	St. Lucie County, FL.
Hendry County, FL .....	Hendry County, FL.
Hernando County, FL .....	Hernando County, FL.
Hialeah city, FL .....	Miami-Dade County, FL.
Indian River County, FL .....	Indian River County, FL.
Lee County, FL .....	Lee County, FL.
Madison County, FL .....	Madison County, FL.
Miami Gardens city, FL .....	Miami-Dade County, FL.
Okeechobee County, FL .....	Okeechobee County, FL.
Palm Coast city, FL .....	Flagler County, FL.
<b>GEORGIA</b>	
Albany city, GA .....	Dougherty County, GA.
Atkinson County, GA .....	Atkinson County, GA.
Atlanta city, GA .....	Fulton and DeKalb Counties.
Augusta-Richmond County (consolidated) city, GA .....	Richmond County, GA.
Balance of Liberty County, GA .....	Liberty County, GA.
Balance of Peach County, GA .....	Peach County, GA.
Baldwin County, GA .....	Baldwin County, GA.
Ben Hill County, GA .....	Ben Hill County, GA.
Burke County, GA .....	Burke County, GA.
Butts County, GA .....	Butts County, GA.
Calhoun County, GA .....	Calhoun County, GA.
Chattahoochee County, GA .....	Chattahoochee County, GA.
Chattooga County, GA .....	Chattooga County, GA.
Clay County, GA .....	Clay County, GA.
Clayton County, GA .....	Clayton County, GA.
Coffee County, GA .....	Coffee County, GA.
Cook County, GA .....	Cook County, GA.
Crisp County, GA .....	Crisp County, GA.
Dalton city, GA .....	Whitfield County, GA.
Decatur County, GA .....	Decatur County, GA.
East Point city, GA .....	Fulton County, GA.
Elbert County, GA .....	Elbert County, GA.
Emanuel County, GA .....	Emanuel County, GA.
Hancock County, GA .....	Hancock County, GA.
Hart County, GA .....	Hart County, GA.
Heard County, GA .....	Heard County, GA.
Irwin County, GA .....	Irwin County, GA.
Jasper County, GA .....	Jasper County, GA.
Jeff Davis County, GA .....	Jeff Davis County, GA.
Jefferson County, GA .....	Jefferson County, GA.
Jenkins County, GA .....	Jenkins County, GA.
Johnson County, GA .....	Johnson County, GA.
LaGrange city, GA .....	Troup County, GA.
Lawrenceville city, GA .....	Gwinnett County, GA.
Lincoln County, GA .....	Lincoln County, GA.
Macon City, GA .....	Bibb and Jones, Counties.
Macon County, GA .....	Macon County, GA.
McDuffie County, GA .....	McDuffie County, GA.
Meriwether County, GA .....	Meriwether County, GA.
Newton County, GA .....	Newton County, GA.
Quitman County, GA .....	Quitman County, GA.
Randolph County, GA .....	Randolph County, GA.
Rome city, GA .....	Floyd County, GA.
Schley County, GA .....	Schley County, GA.
Screven County, GA .....	Screven County, GA.
Seminole County, GA .....	Seminole County, GA.
Spalding County, GA .....	Spalding County, GA.
Statesboro city, GA .....	Bulloch County, GA.
Stewart County, GA .....	Stewart County, GA.
Sumter County, GA .....	Sumter County, GA.
Talbot County, GA .....	Talbot County, GA.
Taliaferro County, GA .....	Taliaferro County, GA.



## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Taylor County, GA .....	Taylor County, GA.
Telfair County, GA .....	Telfair County, GA.
Terrell County, GA .....	Terrell County, GA.
Treutlen County, GA .....	Treutlen County, GA.
Turner County, GA .....	Turner County, GA.
Twiggs County, GA .....	Twiggs County, GA.
Upton County, GA .....	Upton County, GA.
Warren County, GA .....	Warren County, GA.
Washington County, GA .....	Washington County, GA.
Wayne County, GA .....	Wayne County, GA.
Wilcox County, GA .....	Wilcox County, GA.
Wilkes County, GA .....	Wilkes County, GA.
<b>IDAHO</b>	
Adams County, ID .....	Adams County, ID.
Benewah County, ID .....	Benewah County, ID.
Boundary County, ID .....	Boundary County, ID.
Clearwater County, ID .....	Clearwater County, ID.
Shoshone County, ID .....	Shoshone County, ID.
Valley County, ID .....	Valley County, ID.
<b>ILLINOIS</b>	
Alexander County, IL .....	Alexander County, IL.
Alton city, IL .....	Madison County, IL.
Balance of Boone County, IL .....	Boone County, IL.
Balance of Kankakee County, IL .....	Kankakee County, IL.
Balance of St. Clair County, IL .....	St. Clair County, IL.
Balance of Vermilion County, IL .....	Vermilion County, IL.
Balance of Winnebago County, IL .....	Winnebago County, IL.
Belleville city, IL .....	St. Clair County, IL.
Belvidere city, IL .....	Boone County, IL.
Berwyn city, IL .....	Cook County, IL.
Bond County, IL .....	Bond County, IL.
Calhoun County, IL .....	Calhoun County, IL.
Calumet City city, IL .....	Cook County, IL.
Carpentersville village, IL .....	Kane County, IL.
Chicago city, IL .....	Cook County, IL.
Chicago Heights city, IL .....	Cook County, IL.
Cicero town, IL .....	Cook County, IL.
Clark County, IL .....	Clark County, IL.
Clay County, IL .....	Clay County, IL.
Crawford County, IL .....	Crawford County, IL.
Cumberland County, IL .....	Cumberland County, IL.
Danville city, IL .....	Vermilion County, IL.
Decatur city, IL .....	Macon County, IL.
Dolton village, IL .....	Cook County, IL.
East St. Louis city, IL .....	St. Clair County, IL.
Edgar County, IL .....	Edgar County, IL.
Elgin city, IL .....	Cook and Kane Counties, IL.
Fayette County, IL .....	Fayette County, IL.
Franklin County, IL .....	Franklin County, IL.
Freeport city, IL .....	Stephenson County, IL.
Fulton County, IL .....	Fulton County, IL.
Galesburg city, IL .....	Knox County, IL.
Gallatin County, IL .....	Gallatin County, IL.
Granite City city, IL .....	Madison County, IL.
Grundy County, IL .....	Grundy County, IL.
Hamilton County, IL .....	Hamilton County, IL.
Hancock County, IL .....	Hancock County, IL.
Hardin County, IL .....	Hardin County, IL.
Harvey city, IL .....	Cook County, IL.
Henderson County, IL .....	Henderson County, IL.
Johnson County, IL .....	Johnson County, IL.
Joliet city, IL .....	Will County, IL.
Kankakee city, IL .....	Kankakee County, IL.
La Salle County, IL .....	La Salle County, IL.
Lansing village, IL .....	Cook County, IL.
Lawrence County, IL .....	Lawrence County, IL.
Lee County, IL .....	Lee County, IL.
Macoupin County, IL .....	Macoupin County, IL.
Marion County, IL .....	Marion County, IL.
Mason County, IL .....	Mason County, IL.
Massac County, IL .....	Massac County, IL.
Maywood village, IL .....	Cook County, IL.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Mercer County, IL .....	Mercer County, IL.
Montgomery County, IL .....	Montgomery County, IL.
North Chicago city, IL .....	Lake County, IL.
Ogle County, IL .....	Ogle County, IL.
Park Forest village, IL .....	Cook and Will Counties, IL.
Perry County, IL .....	Perry County, IL.
Pope County, IL .....	Pope County, IL.
Pulaski County, IL .....	Pulaski County, IL.
Putnam County, IL .....	Putnam County, IL.
Randolph County, IL .....	Randolph County, IL.
Rockford city, IL .....	Winnebago County, IL.
Round Lake Beach village, IL .....	Lake County, IL.
Saline County, IL .....	Saline County, IL.
Stephenson County, IL .....	Stephenson County, IL.
Union County, IL .....	Union County, IL.
Wabash County, IL .....	Wabash County, IL.
Waukegan city, IL .....	Lake County, IL.
Whiteside County, IL .....	Whiteside County, IL.
Williamson County, IL .....	Williamson County, IL.
Zion city, IL .....	Lake County, IL.
<b>INDIANA</b>	
Anderson city, IN .....	Madison County, IN.
Blackford County, IN .....	Blackford County, IN.
Clay County, IN .....	Clay County, IN.
Crawford County, IN .....	Crawford County, IN.
DeKalb County, IN .....	DeKalb County, IN.
East Chicago city, IN .....	Lake County, IN.
Elkhart city, IN .....	Elkhart County, IN.
Fayette County, IN .....	Fayette County, IN.
Gary city, IN .....	Lake County, IN.
Goshen city, IN .....	Elkhart County, IN.
Hammond city, IN .....	Lake County, IN.
Henry County, IN .....	Henry County, IN.
Kokomo city, IN .....	Howard County, IN.
LaGrange County, IN .....	LaGrange County, IN.
Lawrence County, IN .....	Lawrence County, IN.
Marion city, IN .....	Grant County, IN.
Miami County, IN .....	Miami County, IN.
Michigan City city, IN .....	LaPorte County, IN.
Muncie city, IN .....	Delaware County, IN.
Noble County, IN .....	Noble County, IN.
Randolph County, IN .....	Randolph County, IN.
Richmond city, IN .....	Wayne County, IN.
South Bend city, IN .....	St. Joseph County, IN.
Starke County, IN .....	Starke County, IN.
Steuben County, IN .....	Steuben County, IN.
Terre Haute city, IN .....	Vigo County, IN.
Vermillion County, IN .....	Vermillion County, IN.
<b>IOWA</b>	
Jasper County, IA .....	Jasper County, IA.
<b>KANSAS</b>	
Kansas City city, KS .....	Wyandotte County, KS.
Leavenworth city, KS .....	Leavenworth County, KS.
<b>KENTUCKY</b>	
Adair County, KY .....	Adair County, KY.
Allen County, KY .....	Allen County, KY.
Balance of Christian County, KY .....	Christian County, KY.
Bath County, KY .....	Bath County, KY.
Bell County, KY .....	Bell County, KY.
Boyle County, KY .....	Boyle County, KY.
Bracken County, KY .....	Bracken County, KY.
Breathitt County, KY .....	Breathitt County, KY.
Breckinridge County, KY .....	Breckinridge County, KY.
Bullitt County, KY .....	Bullitt County, KY.
Butler County, KY .....	Butler County, KY.
Carlisle County, KY .....	Carlisle County, KY.
Carroll County, KY .....	Carroll County, KY.
Carter County, KY .....	Carter County, KY.
Clay County, KY .....	Clay County, KY.
Crittenden County, KY .....	Crittenden County, KY.
Cumberland County, KY .....	Cumberland County, KY.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Edmonson County, KY .....	Edmonson County, KY.
Elliott County, KY .....	Elliott County, KY.
Estill County, KY .....	Estill County, KY.
Fleming County, KY .....	Fleming County, KY.
Floyd County, KY .....	Floyd County, KY.
Fulton County, KY .....	Fulton County, KY.
Gallatin County, KY .....	Gallatin County, KY.
Grant County, KY .....	Grant County, KY.
Graves County, KY .....	Graves County, KY.
Grayson County, KY .....	Grayson County, KY.
Green County, KY .....	Green County, KY.
Harlan County, KY .....	Harlan County, KY.
Hickman County, KY .....	Hickman County, KY.
Hopkins County, KY .....	Hopkins County, KY.
Hopkinsville city, KY .....	Christian County, KY.
Jackson County, KY .....	Jackson County, KY.
Johnson County, KY .....	Johnson County, KY.
Knott County, KY .....	Knott County, KY.
Knox County, KY .....	Knox County, KY.
Lawrence County, KY .....	Lawrence County, KY.
Lee County, KY .....	Lee County, KY.
Leslie County, KY .....	Leslie County, KY.
Letcher County, KY .....	Letcher County, KY.
Lewis County, KY .....	Lewis County, KY.
Lincoln County, KY .....	Lincoln County, KY.
Lyon County, KY .....	Lyon County, KY.
Magoffin County, KY .....	Magoffin County, KY.
Martin County, KY .....	Martin County, KY.
McCreary County, KY .....	McCreary County, KY.
McLean County, KY .....	McLean County, KY.
Meade County, KY .....	Meade County, KY.
Menifee County, KY .....	Menifee County, KY.
Metcalfe County, KY .....	Metcalfe County, KY.
Monroe County, KY .....	Monroe County, KY.
Montgomery County, KY .....	Montgomery County, KY.
Morgan County, KY .....	Morgan County, KY.
Muhlenberg County, KY .....	Muhlenberg County, KY.
Nelson County, KY .....	Nelson County, KY.
Nicholas County, KY .....	Nicholas County, KY.
Owsley County, KY .....	Owsley County, KY.
Pendleton County, KY .....	Pendleton County, KY.
Perry County, KY .....	Perry County, KY.
Powell County, KY .....	Powell County, KY.
Pulaski County, KY .....	Pulaski County, KY.
Rockcastle County, KY .....	Rockcastle County, KY.
Russell County, KY .....	Russell County, KY.
Spencer County, KY .....	Spencer County, KY.
Todd County, KY .....	Todd County, KY.
Trigg County, KY .....	Trigg County, KY.
Trimble County, KY .....	Trimble County, KY.
Washington County, KY .....	Washington County, KY.
Wayne County, KY .....	Wayne County, KY.
Whitley County, KY .....	Whitley County, KY.
Wolfe County, KY .....	Wolfe County, KY.
<b>LOUISIANA</b>	
East Carroll Parish, LA .....	Concordia Parish, LA.
Franklin Parish, LA .....	De Soto Parish, LA.
Madison Parish, LA .....	East Carroll Parish, LA.
Morehouse Parish, LA .....	Franklin Parish, LA.
Red River Parish, LA .....	Madison Parish, LA.
St. Helena Parish, LA .....	Morehouse Parish, LA.
St. James Parish, LA .....	Red River Parish, LA.
Tensas Parish, LA .....	St. Helena Parish, LA.
West Carroll Parish, LA .....	St. James Parish, LA.
<b>MAINE</b>	
Aroostook County, ME .....	Aroostook County, ME.
Franklin County, ME .....	Franklin County, ME.
Oxford County, ME .....	Oxford County, ME.
Piscataquis County, ME .....	Piscataquis County, ME.
Somerset County, ME .....	Somerset County, ME.
Washington County, ME .....	Washington County, ME.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
<b>MARYLAND</b>	
Dorchester County, MD .....	Dorchester County, MD.
Worcester County, MD .....	Worcester County, MD.
<b>MASSACHUSETTS</b>	
Adams town, MA .....	Adams town, MA.
Athol town, MA .....	Athol town, MA.
Brockton city, MA .....	Brockton city, MA.
Fairhaven town, MA .....	Fairhaven town, MA.
Fall River city, MA .....	Fall River city, MA.
Fitchburg city, MA .....	Fitchburg city, MA.
Florida town, MA .....	Florida town, MA.
Gardner city, MA .....	Gardner city, MA.
Holyoke city, MA .....	Holyoke city, MA.
Lawrence city, MA .....	Lawrence city, MA.
Monroe town, MA .....	Monroe town, MA.
New Bedford city, MA .....	New Bedford city, MA.
North Adams city, MA .....	North Adams city, MA.
Provincetown town, MA .....	Provincetown town, MA.
Royalston town, MA .....	Royalston town, MA.
Southbridge town, MA .....	Southbridge town, MA.
Springfield city, MA .....	Springfield city, MA.
Templeton town, MA .....	Templeton town, MA.
Truro town, MA .....	Truro town, MA.
Warren town, MA .....	Warren town, MA.
Webster town, MA .....	Webster town, MA.
Wellfleet town, MA .....	Wellfleet town, MA.
Westport town, MA .....	Westport town, MA.
Winchendon town, MA .....	Winchendon town, MA.
<b>MICHIGAN</b>	
Alcona County, MI .....	Alcona County, MI.
Alger County, MI .....	Alger County, MI.
Alpena County, MI .....	Alpena County, MI.
Antrim County, MI .....	Antrim County, MI.
Arenac County, MI .....	Arenac County, MI.
Balance of Allegan County, MI .....	Allegan County, MI.
Balance of Bay County, MI .....	Bay County, MI.
Balance of Calhoun County, MI .....	Calhoun County, MI.
Balance of Genesee County, MI .....	Genesee County, MI.
Balance of Jackson County, MI .....	Jackson County, MI.
Balance of Macomb County, MI .....	Macomb County, MI.
Balance of Midland County, MI .....	Midland County, MI.
Balance of Muskegon County, MI .....	Muskegon County, MI.
Balance of Oakland County, MI .....	Oakland County, MI.
Balance of Saginaw County, MI .....	Saginaw County, MI.
Balance of St. Clair County, MI .....	St. Clair County, MI.
Baraga County, MI .....	Baraga County, MI.
Battle Creek city, MI .....	Calhoun County, MI.
Bay City city, MI .....	Bay County, MI.
Bedford township (Monroe County), MI .....	Monroe County, MI.
Benzie County, MI .....	Benzie County, MI.
Berrien County, MI .....	Berrien County, MI.
Blackman charter township, MI .....	Jackson County, MI.
Branch County, MI .....	Branch County, MI.
Burton city, MI .....	Genesee County, MI.
Cass County, MI .....	Cass County, MI.
Charlevoix County, MI .....	Charlevoix County, MI.
Cheboygan County, MI .....	Cheboygan County, MI.
Chesterfield township, MI .....	Macomb County, MI.
Chippewa County, MI .....	Chippewa County, MI.
Clare County, MI .....	Clare County, MI.
Clinton township (Macomb County), MI .....	Macomb County, MI.
Crawford County, MI .....	Crawford County, MI.
Delta County, MI .....	Delta County, MI.
Detroit city, MI .....	Wayne County, MI.
Dickinson County, MI .....	Dickinson County, MI.
East Lansing city, MI .....	Ingham County, MI.
Eastpointe city, MI .....	Macomb County, MI.
Emmet County, MI .....	Emmet County, MI.
Ferndale city, MI .....	Oakland County, MI.
Flint city, MI .....	Genesee County, MI.
Flint township, MI .....	Genesee County, MI.
Gladwin County, MI .....	Gladwin County, MI.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Gogebic County, MI .....	Gogebic County, MI.
Grand Rapids city, MI .....	Kent County, MI.
Grand Traverse County, MI .....	Grand Traverse County, MI.
Gratiot County, MI .....	Gratiot County, MI.
Harrison township, MI .....	Macomb County, MI.
Highland Park city, MI .....	Wayne County, MI.
Hillsdale County, MI .....	Hillsdale County, MI.
Holland city, MI .....	Allegan County, MI.
Houghton County, MI .....	Houghton County, MI.
Huron County, MI .....	Huron County, MI.
Inkster city, MI .....	Wayne County, MI.
Ionia County, MI .....	Ionia County, MI.
Iosco County, MI .....	Iosco County, MI.
Iron County, MI .....	Iron County, MI.
Jackson city, MI .....	Jackson County, MI.
Kalamazoo city, MI .....	Kalamazoo County, MI.
Kalkaska County, MI .....	Kalkaska County, MI.
Kent County, MI .....	Kent County, MI.
Keweenaw County, MI .....	Keweenaw County, MI.
Lake County, MI .....	Lake County, MI.
Lansing city, MI .....	Eaton County, MI.
Lapeer County, MI .....	Lapeer County, MI.
Lenawee County, MI .....	Lenawee County, MI.
Lincoln Park city, MI .....	Wayne County, MI.
Luce County, MI .....	Luce County, MI.
Mackinac County, MI .....	Mackinac County, MI.
Macomb township, MI .....	Macomb County, MI.
Madison Heights city, MI .....	Oakland County, MI.
Manistee County, MI .....	Manistee County, MI.
Marquette County, MI .....	Marquette County, MI.
Mason County, MI .....	Mason County, MI.
Mecosta County, MI .....	Mecosta County, MI.
Missaukee County, MI .....	Missaukee County, MI.
Monroe County, MI .....	Monroe County, MI.
Montcalm County, MI .....	Montcalm County, MI.
Montmorency County, MI .....	Montmorency County, MI.
Muskegon city, MI .....	Muskegon County, MI.
Newaygo County, MI .....	Newaygo County, MI.
Oak Park city, MI .....	Oakland County, MI.
Oceana County, MI .....	Oceana County, MI.
Ogemaw County, MI .....	Ogemaw County, MI.
Ontonagon County, MI .....	Ontonagon County, MI.
Osceola County, MI .....	Osceola County, MI.
Oscoda County, MI .....	Oscoda County, MI.
Otsego County, MI .....	Otsego County, MI.
Ottawa County, MI .....	Ottawa County, MI.
Pontiac city, MI .....	Oakland County, MI.
Port Huron city, MI .....	St. Clair County, MI.
Presque Isle County, MI .....	Presque Isle County, MI.
Romulus city, MI .....	Wayne County, MI.
Roscommon County, MI .....	Roscommon County, MI.
Roseville city, MI .....	Macomb County, MI.
Saginaw city, MI .....	Saginaw County, MI.
Sanilac County, MI .....	Sanilac County, MI.
Schoolcraft County, MI .....	Schoolcraft County, MI.
Shelby charter township (Macomb County), MI .....	Macomb County, MI.
Shiawassee County, MI .....	Shiawassee County, MI.
Southfield city, MI .....	Oakland County, MI.
St. Clair Shores city, MI .....	Macomb County, MI.
St. Joseph County, MI .....	St. Joseph County, MI.
Taylor city, MI .....	Wayne County, MI.
Tuscola County, MI .....	Tuscola County, MI.
Van Buren County, MI .....	Van Buren County, MI.
Warren city, MI .....	Macomb County, MI.
Waterford township, MI .....	Oakland County, MI.
Wexford County, MI .....	Wexford County, MI.
Wyandotte city, MI .....	Wayne County, MI.
Wyoming city, MI .....	Kent County, MI.
<b>MINNESOTA</b>	
Aitkin County, MN .....	Aitkin County, MN.
Balance of St. Louis County, MN .....	St. Louis County, MN.
Becker County, MN .....	Becker County, MN.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Beltrami County, MN .....	Beltrami County, MN.
Cass County, MN .....	Cass County, MN.
Chisago County, MN .....	Chisago County, MN.
Clearwater County, MN .....	Clearwater County, MN.
Crow Wing County, MN .....	Crow Wing County, MN.
Grant County, MN .....	Grant County, MN.
Hubbard County, MN .....	Hubbard County, MN.
Isanti County, MN .....	Isanti County, MN.
Itasca County, MN .....	Itasca County, MN.
Kanabec County, MN .....	Kanabec County, MN.
Koochiching County, MN .....	Koochiching County, MN.
Le Sueur County, MN .....	Le Sueur County, MN.
Mahnomen County, MN .....	Mahnomen County, MN.
Marshall County, MN .....	Marshall County, MN.
Meeker County, MN .....	Meeker County, MN.
Mille Lacs County, MN .....	Mille Lacs County, MN.
Morrison County, MN .....	Morrison County, MN.
Pennington County, MN .....	Pennington County, MN.
Pine County, MN .....	Pine County, MN.
Red Lake County, MN .....	Red Lake County, MN.
Wadena County, MN .....	Wadena County, MN.
<b>MISSISSIPPI</b>	
Adams County, MS .....	Adams County, MS.
Alcorn County, MS .....	Alcorn County, MS.
Amite County, MS .....	Amite County, MS.
Attala County, MS .....	Attala County, MS.
Balance of Lee County, MS .....	Lee County, MS.
Balance of Washington County, MS .....	Washington County, MS.
Benton County, MS .....	Benton County, MS.
Biloxi city, MS .....	Harrison County, MS.
Bolivar County, MS .....	Bolivar County, MS.
Calhoun County, MS .....	Calhoun County, MS.
Carroll County, MS .....	Carroll County, MS.
Chickasaw County, MS .....	Chickasaw County, MS.
Choctaw County, MS .....	Choctaw County, MS.
Claiborne County, MS .....	Claiborne County, MS.
Clarke County, MS .....	Clarke County, MS.
Clay County, MS .....	Clay County, MS.
Coahoma County, MS .....	Coahoma County, MS.
Columbus city, MS .....	Lowndes County, MS.
Copiah County, MS .....	Copiah County, MS.
Franklin County, MS .....	Franklin County, MS.
George County, MS .....	George County, MS.
Greene County, MS .....	Greene County, MS.
Greenville city, MS .....	Washington County, MS.
Grenada County, MS .....	Grenada County, MS.
Hattiesburg city, MS .....	Forrest and Lamar Counties, MS.
Holmes County, MS .....	Holmes County, MS.
Humphreys County, MS .....	Humphreys County, MS.
Issaquena County, MS .....	Issaquena County, MS.
Itawamba County, MS .....	Itawamba County, MS.
Jackson city, MS .....	Hinds, Madison and Rankin Counties.
Jasper County, MS .....	Jasper County, MS.
Jefferson County, MS .....	Jefferson County, MS.
Jefferson Davis County, MS .....	Jefferson Davis County, MS.
Kemper County, MS .....	Kemper County, MS.
Lawrence County, MS .....	Lawrence County, MS.
Leake County, MS .....	Leake County, MS.
Leflore County, MS .....	Leflore County, MS.
Lincoln County, MS .....	Lincoln County, MS.
Marion County, MS .....	Marion County, MS.
Marshall County, MS .....	Marshall County, MS.
Meridian city, MS .....	Lauderdale County, MS.
Monroe County, MS .....	Monroe County, MS.
Montgomery County, MS .....	Montgomery County, MS.
Noxubee County, MS .....	Noxubee County, MS.
Oktibbeha County, MS .....	Oktibbeha County, MS.
Panola County, MS .....	Panola County, MS.
Pascagoula city, MS .....	Jackson County, MS.
Pearl River County, MS .....	Pearl River County, MS.
Perry County, MS .....	Perry County, MS.
Pike County, MS .....	Pike County, MS.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Pontotoc County, MS .....	Pontotoc County, MS.
Prentiss County, MS .....	Prentiss County, MS.
Quitman County, MS .....	Quitman County, MS.
Sharkey County, MS .....	Sharkey County, MS.
Sunflower County, MS .....	Sunflower County, MS.
Tallahatchie County, MS .....	Tallahatchie County, MS.
Tate County, MS .....	Tate County, MS.
Tippah County, MS .....	Tippah County, MS.
Tishomingo County, MS .....	Tishomingo County, MS.
Tunica County, MS .....	Tunica County, MS.
Tupelo city, MS .....	Lee County, MS.
Union County, MS .....	Union County, MS.
Vicksburg city, MS .....	Warren County, MS.
Walthall County, MS .....	Walthall County, MS.
Wayne County, MS .....	Wayne County, MS.
Webster County, MS .....	Webster County, MS.
Wilkinson County, MS .....	Wilkinson County, MS.
Winston County, MS .....	Winston County, MS.
Yalobusha County, MS .....	Yalobusha County, MS.
Yazoo County, MS .....	Yazoo County, MS.
<b>MISSOURI</b>	
Barton County, MO .....	Barton County, MO.
Bates County, MO .....	Cass County, MO.
Benton County, MO .....	Benton County, MO.
Butler County, MO .....	Butler County, MO.
Carter County, MO .....	Carter County, MO.
Crawford County, MO .....	Crawford County, MO.
Dallas County, MO .....	Dallas County, MO.
Dent County, MO .....	Dent County, MO.
Douglas County, MO .....	Douglas County, MO.
Dunklin County, MO .....	Dunklin County, MO.
Franklin County, MO .....	Franklin County, MO.
Gasconade County, MO .....	Gasconade County, MO.
Hickory County, MO .....	Hickory County, MO.
Jackson County, MO .....	Jackson County, MO.
Kansas City city, MO .....	Cass, Clay and Platte Counties, MO.
Laclede County, MO .....	Laclede County, MO.
Lincoln County, MO .....	Lincoln County, MO.
Linn County, MO .....	Linn County, MO.
Mississippi County, MO .....	Mississippi County, MO.
Monroe County, MO .....	Monroe County, MO.
Montgomery County, MO .....	Montgomery County, MO.
Morgan County, MO .....	Morgan County, MO.
New Madrid County, MO .....	New Madrid County, MO.
Pemiscot County, MO .....	Pemiscot County, MO.
Reynolds County, MO .....	Reynolds County, MO.
Ripley County, MO .....	Ripley County, MO.
Shannon County, MO .....	Shannon County, MO.
St. Clair County, MO .....	St. Clair County, MO.
St. Francois County, MO .....	St. Francois County, MO.
St. Louis city, MO .....	St. Louis city, MO.
Stoddard County, MO .....	Stoddard County, MO.
Stone County, MO .....	Stone County, MO.
Taney County, MO .....	Taney County, MO.
Warren County, MO .....	Warren County, MO.
Washington County, MO .....	Washington County, MO.
Wayne County, MO .....	Wayne County, MO.
Wright County, MO .....	Wright County, MO.
<b>MONTANA</b>	
Big Horn County, MT .....	Big Horn County, MT.
Glacier County, MT .....	Glacier County, MT.
Lincoln County, MT .....	Lincoln County, MT.
Roosevelt County, MT .....	Roosevelt County, MT.
Sanders County, MT .....	Sanders County, MT.
<b>NEBRASKA</b>	
Thurston County, NE .....	Thurston County, NE.
<b>NEVADA</b>	
Lyon County, NV .....	Lyon County, NV.
Mineral County, NV .....	Mineral County, NV.
Nye County, NV .....	Nye County, NV.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
<b>NEW JERSEY</b>	
Atlantic City city, NJ .....	Atlantic County, NJ.
Balance of Cumberland County, NJ .....	Cumberland County, NJ.
Bayonne city, NJ .....	Hudson County, NJ.
Camden city, NJ .....	Camden County, NJ.
Cape May County, NJ .....	Cape May County, NJ.
City of Orange township, NJ .....	Essex County, NJ.
East Orange city, NJ .....	Essex County, NJ.
Elizabeth city, NJ .....	Union County, NJ.
Garfield city, NJ .....	Bergen County, NJ.
Irvington township, NJ .....	Essex County, NJ.
Manchester township, NJ .....	Ocean County, NJ.
Millville city, NJ .....	Cumberland County, NJ.
Neptune township, NJ .....	Monmouth County, NJ.
Newark city, NJ .....	Essex County, NJ.
Passaic city, NJ .....	Passaic County, NJ.
Paterson city, NJ .....	Passaic County, NJ.
Pennsauken township, NJ .....	Camden County, NJ.
Perth Amboy city, NJ .....	Middlesex County, NJ.
Plainfield city, NJ .....	Union County, NJ.
Trenton city, NJ .....	Mercer County, NJ.
Union City city, NJ .....	Hudson County, NJ.
Vineland city, NJ .....	Cumberland County, NJ.
Winslow township, NJ .....	Camden County, NJ.
<b>NEW MEXICO</b>	
Luna County, NM .....	Luna County, NM.
Mora County, NM .....	Mora County, NM.
<b>NEW YORK</b>	
Balance of Jefferson County, NY .....	Jefferson County, NY.
Bronx County, NY .....	Bronx County, NY.
Buffalo city, NY .....	Erie County, NY.
Essex County, NY .....	Essex County, NY.
Franklin County, NY .....	Franklin County, NY.
Lockport city, NY .....	Niagara County, NY.
Montgomery County, NY .....	Montgomery County, NY.
Newburgh city, NY .....	Orange County, NY.
Niagara Falls city, NY .....	Niagara County, NY.
Orleans County, NY .....	Orleans County, NY.
Oswego County, NY .....	Oswego County, NY.
Rochester city, NY .....	Monroe County, NY.
Schoharie County, NY .....	Schoharie County, NY.
St. Lawrence County, NY .....	St. Lawrence County, NY.
<b>NORTH CAROLINA</b>	
Alexander County, NC .....	Alexander County, NC.
Alleghany County, NC .....	Alleghany County, NC.
Anson County, NC .....	Anson County, NC.
Balance of Cumberland County, NC .....	Cumberland County, NC.
Balance of Davidson County, NC .....	Davidson County, NC.
Balance of Edgecombe County, NC .....	Edgecombe County, NC.
Balance of Gaston County, NC .....	Gaston County, NC.
Balance of Mecklenburg County, NC .....	Mecklenburg County, NC.
Balance of Nash County, NC .....	Nash County, NC.
Balance of Pitt County, NC .....	Pitt County, NC.
Balance of Rowan County, NC .....	Rowan County, NC.
Balance of Wilson County, NC .....	Wilson County, NC.
Beaufort County, NC .....	Beaufort County, NC.
Bertie County, NC .....	Bertie County, NC.
Bladen County, NC .....	Bladen County, NC.
Burke County, NC .....	Burke County, NC.
Caldwell County, NC .....	Caldwell County, NC.
Caswell County, NC .....	Caswell County, NC.
Catawba County, NC .....	Catawba County, NC.
Cherokee County, NC .....	Cherokee County, NC.
Chowan County, NC .....	Chowan County, NC.
Cleveland County, NC .....	Cleveland County, NC.
Columbus County, NC .....	Columbus County, NC.
Gastonia city, NC .....	Gaston County, NC.
Graham County, NC .....	Graham County, NC.
Halifax County, NC .....	Halifax County, NC.
Hyde County, NC .....	Hyde County, NC.
Kinston city, NC .....	Lenoir County, NC.



## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Lee County, NC .....	Lee County, NC.
McDowell County, NC .....	McDowell County, NC.
Mitchell County, NC .....	Mitchell County, NC.
Montgomery County, NC .....	Montgomery County, NC.
Northampton County, NC .....	Northampton County, NC.
Person County, NC .....	Person County, NC.
Richmond County, NC .....	Richmond County, NC.
Robeson County, NC .....	Robeson County, NC.
Rockingham County, NC .....	Rockingham County, NC.
Rocky Mount city, NC .....	Edgecombe and Nash Counties, NC.
Rutherford County, NC .....	Rutherford County, NC.
Salisbury city, NC .....	Rowan County, NC.
Scotland County, NC .....	Scotland County, NC.
Surry County, NC .....	Surry County, NC.
Swain County, NC .....	Swain County, NC.
Thomasville city, NC .....	Davidson County, NC.
Tyrrell County, NC .....	Tyrrell County, NC.
Vance County, NC .....	Vance County, NC.
Warren County, NC .....	Warren County, NC.
Washington County, NC .....	Washington County, NC.
Wilkes County, NC .....	Wilkes County, NC.
Wilson city, NC .....	Wilson County, NC.
Yancey County, NC .....	Yancey County, NC.
<b>NORTH DAKOTA</b>	
Benson County, ND .....	Benson County, ND.
Rolette County, ND .....	Rolette County, ND.
<b>OHIO</b>	
Adams County, OH .....	Adams County, OH.
Akron city, OH .....	Summit County, OH.
Ashland County, OH .....	Ashland County, OH.
Ashtabula County, OH .....	Ashtabula County, OH.
Athens County, OH .....	Athens County, OH.
Balance of Allen County, OH .....	Allen County, OH.
Balance of Erie County, OH .....	Erie County, OH.
Balance of Lorain County, OH .....	Lorain County, OH.
Balance of Lucas County, OH .....	Lucas County, OH.
Balance of Montgomery County, OH .....	Montgomery County, OH.
Balance of Muskingum County, OH .....	Muskingum County, OH.
Balance of Richland County, OH .....	Richland County, OH.
Balance of Trumbull County, OH .....	Trumbull County, OH.
Balance of Wood County, OH .....	Wood County, OH.
Barberton city, OH .....	Summit County, OH.
Brook Park city, OH .....	Cuyahoga County, OH.
Brown County, OH .....	Brown County, OH.
Canton city, OH .....	Stark County, OH.
Carroll County, OH .....	Carroll County, OH.
Champaign County, OH .....	Champaign County, OH.
Cleveland city, OH .....	Cuyahoga County, OH.
Columbiana County, OH .....	Columbiana County, OH.
Coshocton County, OH .....	Coshocton County, OH.
Crawford County, OH .....	Crawford County, OH.
Dayton city, OH .....	Montgomery County, OH.
Defiance County, OH .....	Defiance County, OH.
East Cleveland city, OH .....	Cuyahoga County, OH.
Elyria city, OH .....	Lorain County, OH.
Euclid city, OH .....	Cuyahoga County, OH.
Fairborn city, OH .....	Greene County, OH.
Fulton County, OH .....	Fulton County, OH.
Gallia County, OH .....	Gallia County, OH.
Garfield Heights city, OH .....	Cuyahoga County, OH.
Guernsey County, OH .....	Guernsey County, OH.
Hardin County, OH .....	Hardin County, OH.
Harrison County, OH .....	Harrison County, OH.
Henry County, OH .....	Henry County, OH.
Highland County, OH .....	Highland County, OH.
Hocking County, OH .....	Hocking County, OH.
Huber Heights city, OH .....	Montgomery County, OH.
Huron County, OH .....	Huron County, OH.
Jackson County, OH .....	Jackson County, OH.
Jefferson County, OH .....	Jefferson County, OH.
Lima city, OH .....	Allen County, OH.
Lorain city, OH .....	Lorain County, OH.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Mansfield city, OH .....	Richland County, OH.
Maple Heights city, OH .....	Cuyahoga County, OH.
Marion city, OH .....	Marion County, OH.
Massillon city, OH .....	Stark County, OH.
Meigs County, OH .....	Meigs County, OH.
Middletown city, OH .....	Butler County, OH.
Monroe County, OH .....	Monroe County, OH.
Morgan County, OH .....	Morgan County, OH.
Morrow County, OH .....	Morrow County, OH.
Noble County, OH .....	Noble County, OH.
Ottawa County, OH .....	Ottawa County, OH.
Parma city, OH .....	Cuyahoga County, OH.
Perry County, OH .....	Perry County, OH.
Pickaway County, OH .....	Pickaway County, OH.
Pike County, OH .....	Pike County, OH.
Preble County, OH .....	Preble County, OH.
Riverside city, OH .....	Montgomery County, OH.
Ross County, OH .....	Ross County, OH.
Sandusky city, OH .....	Erie County, OH.
Sandusky County, OH .....	Sandusky County, OH.
Scioto County, OH .....	Scioto County, OH.
Seneca County, OH .....	Seneca County, OH.
Springfield city, OH .....	Clark County, OH.
Toledo city, OH .....	Lucas County, OH.
Trotwood city, OH .....	Montgomery County, OH.
Van Wert County, OH .....	Van Wert County, OH.
Vinton County, OH .....	Vinton County, OH.
Warren city, OH .....	Trumbull County, OH.
Williams County, OH .....	Williams County, OH.
Wyandot County, OH .....	Wyandot County, OH.
Xenia city, OH .....	Greene County, OH.
Youngstown city, OH .....	Mahoning County, OH.
Zanesville city, OH .....	Muskingum County, OH.
<b>OKLAHOMA</b>	
McCurtain County, OK .....	McCurtain County, OK.
<b>OREGON</b>	
Albany city, OR .....	Linn County, OR.
Baker County, OR .....	Baker County, OR.
Balance of Jackson County, OR .....	Jackson County, OR.
Balance of Josephine County, OR .....	Josephine County, OR.
Balance of Lane County, OR .....	Lane County, OR.
Balance of Linn County, OR .....	Linn County, OR.
Columbia County, OR .....	Columbia County, OR.
Coos County, OR .....	Coos County, OR.
Crook County, OR .....	Crook County, OR.
Curry County, OR .....	Curry County, OR.
Deschutes County, OR .....	Deschutes County, OR.
Douglas County, OR .....	Douglas County, OR.
Grant County, OR .....	Grant County, OR.
Grants Pass city, OR .....	Josephine County, OR.
Harney County, OR .....	Harney County, OR.
Jefferson County, OR .....	Jefferson County, OR.
Klamath County, OR .....	Klamath County, OR.
Lake County, OR .....	Lake County, OR.
Malheur County, OR .....	Malheur County, OR.
Medford city, OR .....	Jackson County, OR.
Springfield city, OR .....	Lane County, OR.
Union County, OR .....	Union County, OR.
Wallowa County, OR .....	Wallowa County, OR.
<b>PENNSYLVANIA</b>	
Allentown city, PA .....	Lehigh County, PA.
Bedford County, PA .....	Bedford County, PA.
Cameron County, PA .....	Cameron County, PA.
Chester city, PA .....	Delaware County, PA.
Forest County, PA .....	Forest County, PA.
Fulton County, PA .....	Fulton County, PA.
Hazleton city, PA .....	Luzerne County, PA.
Johnstown city, PA .....	Cambria County, PA.
McKeesport city, PA .....	Allegheny County, PA.
Mercer County, PA .....	Mercer County, PA.
New Castle city, PA .....	Lawrence County, PA.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Philadelphia County/city, PA .....	Philadelphia County/city, PA.
Potter County, PA .....	Potter County, PA.
Reading city, PA .....	Berks County, PA.
York city, PA .....	York County, PA.
<b>PUERTO RICO</b>	
Adjuntas Municipio, PR .....	Adjuntas Municipio, PR.
Aguada Municipio, PR .....	Aguada Municipio, PR.
Aguadilla Municipio, PR .....	Aguadilla Municipio, PR.
Aguas Buenas Municipio, PR .....	Aguas Buenas Municipio, PR.
Aibonito Municipio, PR .....	Aibonito Municipio, PR.
Anasco Municipio, PR .....	Anasco Municipio, PR.
Arecibo Municipio, PR .....	Arecibo Municipio, PR.
Arroyo Municipio, PR .....	Arroyo Municipio, PR.
Barceloneta Municipio, PR .....	Barceloneta Municipio, PR.
Barranquitas Municipio, PR .....	Barranquitas Municipio, PR.
Bayamon Municipio, PR .....	Bayamon Municipio, PR.
Cabo Rojo Municipio, PR .....	Cabo Rojo Municipio, PR.
Caguas Municipio, PR .....	Caguas Municipio, PR.
Camuy Municipio, PR .....	Camuy Municipio, PR.
Canovanas Municipio, PR .....	Canovanas Municipio, PR.
Carolina Municipio, PR .....	Carolina Municipio, PR.
Catano Municipio, PR .....	Catano Municipio, PR.
Cayey Municipio, PR .....	Cayey Municipio, PR.
Ceiba Municipio, PR .....	Ceiba Municipio, PR.
Ciales Municipio, PR .....	Ciales Municipio, PR.
Cidra Municipio, PR .....	Cidra Municipio, PR.
Coamo Municipio, PR .....	Coamo Municipio, PR.
Comerio Municipio, PR .....	Comerio Municipio, PR.
Corozal Municipio, PR .....	Corozal Municipio, PR.
Culebra Municipio, PR .....	Culebra Municipio, PR.
Dorado Municipio, PR .....	Dorado Municipio, PR.
Fajardo Municipio, PR .....	Fajardo Municipio, PR.
Florida Municipio, PR .....	Florida Municipio, PR.
Guanica Municipio, PR .....	Guanica Municipio, PR.
Guayama Municipio, PR .....	Guayama Municipio, PR.
Guayanilla Municipio, PR .....	Guayanilla Municipio, PR.
Guaynabo Municipio, PR .....	Guaynabo Municipio, PR.
Gurabo Municipio, PR .....	Gurabo Municipio, PR.
Hatillo Municipio, PR .....	Hatillo Municipio, PR.
Hormigueros Municipio, PR .....	Hormigueros Municipio, PR.
Humacao Municipio, PR .....	Humacao Municipio, PR.
Isabela Municipio, PR .....	Isabela Municipio, PR.
Jayuya Municipio, PR .....	Jayuya Municipio, PR.
Juana Diaz Municipio, PR .....	Juana Diaz Municipio, PR.
Juncos Municipio, PR .....	Juncos Municipio, PR.
Lajas Municipio, PR .....	Lajas Municipio, PR.
Lares Municipio, PR .....	Lares Municipio, PR.
Las Marias Municipio, PR .....	Las Marias Municipio, PR.
Las Piedras Municipio, PR .....	Las Piedras Municipio, PR.
Loiza Municipio, PR .....	Loiza Municipio, PR.
Luquillo Municipio, PR .....	Luquillo Municipio, PR.
Manati Municipio, PR .....	Manati Municipio, PR.
Maricao Municipio, PR .....	Maricao Municipio, PR.
Maunabo Municipio, PR .....	Maunabo Municipio, PR.
Mayaguez Municipio, PR .....	Mayaguez Municipio, PR.
Moca Municipio, PR .....	Moca Municipio, PR.
Morovis Municipio, PR .....	Morovis Municipio, PR.
Naguabo Municipio, PR .....	Naguabo Municipio, PR.
Naranjito Municipio, PR .....	Naranjito Municipio, PR.
Orocovis Municipio, PR .....	Orocovis Municipio, PR.
Patillas Municipio, PR .....	Patillas Municipio, PR.
Penuelas Municipio, PR .....	Penuelas Municipio, PR.
Ponce Municipio, PR .....	Ponce Municipio, PR.
Quebradillas Municipio, PR .....	Quebradillas Municipio, PR.
Rincon Municipio, PR .....	Rincon Municipio, PR.
Rio Grande Municipio, PR .....	Rio Grande Municipio, PR.
Sabana Grande Municipio, PR .....	Sabana Grande Municipio, PR.
Salinas Municipio, PR .....	Salinas Municipio, PR.
San German Municipio, PR .....	San German Municipio, PR.
San Juan Municipio, PR .....	San Juan Municipio, PR.
San Lorenzo Municipio, PR .....	San Lorenzo Municipio, PR.
San Sebastian Municipio, PR .....	San Sebastian Municipio, PR.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Santa Isabel Municipio, PR .....	Santa Isabel Municipio, PR.
Toa Alta Municipio, PR .....	Toa Alta Municipio, PR.
Toa Baja Municipio, PR .....	Toa Baja Municipio, PR.
Trujillo Alto Municipio, PR .....	Trujillo Alto Municipio, PR.
Utua Municipio, PR .....	Utua Municipio, PR.
Vega Alta Municipio, PR .....	Vega Alta Municipio, PR.
Vega Baja Municipio, PR .....	Vega Baja Municipio, PR.
Vieques Municipio, PR .....	Vieques Municipio, PR.
Villalba Municipio, PR .....	Villalba Municipio, PR.
Yabucoa Municipio, PR .....	Yabucoa Municipio, PR.
Yauco Municipio, PR .....	Yauco Municipio, PR.
<b>RHODE ISLAND</b>	
Central Falls city, RI .....	Central Falls city, RI.
Cranston city, RI .....	Cranston city, RI.
East Providence city, RI .....	East Providence city, RI.
Johnston town, RI .....	Johnston town, RI.
North Providence town, RI .....	North Providence town, RI.
Pawtucket city, RI .....	Pawtucket city, RI.
Providence city, RI .....	Providence city, RI.
West Warwick town, RI .....	West Warwick town, RI.
Woonsocket city, RI .....	Woonsocket city, RI.
<b>SOUTH CAROLINA</b>	
Abbeville County, SC .....	Abbeville County, SC.
Aiken city, SC .....	Aiken County, SC.
Allendale County, SC .....	Allendale County, SC.
Anderson city, SC .....	Anderson County, SC.
Balance of Sumter County, SC .....	Sumter County, SC.
Bamberg County, SC .....	Bamberg County, SC.
Barnwell County, SC .....	Barnwell County, SC.
Calhoun County, SC .....	Calhoun County, SC.
Cherokee County, SC .....	Cherokee County, SC.
Chester County, SC .....	Chester County, SC.
Chesterfield County, SC .....	Chesterfield County, SC.
Clarendon County, SC .....	Clarendon County, SC.
Colleton County, SC .....	Colleton County, SC.
Columbia city, SC .....	Richland County, SC.
Darlington County, SC .....	Darlington County, SC.
Dillon County, SC .....	Dillon County, SC.
Edgefield County, SC .....	Edgefield County, SC.
Fairfield County, SC .....	Fairfield County, SC.
Florence city, SC .....	Florence County, SC.
Georgetown County, SC .....	Georgetown County, SC.
Goose Creek city, SC .....	Berkeley County, SC.
Greenville city, SC .....	Greenville County, SC.
Greenwood County, SC .....	Greenwood County, SC.
Hampton County, SC .....	Hampton County, SC.
Lancaster County, SC .....	Lancaster County, SC.
Laurens County, SC .....	Laurens County, SC.
Lee County, SC .....	Lee County, SC.
Marion County, SC .....	Marion County, SC.
Marlboro County, SC .....	Marlboro County, SC.
McCormick County, SC .....	McCormick County, SC.
Myrtle Beach city, SC .....	Horry County, SC.
Newberry County, SC .....	Newberry County, SC.
Oconee County, SC .....	Oconee County, SC.
Orangeburg County, SC .....	Orangeburg County, SC.
Rock Hill city, SC .....	York County, SC.
Spartanburg city, SC .....	Spartanburg County, SC.
Summerville town, SC .....	Charleston and Dorchester Counties, SC.
Sumter city, SC .....	Sumter County, SC.
Union County, SC .....	Union County, SC.
Williamsburg County, SC .....	Williamsburg County, SC.
<b>SOUTH DAKOTA</b>	
Buffalo County, SD .....	Buffalo County, SD.
Dewey County, SD .....	Dewey County, SD.
Shannon County, SD .....	Shannon County, SD.
Todd County, SD .....	Todd County, SD.
<b>TENNESSEE</b>	
Balance of Maury County, TN .....	Maury County, TN.
Benton County, TN .....	Benton County, TN.
Bledsoe County, TN .....	Bledsoe County, TN.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Campbell County, TN .....	Campbell County, TN.
Carroll County, TN .....	Carroll County, TN.
Claiborne County, TN .....	Claiborne County, TN.
Clay County, TN .....	Clay County, TN.
Cleveland city, TN .....	Bradley County, TN.
Cocke County, TN .....	Cocke County, TN.
Columbia city, TN .....	Maury County, TN.
Cookeville city, TN .....	Putnam County, TN.
Crockett County, TN .....	Crockett County, TN.
Cumberland County, TN .....	Cumberland County, TN.
Decatur County, TN .....	Decatur County, TN.
Dyer County, TN .....	Dyer County, TN.
Fayette County, TN .....	Fayette County, TN.
Fentress County, TN .....	Fentress County, TN.
Gallatin city, TN .....	Sumner County, TN.
Gibson County, TN .....	Gibson County, TN.
Giles County, TN .....	Giles County, TN.
Grainger County, TN .....	Grainger County, TN.
Greene County, TN .....	Greene County, TN.
Grundy County, TN .....	Grundy County, TN.
Hancock County, TN .....	Hancock County, TN.
Hardeman County, TN .....	Hardeman County, TN.
Hardin County, TN .....	Hardin County, TN.
Haywood County, TN .....	Haywood County, TN.
Henderson County, TN .....	Henderson County, TN.
Henry County, TN .....	Henry County, TN.
Hickman County, TN .....	Hickman County, TN.
Houston County, TN .....	Houston County, TN.
Humphreys County, TN .....	Humphreys County, TN.
Jackson city, TN .....	Madison County, TN.
Jackson County, TN .....	Jackson County, TN.
Johnson County, TN .....	Johnson County, TN.
Kingsport city, TN .....	Hawkins and Sullivan Counties, TN.
Knoxville city, TN .....	Knox County, TN.
Lake County, TN .....	Lake County, TN.
Lauderdale County, TN .....	Lauderdale County, TN.
Lawrence County, TN .....	Lawrence County, TN.
Lewis County, TN .....	Lewis County, TN.
Macon County, TN .....	Macon County, TN.
Marion County, TN .....	Marion County, TN.
Marshall County, TN .....	Marshall County, TN.
Maryville city, TN .....	Blount County, TN.
McMinn County, TN .....	McMinn County, TN.
McNairy County, TN .....	McNairy County, TN.
Meigs County, TN .....	Meigs County, TN.
Memphis city, TN .....	Shelby County, TN.
Monroe County, TN .....	Monroe County, TN.
Morgan County, TN .....	Morgan County, TN.
Morristown city, TN .....	Hamblen County, TN.
Obion County, TN .....	Obion County, TN.
Overton County, TN .....	Overton County, TN.
Perry County, TN .....	Perry County, TN.
Pickett County, TN .....	Pickett County, TN.
Polk County, TN .....	Polk County, TN.
Rhea County, TN .....	Rhea County, TN.
Scott County, TN .....	Scott County, TN.
Sequatchie County, TN .....	Sequatchie County, TN.
Smith County, TN .....	Smith County, TN.
Stewart County, TN .....	Stewart County, TN.
Tipton County, TN .....	Tipton County, TN.
Trousdale County, TN .....	Trousdale County, TN.
Unicoi County, TN .....	Unicoi County, TN.
Van Buren County, TN .....	Van Buren County, TN.
Warren County, TN .....	Warren County, TN.
Wayne County, TN .....	Wayne County, TN.
Weakley County, TN .....	Weakley County, TN.
White County, TN .....	White County, TN.
<b>TEXAS</b>	
Balance of Cameron County, TX .....	Cameron County, TX.
Balance of Coryell County, TX .....	Coryell County, TX.
Balance of Dallas County, TX .....	Dallas County, TX.
Balance of El Paso County, TX .....	El Paso County, TX.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Balance of Hidalgo County, TX .....	Hidalgo County, TX.
Balance of Maverick County, TX .....	Maverick County, TX.
Balance of Val Verde County, TX .....	Val Verde County, TX.
Balance of Webb County, TX .....	Webb County, TX.
Baytown city, TX .....	Harris County, TX.
Brownsville city, TX .....	Cameron County, TX.
Coke County, TX .....	Coke County, TX.
Dimmit County, TX .....	Dimmit County, TX.
Eagle Pass city, TX .....	Maverick County, TX.
Houston County, TX .....	Houston County, TX.
Lancaster city, TX .....	Dallas County, TX.
Loving County, TX .....	Loving County, TX.
Matagorda County, TX .....	Matagorda County, TX.
Newton County, TX .....	Newton County, TX.
Port Arthur city, TX .....	Jefferson and Orange Counties, TX.
Presidio County, TX .....	Presidio County, TX.
Sabine County, TX .....	Sabine County, TX.
San Juan city, TX .....	Hidalgo County, TX.
Socorro city, TX .....	El Paso County, TX.
Starr County, TX .....	Starr County, TX.
Texas City city, TX .....	Galveston County, TX.
Weslaco city, TX .....	Hidalgo County, TX.
Willacy County, TX .....	Willacy County, TX.
Zavala County, TX .....	Zavala County, TX.
<b>VERMONT</b>	
Orleans County, VT .....	Orleans County, VT.
<b>VIRGINIA</b>	
Covington city, VA .....	Covington city, VA.
Danville city, VA .....	Danville city, VA.
Emporia city, VA .....	Emporia city, VA.
Halifax County, VA .....	Halifax County, VA.
Henry County, VA .....	Henry County, VA.
Martinsville city, VA .....	Martinsville city, VA.
Petersburg city, VA .....	Petersburg city, VA.
Pittsylvania County, VA .....	Pittsylvania County, VA.
Williamsburg city, VA .....	Williamsburg city, VA.
<b>WASHINGTON</b>	
Balance of Cowlitz County, WA .....	Cowlitz County, WA.
Bremerton city, WA .....	Kitsap County, WA.
Clallam County, WA .....	Clallam County, WA.
Clark County, WA .....	Clark County, WA.
Columbia County, WA .....	Columbia County, WA.
Ferry County, WA .....	Ferry County, WA.
Grays Harbor County, WA .....	Grays Harbor County, WA.
Klickitat County, WA .....	Klickitat County, WA.
Lewis County, WA .....	Lewis County, WA.
Longview city, WA .....	Cowlitz County, WA.
Mason County, WA .....	Mason County, WA.
Okanogan County, WA .....	Okanogan County, WA.
Pacific County, WA .....	Pacific County, WA.
Pasco city, WA .....	Franklin County, WA.
Pend Oreille County, WA .....	Pend Oreille County, WA.
Skamania County, WA .....	Skamania County, WA.
Stevens County, WA .....	Stevens County, WA.
Wahkiakum County, WA .....	Wahkiakum County, WA.
Yakima County, WA .....	Yakima County, WA.
<b>WEST VIRGINIA</b>	
Calhoun County, WV .....	Calhoun County, WV.
Clay County, WV .....	Clay County, WV.
Mason County, WV .....	Mason County, WV.
McDowell County, WV .....	McDowell County, WV.
Pocahontas County, WV .....	Pocahontas County, WV.
Wetzel County, WV .....	Wetzel County, WV.
<b>WISCONSIN</b>	
Adams County, WI .....	Adams County, WI.
Bayfield County, WI .....	Bayfield County, WI.
Beloit city, WI .....	Rock County, WI.
Burnett County, WI .....	Burnett County, WI.
Forest County, WI .....	Forest County, WI.
Green Bay city, WI .....	Brown County, WI.
Iron County, WI .....	Iron County, WI.

## LABOR SURPLUS AREAS—OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010—Continued

Eligible labor surplus areas	Civil jurisdictions included
Janesville city, WI .....	Rock County, WI.
Menominee County, WI .....	Menominee County, WI.
Milwaukee city, WI .....	Milwaukee County, WI.
Racine city, WI .....	Racine County, WI.
Rusk County, WI .....	Rusk County, WI.
Sawyer County, WI .....	Sawyer County, WI.
Washburn County, WI .....	Washburn County, WI.

[FR Doc. 2010-6207 Filed 3-19-10; 8:45 am]

**BILLING CODE P****DEPARTMENT OF LABOR****Employment and Training Administration****Workforce Investment Act; Native American Employment and Training Council**

**AGENCY:** Employment and Training Administration, U. S. Department of Labor.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463), as amended, and Section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (Council), as constituted under WIA.

**DATES:** The meeting will begin at 10:30 a.m. (Central Time) on Thursday, April 29, 2010, and continue until 4:30 p.m. that day. The meeting will reconvene at 9 a.m. on Friday, April 30, 2010, and adjourn at 12 p.m. that day. The period from 2:30 p.m. to 4:30 p.m. on April 29, 2010, will be reserved for participation and presentations by members of the public.

**ADDRESSES:** The meetings will be held at the Albuquerque Marriot Uptown, 2101 Louisiana Boulevard, Albuquerque, New Mexico 87110.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Members of the public not present may submit a written statement on or before April 22, 2010, to be included in the record of the meeting. Statements are to be submitted to Mrs. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-4209, Washington, DC 20210. Persons who need special accommodations should contact Mr. Craig Lewis at (202) 693-3384, at least two business days before the meeting. The formal agenda

will focus on the following topics: (1) U.S. Department of Labor (DOL), Employment and Training Program Year 2010—Program Year 2011 Strategic Planning; (2) Reauthorization of WIA; (3) Program Year 2010–2011 Training and Technical Assistance Guidance Letter; (4) Training and Technical Assistance; (5) 2010 Census; (6) Council Update; (7) Council Workgroup Reports; and (8) Council Recommendations.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Campbell, DFO, Indian and Native American Program, Employment and Training Administration, U.S. Department of Labor, Room S-4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number (202) 693-3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 17th day of March 2010.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2010-6208 Filed 3-19-10; 8:45 am]

**BILLING CODE 4510-FR-P****DEPARTMENT OF LABOR****Employee Benefits Security Administration****Publication of Model Notices for Health Care Continuation Coverage Provided Pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and Other Health Care Continuation Coverage, as Required by the American Recovery and Reinvestment Act of 2009 (ARRA), as Further Amended by the Temporary Extension Act (TEA) of 2010, Notice**

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of the availability of the Model Health Care Continuation Coverage Notices required by ARRA, as further amended by TEA.

**SUMMARY:** On March 2, 2010, President Obama signed the Temporary Extension Act of 2010 (Pub. L. 111-144), which extended, for a second time, and

expanded the availability of the health care continuation coverage premium reduction provided for COBRA and other health care continuation coverage as required by ARRA (Pub. L. 111-5). ARRA, as amended, retained the requirement that the Secretary of Labor (the Secretary), in consultation with the Secretaries of the Treasury and Health and Human Services, develop model notices. These models are for use by group health plans and other entities that, pursuant to ARRA, as amended, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. This document announces the availability of the model health care continuation coverage notices required by ARRA, as further amended by TEA.

**FOR FURTHER INFORMATION CONTACT:** Kevin Horahan or Mark Connor, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693-8335. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) created the health care continuation coverage provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code (Code), and the Public Health Service Act (PHS Act). These provisions are commonly referred to as the “COBRA continuation provisions,” and the continuation coverage that they mandate is commonly referred to as “COBRA continuation coverage.” Group health plans subject to the Federal COBRA continuation provisions are subject to ARRA’s premium reduction provisions and notice requirements. The Federal COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. Many States require health insurance issuers that provide group health insurance coverage to plans not subject to the COBRA continuation provisions to provide comparable continuation

coverage. Such continuation coverage provided pursuant to State law is also subject to ARRA's premium reduction provisions and notice requirements.

## II. Description of the Model Notices

### a. In General

ARRA, as further amended, mandates the provision of certain notices. Each of these notices must include: A prominent description of the availability of the premium reduction, including any conditions on the entitlement; a model form to request treatment as an "Assistance Eligible Individual";<sup>1</sup> the name, address, and telephone number of the plan administrator (and any other person with information about the premium reduction); a description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan; and (if applicable) a description of the opportunity to switch coverage options.

The Department of Labor (the Department) created these model notices to cover an array of situations in order to deal with the complexity of the various scenarios facing dislocated workers and their families. In an effort to ensure that the notices include all of the information required under ARRA, as amended, while minimizing the burden imposed on group health plans and issuers, the Department has created several packages. As with those models previously developed by the Department, each of the new packages is designed for a particular group of qualified beneficiaries, and contains all of the information needed to satisfy the content requirements for ARRA's new and amended notice provisions. The packages include the following disclosures:

- A summary of ARRA's premium reduction provisions.
- A form to request the premium reduction.
- A form for plans (or issuers) that permit qualified beneficiaries to switch coverage options to use to satisfy ARRA's requirement to give notice of this option.
- A form for an individual to use to satisfy ARRA's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage or Medicare.

<sup>1</sup>In general, an "Assistance Eligible Individual" is an individual who has experienced an involuntary termination of employment that is a COBRA "qualifying event" at any time from September 1, 2008 through March 31, 2010 if he or she elects such COBRA coverage. For purposes of ARRA, certain involuntary terminations are considered qualifying events despite the occurrence of a previous qualifying event.

- COBRA election forms and information, as appropriate.

### b. General Notice

Plans that are subject to the COBRA continuation provisions under Federal law are required to send the General Notice.<sup>2</sup> It must include the information described above and be provided to all qualified beneficiaries, not just covered employees, who experience a qualifying event through March 31, 2010.<sup>3</sup>

The Department has modified the previously updated version of this model notice so that it includes all of the information related to the premium reduction and other rights and obligations under ARRA, as further amended by TEA. This model also includes all of the information required in an election notice required pursuant to the Department's final COBRA notice regulations under 29 CFR 2590.606-4(b).<sup>4</sup> Using this model to provide notice to individuals who have experienced any qualifying event from September 1, 2008 through March 31, 2010 will satisfy the Department's existing requirements for the content of the COBRA election notice as well as those imposed by ARRA, as amended.

### c. Alternative Notice

Issuers that offer group health insurance coverage that is subject to comparable continuation coverage requirements imposed by State law must provide the Alternative Notice. The Alternative Notice must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event through March 31, 2010.<sup>5</sup> The Department has

<sup>2</sup>Under ARRA, as amended, the Secretary generally is responsible for developing all of the model notices with the exception of model notices relating to Temporary Continuation Coverage under 5 U.S.C. 8905a, which is the responsibility of the Office of Personnel Management (OPM). In developing the original ARRA model notices, the Department was required to, and did, consult with the Departments of the Treasury and Health and Human Services, OPM, the National Association of Insurance Commissioners, and plan administrators and other entities responsible for providing COBRA continuation coverage. This set of models was again created in consultation with staff at the Departments of the Treasury and Health and Human Services.

<sup>3</sup>This notice need not be provided to the extent that a notice including accurate information regarding rights under ARRA has already been provided.

<sup>4</sup>The 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. ARRA provides that COBRA election notices provided for qualifying events occurring during the effective dates of the premium reduction period are not complete if they fail to include information on the availability of the premium reduction.

<sup>5</sup>See note 3 above.

modified the previously updated version of this model notice. However, because continuation coverage requirements vary among States, it should be further modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement should feel free to use the model Alternative Notice, the model Notice of New Election Period, the model Supplemental Information Notice, the model Notice of Extended Election Period, or the model General Notice (as appropriate).

### d. Notice of New Election Period

The Notice of New Election Period is required to be sent by plans that are subject to COBRA continuation provisions under Federal or State law. It must include the information described above and should be provided to all individuals who:

- Experienced a qualifying event that was a reduction in hours at any time from September 1, 2008 through March 31, 2010;
- Experienced a termination of employment at any point from March 2, 2010 through March 31, 2010; AND
- Either did not elect COBRA continuation coverage when it was first offered OR who elected but subsequently discontinued COBRA.

Individuals who experience an involuntary termination of employment after experiencing a qualifying event that consists of a reduction of hours MUST be provided this notice within 60 days of the termination of employment. The Department has created a model Notice of New Election Period. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by TEA.

### e. Supplemental Information Notice

The Supplemental Information Notice is required to be sent by plans that are subject to COBRA continuation provisions under Federal or State law. It must include the information described above and should be provided to all individuals who elected and maintained COBRA continuation coverage based on the following qualifying events:

- Terminations of employment that occurred at some time on or after March 1, 2010 for which notice of the availability of the premium reduction available under ARRA was not given; or
- Reductions of hours that occurred during the period from September 1, 2008 through March 31, 2010 which were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by March 31, 2010.



Individuals who experience an involuntary termination of employment after experiencing a qualifying event that consists of a reduction of hours MUST be provided this notice within 60 days of the termination of employment. Individuals with qualifying events that occurred at some time on or after March 1, 2010 for which notice of the availability of the premium reduction available under ARRA was not given MUST be provided this notice before the end of the required time period for providing a COBRA election notice.<sup>6</sup> The Department has created a model Supplemental Information Notice. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by TEA.

#### f. Notice of Extended Election Period

The Notice of Extended Election Period is required to be sent by plans that are subject to COBRA continuation provisions under Federal or State law. It must include the information described above and be provided to ALL individuals who experienced a qualifying event that was a termination of employment at some time on or after March 1, 2010, were provided notice that did not inform them of their rights under ARRA, as amended by TEA, and either chose not to elect COBRA continuation coverage at that time OR elected COBRA but subsequently discontinued that coverage. This notice MUST be provided before the end of the required time period for providing a COBRA election notice.<sup>7</sup> The Department has created a model Notice of Extended Election Period. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by TEA.

### III. For Additional Information

For additional information about ARRA's COBRA premium reduction provisions as amended by TEA, contact the Department's Employee Benefits Security Administration's Benefits Advisors at 1-866-444-3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA Web page <http://www.dol.gov/COBRA> that will contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

<sup>6</sup> ARRA section 3001(a)(7) provides that COBRA election notices provided for qualifying events occurring during the effective dates of the premium reduction program are not complete if they fail to include information on the availability of the premium reduction.

<sup>7</sup> See note 6 above.

### IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number; further, the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

OMB has approved the Department's no-material, non-substantive change request for the updated notices under OMB Control Number 1210-0123. The public reporting burden for this collection of information is estimated to average approximately 3 minutes per respondent, including time for gathering and maintaining the data needed to complete the required disclosure. There is also an additional \$0.44 average cost per response for mailing costs. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of the Chief Information Officer, Attention: Departmental Clearance Officer, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210 or e-mail [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov) and reference the OMB Control Number 1210-0123.

### V. Models

The Department has decided to make the model notices available in modifiable, electronic form on its Web site: <http://www.dol.gov/COBRA>.

### VI. Statutory Authority

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1161-1169; Sec. 3001, Pub. L. 111-5, 123 Stat. 115; Sec. 1010, Pub. L. 111-118, 123 Stat. 3409; Sec. 3, Pub. L. 111-144, 124 Stat. 42; and Secretary of Labor's Order 6-2009, 74 FR 21524 (May 7, 2009).

Signed at Washington, DC this 15th day of March 2010.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2010-6174 Filed 3-19-10; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10-031)]

### NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

**DATES:** Monday, April 12, 2010, 2 p.m. to 5 p.m., EDT.

**ADDRESSES:** This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number (800) 779-1627, pass code APS, to participate in this meeting by telephone. International callers may contact Ms. Marian Norris for country-specific conference call numbers. For WebEx information, please contact Ms. Marian Norris.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358-4452, fax (202) 358-4118, or [mnorris@nasa.gov](mailto:mnorris@nasa.gov).

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting includes the following topics:

- Astrophysics Division Update.
- Kepler Data Release Policy.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 16, 2010.

**P. Diane Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration and Space Administration.*

[FR Doc. 2010-6291 Filed 3-19-10; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10-032)]

### NASA Advisory Council; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announce a meeting for the Information Technology Infrastructure Committee of the NASA Advisory Council.

**DATES:** Thursday, April 15, 2010, 9 a.m.–5 p.m. (EST), and Friday, April 16, 2010, 11 a.m.–5 p.m.

*Meet-Me-Number:* 1-877-613-3958; #2939943.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., Washington, DC, Room 2O43

**FOR FURTHER INFORMATION CONTACT:** Ms. Tereda J. Frazier, Executive Secretary for the Information Technology Infrastructure Committee, National Aeronautics and Space Administration Headquarters, Washington, DC, 20546, (202) 358-2595.

**SUPPLEMENTARY INFORMATION:** The topics of discussion for the meeting are the following:

- NASA IT Summit Briefing.
- NASA IT Infrastructure Briefing.
- Status of NASA Supercomputing.
- NASA IT Security Operations.
- ASCS Briefing.
- IT Committee Work Plan Actions/Assignments.
- Logistics.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitors Control Center), and must state that they are attending the NASA Advisory Council Information Technology Infrastructure Committee meeting in room 2O43. All non-U.S. citizens must fax copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., to

Ms. Tereda J. Frazier, Executive Secretary, Information Technology Infrastructure Committee, NASA Advisory Council, at e-mail [tereda.j.frazier@nasa.gov](mailto:tereda.j.frazier@nasa.gov) or by telephone at (202) 358-2595 by no later than April 8, 2010. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Tereda J. Frazier via e-mail at [tereda.j.frazier@nasa.gov](mailto:tereda.j.frazier@nasa.gov) or by telephone at 202-358-2595. Persons with disabilities who require assistance should indicate this.

Dated: March 16, 2010.

**P. Diane Rausch,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 2010-6293 Filed 3-19-10; 8:45 am]

**BILLING CODE 7510-13-P**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Regular Board of Directors Meeting; Sunshine Act

**TIME AND DATE:** 10 a.m., Monday, March 22, 2010.

**PLACE:** 1325 G Street, NW., Suite 800 Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:**

Erica Hall, Assistant Corporate Secretary, (202) 220-2376; [ehall@nw.org](mailto:ehall@nw.org).

#### Agenda

- I. Call to Order
- II. Approval of the Minutes
- III. Summary Report of the Corporate Administration Committee
- IV. Approval of the Minutes
- V. Summary Report of the Audit Committee
- VI. Approval of the Minutes
- VII. Summary Report of the Finance, Budget and Program Committee
- VIII. Summary Report of the Corporate Administration Committee
- IX. Approval of Grants Exceeding One Million Dollars
- X. Financial Report
- XI. Corporate Scorecard
- XII. NHSA Update
- XIII. Chief Executive Officer's Quarterly Management Report
- XIV. Adjournment

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2010-6154 Filed 3-19-10; 8:45 am]

**BILLING CODE 7570-02-M**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of two years.

**SUPPLEMENTARY INFORMATION:** The U. S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on the Medical Uses of Isotopes for the two year period commencing on March 16, 2010 is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

For further information please contact: Ashley Cockerham, Office of Federal and State Materials and Environmental Management Programs,

U.S. Nuclear Regulatory Commission,  
Washington, DC 20555; Telephone (240)  
888-7129; e-mail  
[Ashley.Cockerham@nrc.gov](mailto:Ashley.Cockerham@nrc.gov)

Dated: March 16, 2010.

**Andrew L. Bates,**  
*Federal Advisory Committee Management  
Officer.*

[FR Doc. 2010-6205 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2010-0114]

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory  
Commission.

**ACTION:** Notice of issuance and  
availability of Draft Regulatory Guide,  
DG-8040, "Health Physics Surveys  
During Enriched Uranium-235  
Processing and Fuel Fabrication."

#### FOR FURTHER INFORMATION CONTACT:

Tyrone Naquin, U.S. Nuclear Regulatory  
Commission, Washington, DC 20555-  
0001, telephone: (301) 492-3187 or e-  
mail [Tyrone.Naquin@nrc.gov](mailto:Tyrone.Naquin@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory  
Commission (NRC) is issuing for public  
comment a draft guide in the agency's  
"Regulatory Guide" series. This series  
was developed to describe and make  
available to the public such information  
as methods that are acceptable to the  
NRC staff for implementing specific  
parts of the NRC's regulations,  
techniques that the staff uses in  
evaluating specific problems or  
postulated accidents, and data that the  
staff needs in its review of applications  
for permits and licenses.

The draft regulatory guide (DG) is  
temporarily identified by its task  
number, DG-8040, which should be  
mentioned in all related  
correspondence. DG-8040 is proposed  
Revision 2 of Regulatory Guide 8.24,  
dated October 1979. This guide specifies  
the types and frequencies of surveys  
that are acceptable to the staff of the  
NRC for the protection of workers in  
plants licensed by the NRC to process  
enriched uranium and fabricate  
uranium fuel.

Title 10, Section 20.1501(a), of the  
*Code of Federal Regulations* (10 CFR  
20.1501(a)) requires that each licensee  
make or cause to be made such surveys  
as may be necessary for it to comply  
with the regulations in that part. As

used in 10 CFR Part 20, "Standards for  
Protection Against Radiation," the term  
"survey" refers to an evaluation of the  
radiation hazards incident to the  
production, use, release, disposal, or  
presence of radioactive materials or  
other sources of radiation under a  
specific set of conditions.

This guide does not relate to the  
processing of uranium-233, nor does it  
deal specifically with the following  
aspects of an acceptable occupational  
health physics program that are closely  
related to surveys: (1) The number and  
qualification of the health physics staff,  
(2) instrumentation, including types,  
numbers of instruments, limitations of  
use, accuracy, and calibration, (3)  
personnel dosimetry, and (4) bioassay.  
Guidance on bioassay for uranium  
appears in Regulatory Guide 8.11,  
"Applications of Bioassay for Uranium."

##### II. Further Information

The NRC staff is soliciting comments  
on DG-8040. Comments may be  
accompanied by relevant information or  
supporting data and should mention  
DG-8040 in the subject line. Comments  
submitted in writing or in electronic  
form will be made available to the  
public in their entirety through the  
NRC's Agencywide Documents Access  
and Management System (ADAMS).

Comments would be most helpful if  
received by May 3, 2010. Comments  
received after that date will be  
considered if it is practical to do so, but  
the NRC is able to ensure consideration  
only for comments received on or before  
this date. Although a time limit is given,  
comments and suggestions in  
connection with items for inclusion in  
guides currently being developed or  
improvements in all published guides  
are encouraged at any time.

**ADDRESSES:** You may submit comments  
by any one of the following methods.  
Please include Docket ID NRC-2010-  
0115 in the subject line of your  
comments. Comments submitted in  
writing or in electronic form will be  
posted on the NRC Web site and on the  
Federal rulemaking Web site  
[www.regulations.gov](http://www.regulations.gov). Because your  
comments will not be edited to remove  
any identifying or contact information,  
the NRC cautions you against including  
any information in your submission that  
you do not want to be publicly  
disclosed.

The NRC requests that any party  
soliciting or aggregating comments  
received from other persons for  
submission to the NRC inform those  
persons that the NRC will not edit their  
comments to remove any identifying or  
contact information, and therefore, they  
should not include any information in

their comments that they do not want  
publicly disclosed.

**Federal Rulemaking Web site:** Go to  
<http://www.regulations.gov> and search  
for documents filed under Docket ID  
NRC-2010-0115. Address questions  
about NRC dockets to Carol Gallagher  
301-492-3668; e-mail  
[Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Michael T. Lesar,  
Chief, Rulemaking and Directives  
Branch (RDB), Office of Administration,  
Mail Stop: TWB-05-B01M, U.S.  
Nuclear Regulatory Commission,  
Washington, DC 20555-0001, or by fax  
to RDB at (301) 492-3446.

You can access publicly available  
documents related to this notice using  
the following methods:

**NRC's Public Document Room (PDR):**  
The public may examine and have  
copied for a fee publicly available  
documents at the NRC's PDR, Room O1  
F21, One White Flint North, 11555  
Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access  
and Management System (ADAMS):**  
Publicly available documents created or  
received at the NRC are available  
electronically at the NRC's Electronic  
Reading Room at [http://www.nrc.gov/  
reading-rm/adams.html](http://www.nrc.gov/reading-rm/adams.html). From this page,  
the public can gain entry into ADAMS,  
which provides text and image files of  
NRC's public documents. If you do not  
have access to ADAMS or if there are  
problems in accessing the documents  
located in ADAMS, contact the NRC's  
PDR reference staff at 1-800-397-4209,  
301-415-4737, or by e-mail to  
[pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). DG-8040 is  
available electronically under ADAMS  
Accession Number ML092150040. In  
addition, electronic copies of DG-8040  
are available through the NRC's public  
Web site under Draft Regulatory Guides  
in the "Regulatory Guides" collection of  
the NRC's Electronic Reading Room at  
[http://www.nrc.gov/reading-rm/doc-  
collections/](http://www.nrc.gov/reading-rm/doc-<br/>collections/)

**Federal Rulemaking Web site:** Public  
comments and supporting materials  
related to this notice can be found at  
<http://www.regulations.gov> by searching  
on Docket ID: NRC-2010-0115.

Regulatory guides are not  
copyrighted, and Commission approval  
is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day  
of March 2010.

For the Nuclear Regulatory Commission.

**Andrea D. Valentin,**  
*Chief, Regulatory Guide Development Branch,  
Division of Engineering, Office of Nuclear  
Regulatory Research.*

[FR Doc. 2010-6196 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339, Docket Nos. 50–280 and 50–281, NRC–2010–0116]

### Virginia Electric and Power Company, North Anna Power Station, Unit Nos. 1 and 2, Surry Power Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), Part 20, Subpart N, Section 20.2301, associated with Section 20.1703(a), 20.1703(b), Section 20.1703(g) and Subpart O—“Enforcement,” Appendix A to Part 20, “Assigned Protection Factors For Respirators,” Footnote “a” for Facility Operating License Nos. NPF–4, NPF–7, DPR–32, and DPR–37 issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit Nos. 1 and 2 (NAPS), and Surry Power Station, Unit Nos. 1 and 2 (SPS), located in Louisa, Virginia, and Surry, Virginia, respectively. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

#### Environmental Assessment

##### Identification of the Proposed Action

The proposed action would permit the licensee the use of Mine Safety Appliance Company (MSA) Firehawk Air Mask (FireHawk) Self-Contained Breathing Apparatus (SCBA) charged with 35 percent oxygen/65 percent nitrogen when making sub-atmospheric containment entries at NAPS and SPS.

The proposed action is in accordance with the licensee’s application dated November 24, 2009.

##### The Need for the Proposed Action

The proposed exemption is necessary to remove the prohibition against using supplemental oxygen delivered by SCBA that has not been tested/certified by the National Institute of Occupational Safety and Health.

##### Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action to use an MSA Firehawk SCBA charged with 35 percent oxygen/65 percent nitrogen when making sub-atmospheric containment entries would not

significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The details of the staff’s safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee providing the NRC’s determination on the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

##### Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the “no-action” alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the “no-action” alternative are similar.

##### Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the “Final Environmental Statement Related to the Continuation of Construction and the Operation” for NAPS dated April 1973, and SPS dated May 1972 and June 1972, respectively, as supplemented through the “Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplements 6 and 7 Regarding SPS and NAPS—Final Report (NUREG–1437, Supplements 6 and 7),” dated November 2002.

##### Agencies and Persons Consulted

In accordance with its stated policy, on February 3, 2010, the NRC staff

consulted with the Virginia State official, Mr. Leslie Foldesi, Division of Radiological Health of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

#### Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee’s letter dated November 24, 2009. Documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 16th day of March 2010.

For the Nuclear Regulatory Commission.

**Karen Cotton,**

*Project Manager, Plant Licensing Branch 2–I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–6199 Filed 3–19–10; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410; NRC–2010–0117]

### Nine Mile Point Nuclear Station, LLC, Nine Mile Point Nuclear Station, Unit No. 2; Draft Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

In accordance with 10 CFR 51.21, the U.S. Nuclear Regulatory Commission (NRC) has prepared a draft Environmental Assessment (EA) as part of its evaluation of a request by Nine

Mile Point Nuclear Station, LLC (the licensee) for a license amendment to increase the maximum thermal power at the Nine Mile Point Nuclear Station Unit 2 (NMP2) from 3,467 megawatts thermal (MWt) to 3,988 MWt. This represents a power increase of approximately 15 percent over the current licensed thermal power, and approximately 20 percent from the original licensed power level of 3,323 MWt. The NRC staff did not identify any significant environmental impact associated with the proposed action based on its evaluation of the information provided in the licensee's extended power uprate (EPU) application and other available information.

### Environmental Assessment

#### *Plant Site and Environs*

The Nine Mile Point Nuclear Station (NMPNS) site is in the town of Scriba, in the northwest corner of Oswego County, New York, on the south shore of Lake Ontario. The site is comprised of approximately 900 acres that includes two nuclear reactors and ancillary facilities. NMP2 uses a boiling-water reactor and a nuclear steam supply system designed by General Electric.

#### *Identification of the Proposed Action*

By application dated May 27, 2009, the licensee requested an amendment for an EPU for NMP2 to increase the licensed thermal power level from 3,467 MWt to 3,988 MWt, which represents an increase of approximately 15% above the current licensed thermal power and approximately 20% over the original licensed thermal power level. This change in core thermal level requires the NRC to amend the facility's operating license. The operational goal of the proposed EPU is a corresponding increase in electrical output from 1,211 MWe to 1,369 MWe. The proposed action is considered an EPU by NRC because it exceeds the typical 7% power increase that can be accommodated with only minor plant changes. EPUs typically involve extensive modifications to the nuclear steam supply system.

The licensee plans to make the physical changes to plant components needed to implement the proposed EPU over the course of two refueling outages currently scheduled for 2010 and 2012. The actual power uprate, if approved by the NRC, would occur in a single increase following the 2012 refueling outage.

#### *The Need for the Proposed Action*

The proposed action provides NMPNS with the flexibility to increase the potential electrical output of NMP2 and to supply low cost, reliable, and efficient electrical generation to New York State and the region. The additional 158 MWe would be enough to power approximately 174,000 homes. The proposed EPU at NMP2 would contribute to meeting the goals and recommendations of the New York State Energy Plan for maintaining the reserve margin and reducing greenhouse gas emissions with low cost, efficient, and reliable electrical generation. The proposed action provides the licensee with the flexibility to increase the potential electrical output of NMP2 to New York State and the region from its existing power station without building a new electric power generation station or importing energy from outside the region.

#### *Environmental Impacts of the Proposed Action*

As part of the licensing process for NMP2, the NRC published a Final Environmental Statement (FES) in May 1985. The NRC staff noted that the impact of any activity authorized by the license would be encompassed by the overall action evaluated in the FES for the operation of NMP2. In addition, the NRC evaluated the environmental impacts of operating NMP2 for an additional 20 years beyond its current operating license, and determined that the environmental impacts of license renewal were small. The NRC staff's evaluation is contained in NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plant, Supplement 24, Regarding Nine Mile Point Nuclear Station, Units 1 and 2" (SEIS-24) issued in May 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML061290310). The NRC staff used information from the licensee's license amendment request, the FES, and the SEIS-24 to perform its EA for the proposed EPU.

The NMP2 EPU is expected to be implemented without making extensive changes to buildings or plant systems that directly or indirectly interface with the environment. All necessary modifications would be performed in existing buildings at NMP2. With the exception of the high-pressure turbine rotor replacement, the required modifications are generally small in scope. Other modifications include providing additional cooling for some plant systems, modifications to

feedwater pumps, modifications to accommodate greater steam and condensate flow rates, and instrumentation upgrades that include minor items such as replacing parts, changing setpoints and modifying software.

The sections below describe the non-radiological and radiological impacts in the environment that may result from the proposed EPU.

### Non-Radiological Impacts

#### *Land Use and Aesthetic Impacts*

Potential land use and aesthetic impacts from the proposed EPU include impacts from plant modifications at NMP2. While some plant components would be modified, most plant changes related to the proposed EPU would occur within existing structures, buildings, and fenced equipment yards housing major components within the developed part of the site. No new construction would occur outside of existing facilities and no expansion of buildings, roads, parking lots, equipment lay-down areas, or transmission facilities would be required to support the proposed EPU.

Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during plant modifications. Therefore, land use conditions would not change at NMP2. Also, there would be no land use changes along transmission lines (no new lines would be required for the proposed EPU), transmission corridors, switch yards, or substations.

Since land use conditions would not change at NMP2, and because any land disturbance would occur within previously disturbed areas, there would be little or no impact to aesthetic resources in the vicinity of NMP2. Therefore, there would be no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of NMP2.

#### *Air Quality Impacts*

Air quality within the Nine Mile Point area is generally considered good, with exceptions occurring for designated ozone nonattainment areas. NMPNS is located in Oswego County which is part of the Central Air Quality Control Region covered by Region 7 of the New York State Department of Environmental Conservation. With the exception of ozone, this region is designated as being in attainment or unclassifiable for all criteria pollutants in Environmental Protection Agency's (EPA's) 40 CFR 81.333.

There are approximately 1,000 people employed on a full-time basis. This

workforce is typically augmented by an additional 1,000 persons on average during regularly scheduled refueling outages. For the EPU work in 2012, the workforce numbers would be somewhat larger than a routine outage, but would be of short duration. During implementation of the EPU at NMP2, some minor and short duration air quality impacts would occur. The main source of the air emissions would be from the vehicles of the additional outage workers needed for the EPU work. The majority of the EPU work would be performed inside existing buildings and would not impact air quality. Operation of the reactor at the increased power level would not result in increased non-radioactive emissions that would have a significant impact on air quality in the region. Therefore, there would be no significant impact on air quality during and following implementation of the proposed EPU.

### Water Use Impacts

#### *Groundwater*

NMP2 does not use groundwater in any of its water systems and has no plans for direct groundwater use in the future. There are no production wells on the site for either domestic-type water uses or industrial use. Potable water in the area is supplied to residents either through the Scriba Water District, which receives its water from the City of Oswego, or from private wells.

Because of variations in the hydrogeological characteristics of the ground under the reactor building foundation, a permanent dewatering system is required for NMP2. The system consists of perimeter drains and two sumps located below the NMP2 reactor building. The dewatering system is designed to maintain the water table below the reactor building foundation at a stable level. The licensee asserts that implementation of the proposed EPU will not result in a change to the groundwater use program at NMP2. Therefore, there would be no significant impact on groundwater resources following implementation of the proposed EPU.

#### *Surface Water*

NMP2 uses surface water from Lake Ontario for the service water system and for a fish diversion system. As described in the licensee's application, the cooling water system for NMP2 consists of a circulating water system, which circulates cooling water through the main condensers to condense steam after it passes through the turbine, and a service water system which circulates cooling water through heat exchangers

that serve various plant components. The service water system for NMP2 is a once-through system withdrawing water from Lake Ontario. However, the circulating water system is a closed-cycle system that uses a natural draft cooling tower. A portion of the cooling water from the service water discharge is used to replace evaporative and drift losses from the cooling tower. NMP2 has its own cooling water intake and discharge structures located offshore in Lake Ontario. The intake and discharge structures are located approximately 950 feet and 1,050 feet offshore. The discharge structure is a two-port diffuser located 3 feet above the bottom approximately 1,500 feet offshore. Because the NMP2 circulating water system is closed-cycle, flows are substantially less than for a typical open-cycle system. During normal operation, an average total flow of 53,600 gallons per minute (gpm) is withdrawn from Lake Ontario, 38,675 gpm for the service water system and makeup to the circulating water system to replace evaporation and drift losses from the cooling tower, and 14,925 gpm for operation of the fish diversion system. Discharge flow from NMP2 ranges from 23,055 gpm to 35,040 gpm during operation.

The licensee estimates that cooling tower makeup water flow post-EPU would increase by approximately 2,000–2,500 gpm; from approximately 18,000 gpm to approximately 20,000 gpm. This increase represents consumptive use of water from Lake Ontario (e.g., due to increased evaporative losses). This loss is not significant when compared to the large amount of water that routinely flows out of Lake Ontario (approximate long-term average of 107,700,000 gpm). Therefore, there would be no significant impact on surface water resources following implementation of the proposed EPU.

#### *Aquatic Resources Impacts*

The potential impacts to aquatic biota from the proposed action could include impingement, entrainment, and thermal discharge effects. NMP2 has a fish diversion system at the onshore facility to reduce potential impingement of fish on the intake screens. The proposed EPU is expected to result in a 2000–2,500 gpm increase in cooling tower makeup. However, this makeup water is drawn entirely from the plant's service water discharge, and service water intake flows would remain unchanged by the EPU. As a result, there would be no increase in cooling water withdrawn from the NMP2 intake structure. Therefore, there would be no increase in impingement from the proposed EPU

and the increase in entrainment losses, if any, would be very small, and would remain consistent with the NRC's conclusion in the SEIS-24, that the aquatic impacts as a result of NMP2 operation during the term of license renewal would be small.

The issues of discharge water temperature and chemical discharges are regulated by the State of New York with limits specified in the State Pollutant Discharge Elimination System (SPDES) permit. According to the licensee, the temperature of the discharge water is expected to increase by a maximum of 2 °F as a result of the EPU. In addition, a modeling study performed by the licensee in 2007 of the thermal plume of NMP2 indicated only a minor increase in thermal discharge would be expected from the EPU. Technical reviews and analyses performed by the licensee indicate that the combined service water and blowdown discharge from NMP2 would remain compliant with current limits in the SPDES permit for thermal and physical parameters during both normal operation and normal shutdown conditions.

The circulating water system and service water system for NMP2 are treated with biocides to control biofouling from zebra mussels (*Dreissena polymorpha*) and other organisms, and with other chemical additives to control scaling and corrosion of system components. The licensee's application notes that several of the chemicals used for the above treatments are subject to specific limits in the NMP2 SPDES permit.

Therefore, there would be no significant adverse impacts to the aquatic biota from entrainment, impingement, and from thermal discharges for the proposed action.

#### *Terrestrial Resources Impacts*

The NMPNS site consists of approximately 900 acres, with over 1 mile of shoreline on Lake Ontario. Approximately 188 acres are used for power generation and support facilities. Much of the remaining area is undeveloped, consisting largely of deciduous forest with some old field and shrub land areas that reflect continuing succession of old fields to secondary forest. As previously discussed in the land use and aesthetic section, the proposed action would not affect land use at NMP2. Therefore, there would be no significant impacts on terrestrial biota associated with the proposed action.

### *Threatened and Endangered Species Impacts*

Animal species found on the NMP2 site are representative of those found within disturbed landscapes of the lower Great Lakes region, and include white-tailed deer and a variety of smaller mammals, reptiles and amphibians. Correspondence between the licensee and the U.S. Fish and Wildlife Service (FWS) in connection with the NMPNS license renewal environmental review indicated that no federally endangered, threatened, or candidate aquatic species are likely to reside in the vicinity of the NMP2 site. According to the licensee's application and information in the SEIS-24, with the exception of the Indiana bat (*Myotis sodalis*) and occasional transient individuals of the piping plover (*Charadrius melodus*) and the bald eagle (*Haliaeetus leucocephalus*) (now delisted), no other species listed by the FWS as endangered or threatened are likely to reside on the NMPNS site or along Nine Mile Point to the Clay transmission corridor. However, recent onsite surveys conducted by the licensee indicate that there is low likelihood of occurrence for Indiana bat and piping plover because there is no suitable habitat on the site or along the transmission corridor. Regardless, planned construction-related activities related to the proposed EPU primarily involve changes to existing structures, systems, and components internal to existing buildings, would not involve earth disturbance. While traffic and worker activity in the developed parts of the plant site during the 2012 refueling outage would be somewhat greater than a normal refueling outage, the potential impact on terrestrial wildlife would be minor and temporary.

Since there are no planned changes to the terrestrial wildlife habitat on the NMPNS site from the proposed EPU and the potential impacts from worker activity would be minor and temporary, there would be no significant impacts to any threatened or endangered species for the proposed action.

### *Historic and Archaeological Resources Impacts*

As reported in the SEIS-24, the NRC reviewed historic and archaeological site files in New York, and confirmed that historic and archaeological resources have been identified in the vicinity of NMP2, but no archaeological and historic architectural sites have been recorded on the licensee's site. In addition, the New York State Historic Preservation Office confirmed that while there are no known archaeological

sites within the plant site, the Preservation Office considers Nine Mile Point to be an area that is sensitive for cultural resources because of its environmental setting. However, as reported in the SEIS-24, a site visit performed by NRC staff in 2004 found the presence of archaeological remains associated with several mapped historic locations within the plant lands. For the proposed EPU, the licensee asserts that there would be no new land disturbance activities and there are no plans to construct new facilities or modify existing access roads, parking areas, or equipment lay-down areas. Therefore, there would be no significant impact from the proposed EPU on historic and archaeological resources at NMP2.

### *Socioeconomic Impacts*

Potential socioeconomic impacts from the proposed EPU include temporary increases in the size of the workforce at NMP2 and associated increased demand for public services and housing in the region. The proposed EPU could also increase tax payments due to increased power generation.

Currently, there are approximately 1,000 full-time workers employed at NMPNS, residing primarily in Oswego County and Onondaga County, New York. During refueling outages approximately every 12 months at NMPNS (every 24 months for each unit) the number of workers at NMPNS increases by as many as 1,000 workers for 30 to 40 days.

The proposed EPU is expected to temporarily increase the size of the workforce at NMPNS during the spring 2010 and 2012 refueling outages. The greatest increase would occur during the spring 2012 outage when the majority of the EPU-related modifications would take place. Once completed, the size of the refueling outage workforce at NMPNS would return to normal levels and would remain relatively the same during future refueling outages. The size of the regular plant operations workforce would be unaffected by the proposed EPU.

Most of the EPU plant modification workers would be expected to relocate temporarily to Oswego and Onondaga counties, resulting in short-term increases in the local population along with increased demands for public services and housing. Because plant modification work would be short-term, most workers would stay in available rental homes, apartments, mobile homes, and camper-trailers. Therefore, a temporary increase in plant employment for a short duration would have little or no noticeable effect on the availability of housing in the region.

NMPNS currently pays annual real estate property taxes to the City of Oswego School District, Oswego County, and the Town of Scriba. The annual amount of property taxes paid by NMPNS could increase due to "incentive payments" should NMP2 megawatt production exceed negotiated annual benchmarks as power generation increases. Future property tax agreements with Oswego County, the Town of Scriba, and the City of Oswego could also take into account the increased value of NMP2 as a result of the EPU implementation and increased power generation.

Due to the short duration of EPU-related plant modification activities, there would be little or no noticeable effect on tax revenues generated by temporary workers residing in Oswego County and Onondaga County. Therefore, there would be no significant adverse socioeconomic impacts from EPU-related plant modifications and operations under EPU conditions in the vicinity of NMP2.

### *Environmental Justice Impacts*

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with EPU operation at NMP2. Environmental effects may include biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of NMP2, and all are exposed to the same health and environmental effects generated from activities at NMP2.

### *Environmental Justice Impact Analysis*

The NRC staff considered the demographic composition of the area within a 50-mile (80-km) radius of NMP2 to determine the location of minority and low-income populations and whether they may be affected by the proposed action.

Minority populations in the vicinity of NMP2, according to the U.S. Census Bureau data for 2000, indicate that 11.8% of the population (approximately 908,000 individuals) residing within a 50-mile (80-km) radius of NMP2 identified themselves as minority individuals. The largest minority group was Black or African American (approximately 63,000 persons or 7.0%), followed by Hispanic or Latino (approximately 22,000 persons or about 2.4%). According to the U.S. Census Bureau, about 3.5% of the Oswego County population identified themselves as minorities, with persons

of Hispanic or Latino origin comprising the largest minority group (1.3%). According to census data, the 3-year average estimate for 2006–2008 for the minority population of Oswego County, as a percent of total population, increased to 4.4%.

According to 2000 census data, approximately 19,600 families and 105,000 individuals (approximately 8.4 and 11.5%, respectively) residing within a 50-mi (80-km) radius of NMP2 were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was \$17,029 for a family of four.

According to census data in the 2006–2008 American Community Survey 3-Year Estimates, the median household income for New York was \$55,401, while 13.8% of the State population and 10.5% of families were determined to be living below the Federal poverty

threshold. Oswego County had a lower median household income average (\$43,643) and higher percentages (16.0%) of individuals and families (11.2%) living below the poverty level, respectively.

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (e.g., noise, dust, traffic, employment, and housing impacts). However, noise and dust impacts would be short-term and limited to onsite activities. Minority and low-income populations residing along site access roads could experience increased commuter vehicle traffic during shift changes. Increased demand for inexpensive rental housing during the refueling outages that include EPU-related plant modifications could disproportionately affect low-income populations, however, due to the short

duration of the EPU-related work and the expected availability of rental properties, impacts to minority and low-income populations would be short-term and limited.

Based on this information and the analysis of human health and environmental impacts presented in this EA, there would be no disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of NMP2.

*Non-Radiological Impacts Summary*

As discussed above, the proposed EPU would not result in any significant non-radiological impacts. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at NMP2.

TABLE 1—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use .....	No significant impact on land use conditions and aesthetic resources in the vicinity of NMP2.
Air Quality .....	Temporary short-term air quality impacts from vehicle emissions related to the workforce. No significant impacts to air quality.
Water Use .....	Water use changes resulting from the EPU would be relatively minor. No significant impact on groundwater or surface water resources.
Aquatic Resources .....	No significant impact to aquatic resources due to impingement, entrainment, or thermal discharge.
Terrestrial Resources .....	No significant impact to terrestrial resources.
Threatened and Endangered Species.	No significant impact to Federally listed species.
Historic and Archaeological Resources.	No significant impact to historic and archaeological resources on site or in the vicinity of NMP2.
Socioeconomics .....	No significant socioeconomic impacts from EPU-related temporary increase in workforce.
Environmental Justice .....	No disproportionately high and adverse human health and environmental effects on minority and low-income populations in the vicinity of NMP2.

**Radiological Impacts**

*Radioactive Gaseous and Liquid Effluents, Direct Radiation Shine, and Solid Waste*

Nuclear power plants use waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. Operation at the proposed EPU conditions would not require any physical changes to the gaseous, liquid, or solid waste systems.

**Radioactive Gaseous Effluents**

Radioactive gaseous wastes principally include radioactive gases extracted from the steam condenser offgas system and the turbine gland seal. The radioactive gaseous waste management system uses holdup (i.e., time delay to achieve radioactive decay) and filtration (i.e., high efficiency filters) to reduce the gaseous radioactivity that is released into the environment. The licensee’s evaluation

concluded that the proposed EPU would not change the radioactive gaseous waste licensing basis and the system’s design criteria. In addition, the existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302, Appendix I to 10 CFR Part 50, and 40 CFR Part 190.

**Radioactive Liquid Effluents**

Radioactive liquid wastes include liquids from various equipment drains, floor drains, containment sumps, chemistry laboratory, laundry drains, and other sources. An evaluation performed by the licensee demonstrates that implementation of the proposed EPU would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This conclusion is based on the fact that the radioactive liquid waste system functions are not changing and the volume inputs would increase less than 10%, which is not an

appreciable increase when compared to the liquid radioactive waste system capacity. The proposed EPU would result in a small increase in the equilibrium radioactivity in the reactor coolant which in turn would impact the concentrations of radionuclides entering the waste disposal systems.

Since the liquid volume does not increase appreciably, and the radiological sources remain bounded by the existing design basis, the current design and operation of the radioactive liquid waste system will accommodate the effects of EPU with no changes. In addition, the existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1302, Appendix I to 10 CFR Part 50, and 40 CFR Part 190.

**Occupational Radiation Dose at EPU Conditions**

In-plant radiation levels and associated occupational doses are



controlled by the NMPNS Radiation Protection Program to ensure that internal and external radiation exposures to station personnel, contractor personnel, and the general population will be as low as is reasonably achievable (ALARA). For plant workers, the program monitors radiation levels throughout the plant to establish work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR Part 20 and ALARA.

The licensee's analysis indicate that in-plant radiation sources are anticipated to increase linearly with the increase in core power level (approximately 15% greater than the current licensed thermal power), except for nitrogen-16 (N-16) which is expected to increase approximately 30% due to increased steam flow and pressure in some components. Shielding is used throughout NMP2 to protect personnel against radiation emanating from the reactor and the auxiliary systems.

For conservatism, many aspects of NMP2 were originally designed for higher-than-expected radiation sources. NMPNS has determined that the current shielding design is adequate for the increase in radiation levels that may occur after the proposed EPU. Thus, the increase in radiation levels would not affect radiation zoning or shielding in the various areas of NMP2 because of the conservatism in the original design. Therefore, no changes are planned to the plant's shielding design and the ALARA program would continue in its current form.

#### **Offsite Doses at EPU Conditions**

The primary sources of normal operation offsite dose to members of the public at NMP2 are airborne releases from the Offgas System and direct dose from gamma radiation (skyshine) from the plant turbines containing radioactive material. During reactor operation, the reactor coolant passing through the core region becomes radioactive as a result of nuclear reactions. The dominant radiation source in the coolant passing through the turbine is N-16. The activation of the water in the reactor core is in approximate proportion to the increase in thermal power. However, while the magnitude of the radioactive source production increases in proportion to reactor power, the concentration in the steam remains nearly constant. This is because the increase in activation production is balanced by the increase in steam flow. The implementation of the proposed EPU could increase

components of offsite dose due to releases of gaseous and liquid effluents by up to 20%. The component of offsite dose due to N-16 radiation emanating from the turbine could increase by as much as 30%. The licensee calculated that the increase in offsite dose from radioactive gaseous and liquid effluents, and skyshine from NMP2 under EPU operating conditions is expected to be less than 1 mrem (0.01mSv) per year. The historical (2003-2007) annual doses to a member of the public located outside the NMPNS site boundary from NMP2's radioactive emissions ranged from 0.18 mrem (0.0018 mSv) to 2.01 mrem (0.0201 mSv). These doses are well below the 10 CFR Part 20 annual dose limit of 100 mrem (1.0 mSv) for members of the public and the EPA's 40 CFR Part 190 annual dose standard of 25 mrem (0.25 mSv). Therefore, while the offsite dose to members of the public under EPU conditions is expected to increase slightly, it is expected to remain within regulatory limits. Based on the above, the potential increase in offsite radiation dose to members of the public would not be significant.

#### *Radioactive Solid Wastes*

The radioactive solid waste system collects, processes, packages, monitors, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite for disposal. Solid radioactive waste streams include filter sludge, spent ion exchange resin, and dry active waste (DAW). DAW includes paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal, and other types of waste routinely generated during site maintenance and outages. The EPU does not generate a new type of waste or create a new waste stream. Therefore, the types of radioactive waste that require shipment are unchanged. The licensee's evaluation indicates that the effect of the EPU on solid waste is primarily from increased input to the reactor water cleanup system (WCS) and condensate demineralizers. The increased use of the WCS and condensate demineralizers is expected to increase the volume of spent ion exchange resins and filter sludge. The licensee's analysis indicates that the estimated increase in solid radioactive waste is approximately 7%, and can be handled by the existing solid waste management system without modification. Therefore, the impact from the increased volume of solid radioactive waste generated under conditions of the proposed EPU would not be significant.

#### **Spent Nuclear Fuel**

Spent fuel from NMP2 is stored in the plant's spent fuel pool. The additional energy requirements for the proposed EPU would be met by an increase in fuel enrichment, an increase in the reload fuel batch size, and/or changes in the fuel loading pattern to maintain the desired plant operating cycle length. NMP2 is currently licensed to use uranium-dioxide fuel that has a maximum enrichment of 4.95% by weight uranium-235. The typical average enrichment is approximately 4.20% by weight uranium-235. For the proposed action, the core design would use a somewhat higher fuel enrichment (4.36%), which remains within the licensed maximum enrichment. The EPU fuel batch size would increase from 276 bundles to 352 bundles. The licensee's fuel reload design goals would maintain the NMP2 fuel cycles within the limits bounded by the impacts analyzed in 10 CFR Part 51, Table S-3—Table of Uranium Fuel Cycle Environmental Data and Table S-4—Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor. Therefore, there would be no significant impact resulting from spent nuclear fuel.

#### *Postulated Design-Basis Accident Doses*

Postulated design-basis accidents are evaluated by both the licensee and the NRC staff to ensure that NMP2 can withstand normal and abnormal transients and a broad spectrum of postulated accidents, without undue hazard to the health and safety of the public. The NRC staff previously evaluated and approved an amendment to the NMP2 license (Technical Specification Amendment No. 125, dated May 29, 2008, ADAMS Accession No. ML081230439) which permitted full implementation of the Alternative Source Term (AST) as described in NRC Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors." The licensee's AST analysis was performed at the proposed EPU power level of 3,988 MWt so that the design-basis accident analyses would be applicable to the proposed EPU being evaluated here. In its approval of TS Amendment No. 125, the NRC staff concluded that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not

be inimical to the common defense and security or to the health and safety of the public. Therefore, there would be no significant increase in the impact resulting from a postulated accident.

*Radiological Impacts Summary*

As discussed above, the proposed EPU would not result in any significant radiological impacts. Table 2

summarizes the radiological environmental impacts of the proposed EPU at NMP2.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radioactive Gaseous Effluents .....	Amount of additional radioactive gaseous effluents generated would be handled by the existing system.
Radioactive Liquid Effluents .....	Amount of additional radioactive liquid effluents generated would be handled by the existing system.
Occupational Radiation Doses .....	Occupational doses would continue to be maintained within NRC limits.
Offsite Radiation Doses .....	Radiation doses to members of the public would remain below NRC and EPA radiation protection standards.
Radioactive Solid Waste .....	Amount of additional radioactive solid waste generated would be handled by the existing system.
Spent Nuclear Fuel .....	Amount of additional spent nuclear fuel would be handled by the existing system.
Postulated Design- Basis Accident Doses .....	Calculated doses for postulated design-basis accidents would remain within NRC limits.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (i.e., the “no-action” alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved for NMP2, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled plant may create impacts in air quality, land use, and waste management significantly greater than those identified for the proposed EPU at NMP2. Furthermore, the proposed EPU does not involve environmental impacts that are significantly different from those originally identified in the NMP2 FES and the SEIS-24.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the FES.

*Agencies and Persons Consulted*

In accordance with its stated policy, on March 2, 2010, the NRC staff consulted with the State of New York official regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee’s application dated May 27, 2009, as supplemented on August 28 and December 23, 2009, and February 19, 2010.

Documents may be examined, and/or copied for a fee, at the NRC’s Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1-800-397-4209, or 301-415-4737, or send an e-mail to [pdr.Resource@nrc.gov](mailto:pdr.Resource@nrc.gov).

Dated at Rockville, Maryland, this 16th day of March 2010.

For the Nuclear Regulatory Commission,  
**Nancy L. Salgado,**

*Chief, Plant Licensing Branch I-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-6198 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. STN 50-528, STN 50-529, and STN 50-530; NRC-2010-0114]

**Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption, pursuant to

Title 10 of the Code of Federal Regulations (10 CFR) § 73.5, “Specific exemptions,” from the implementation date for certain new requirements of 10 CFR Part 73, “Physical protection of plants and materials,” for Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, issued to Arizona Public Service Company (APS, the licensee), for operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS, Units 1, 2, and 3), located in Maricopa County, Arizona. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed actions will have no significant environmental impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt APS from the required implementation date of March 31, 2010, for several new requirements of 10 CFR Part 73. Specifically, APS would be granted an exemption from being in full compliance with certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. APS has proposed an alternate full compliance implementation date of December 17, 2010, approximately 8½ months beyond the date required by 10 CFR Part 73. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the PVNGS, Units 1, 2, and 3 site.

The proposed action is in accordance with the licensee’s application dated December 21, 2009, as supplemented by letters dated February 16 and March 5, 2010. Publicly available versions of

these letters can be found in the Agencywide Documents Access and Management System (ADAMS), at Accession Nos. ML100040088, ML100550875, and ML100680760, respectively. Portions of the December 21, 2009, and March 5, 2010, letters contain security-related information and, accordingly, those portions of the letters are being withheld from public disclosure.

#### *The Need for the Proposed Action*

The proposed action is needed to provide the licensee with additional time to implement two specific elements of the new requirements that involve significant physical modifications to the PVNGS security systems.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed actions, the NRC staff considered denial of the proposed actions (*i.e.*, the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for PVNGS, Units 1, 2, and 3, NUREG-0841, dated February 1982.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on March 1, 2010, the NRC staff consulted with the Arizona State official, Mr. Aubrey Godwin of the Arizona Radiation Regulatory Agency, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated December 21, 2009, February 16, 2010, and March 5, 2010. Portions of these letters contain security-related information and, accordingly, are not available to the public. The publicly available parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located

at One White Flint North, Room O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 15th day of March 2010.

For the Nuclear Regulatory Commission.

**James R. Hall,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-6195 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-313 and 50-368; NRC-2010-0111]**

### **Entergy Operations, Inc., Arkansas Nuclear One, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) § 73.5, "Specific exemptions," from the implementation date for certain new requirements of 10 CFR Part 73, "Physical protection of plants and materials," for Facility Operating License Nos. DPR-51 and NPF-6, issued to Entergy Operations, Inc. (Entergy, the licensee), for operation of the Arkansas Nuclear One, Units 1 and 2 (ANO-1 and 2), located in Pope County, Arkansas. Therefore, as required by 10 CFR 51.21, the NRC prepared an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

#### **Environmental Assessment**

##### *Identification of the Proposed Action*

The proposed action would exempt Entergy from the required implementation date of March 31, 2010, for three new requirements of 10 CFR Part 73 for ANO-1 and 2. Specifically, Entergy would be granted an exemption from being in full compliance with

certain new requirements contained in 10 CFR 73.55 by the March 31, 2010, deadline. Entergy has proposed an alternate compliance date to October 31, 2010 for two requirements, and August 31, 2011 for the third requirement. The proposed action, an extension of the schedule for completion of certain actions required by the revised 10 CFR Part 73, does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the ANO-1 and 2 site.

The proposed action is in accordance with the licensee's application dated January 14, 2010, as supplemented by letter dated January 28, 2010. Portions of the letters dated January 14 and 28, 2010, contain security-related information and, accordingly, are withheld from public disclosure. Redacted versions of the letters dated January 14 and 28, 2010, are available to the public in the Agencywide Documents Access and Management System (ADAMS) in ADAMS Accession Nos. ML100190140 and ML100710021, respectively.

#### *The Need for the Proposed Action*

The proposed action is needed to provide the licensee with additional time based on the delayed delivery of critical security equipment caused by limited vendor resources and subsequent installation and testing time requirements.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to extend the implementation deadline would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the environmental assessment and finding of no significant impact made by the Commission in promulgating its revisions to 10 CFR Part 73 as discussed in a **Federal Register** notice dated March 27, 2009 (74 FR 13926). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents.

No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There would be no impact to the air or ambient air quality.

There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action. In addition, in promulgating its revisions to 10 CFR Part 73, the Commission prepared an environmental assessment and published a finding of no significant impact [Part 73, Power Reactor Security Requirements, 74 FR 13926 (March 27, 2009)].

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed actions, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action was denied, the licensee would have to comply with the March 31, 2010, implementation deadline. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the ANO-1, U.S. Atomic Energy Commission (AEC), 1973, "Final Environmental Statement Related to Arkansas Nuclear One, Unit 1," as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Arkansas Nuclear One, Unit 1—Final Report" (NUREG-1437, Supplement 3), dated April 2001, and for the ANO-2, U.S. Nuclear Regulatory Commission (NRC), 1977, "Final Environmental Statement Related to Operation of Arkansas Nuclear One, Unit 2," as supplemented through the "Generic

Environmental Impact Statement for License Renewal of Nuclear Plants: Arkansas Nuclear One, Unit 2—Final Report" (NUREG-1437, Supplement 19), dated April 2005.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on January 26, 2010, the NRC staff consulted with the Arkansas State official, Mr. Bernard Beville, of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

#### *Finding of No Significant Impact*

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 14, 2010, as supplemented by letter dated January 28, 2010. Portions of the letters dated January 14 and 28, 2010, contain security-related information and, accordingly, are not available to the public. Other parts of these documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site: <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 12th day of March 2010.

For the Nuclear Regulatory Commission.

**Balwant K. Singal,**

*Senior Project Manager, Plant Licensing Branch LPL4, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-6193 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328; NRC–2010–0021]

### Tennessee Valley Authority Sequoyah Nuclear Plant, Units 1 and 2 Exemption

#### 1.0 Background

Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License Numbers DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2 (SQN). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two Westinghouse pressurized-water reactors located in Hamilton County, Tennessee.

#### 2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, “Physical protection of plants and materials,” Section 73.55, “Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,” published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from two of these new requirements that SQN now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010. By letter dated November 6, 2009, as supplemented by letter dated January 11, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, “Specific exemptions.” Portions of the licensee’s November 6, 2009, letter contain safeguards and security sensitive information and,

accordingly, are not available to the public. The January 11, 2010, letter is publicly available (Agencywide Documents Access and Management System Accession No. ML100130169). The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is for two specific 10 CFR 73.55 requirements that would be in place by September 24, 2012, versus the March 31, 2010, deadline. Being granted this exemption for the two items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed regulatory requirements.

#### 3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), “By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as ‘security plans.’” Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until September 24, 2012. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting of the licensee’s proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission’s regulations. Therefore, NRC approval of the licensee’s exemption request is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule (74 FR 13926, March 27, 2009). From this, it is

clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final power reactor security rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule’s requirements, and that these changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected generic industry requests to extend the rule’s compliance date for all operating nuclear power plants, but noted that the Commission’s regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee’s request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

#### *Sequoyah Schedule Exemption Request*

The licensee provided detailed information in its November 6, 2009, letter, as supplemented by letter dated January 11, 2010, requesting an exemption. The NRC staff finds that the licensee has provided an adequate basis for the exemption request as well as appropriate detailed justification that describes the reason additional time is needed. Specifically, the SQN will be undertaking multiple large scope modifications to the physical protection program through three interrelated projects that require multiple supporting subtasks. These subtasks must be completed in sequence due to the complex interconnectivity of each project to other program components. The licensee has provided sufficiently detailed technical information that supports the described solution for meeting the identified requirements. Because of the large scope of the proposed modifications and upgrades, significant engineering analysis, design, and planning are required to ensure system effectiveness upon completion of the three projects. In addition to project-specific tasks and procurement details, the TVA has also identified a variety of site-specific considerations that will impact the final completion date, such as refueling outages, manpower resources, engineering/design changes during construction, and/or weather conditions that may impact completion milestones. As with all construction activities, the licensee must also account for site-specific safety and

construction methods regarding the areas in which work is to be performed, the location of existing infrastructure such as buried power lines, and/or unanticipated delays that could significantly impact the project schedules. These site-specific safety and construction methods must be accounted for in the proposed schedule that, in turn, impacts the final compliance date requested. The licensee has provided a coordinated/combined schedule for all three projects at SQN that outlines the sequence in which work must be conducted to ensure effective system connectivity. The required tasks/changes must be completed in sequence at each site to support all program upgrades being performed and to ensure effective connectivity of each project.

The upgrades that the licensee identified within their exemption request support their solution for meeting the requirements.

The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified; and is consistent with the licensee's requested compliance date.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC approved physical security program. By September 24, 2012, SQN will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

#### 4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to September 24, 2012, with regard to two specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, the exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the security system upgrades are

complete justify exceeding the full compliance date in the case of this particular licensee. The security measures SQN needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, implementation deadline for the two items specified in Enclosure 1 of the TVA letter dated November 6, 2009, as supplemented by letter dated January 11, 2010, the licensee is required to be in full compliance by September 24, 2012. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.*, 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 3762, dated January 22, 2010).

*This exemption is effective upon issuance.*

Dated at Rockville, Maryland, this 11th day of March 2010.

For The Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-6190 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

#### NUCLEAR REGULATORY COMMISSION

[DC/COL-ISG-020; NRC-2009-0457]

#### Office of New Reactors; Interim Staff Guidance on Implementation of a Seismic Margin Analysis for New Reactors Based on Probabilistic Risk Assessment

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of availability.

**SUMMARY:** The NRC is issuing its Final Interim Staff Guidance (ISG) DC/COL-

ISG-020 titled "Implementation of a Seismic Margin Analysis for New Reactors Based on Probabilistic Risk Assessment," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100491233). This ISG supplements the guidance provided to the staff in Section 19.0 of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," issued March 2007 and DC/COL-ISG-03, "Probabilistic Risk Assessment Information to Support Design Certification and Combined License Applications," dated June 11, 2008 (ADAMS Accession No. ML081430087) concerning the review of probabilistic risk assessment (PRA) information and severe accident assessments submitted to support design certification (DC) and combined license (COL) applications. The NRC staff intends to incorporate DC/COL-ISG-020 into the next revision of SRP Section 19.0 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

*Disposition:* On October 16, 2009, the NRC staff issued the proposed ISG, DC/COL-ISG-020 "Implementation of a Seismic Margin Analysis for New Reactors Based on Probabilistic Risk Assessment," (ADAMS Accession No. ML092650316) to solicit public and industry comment. The NRC staff received comments on the proposed guidance. This final issuance incorporates changes from the majority of the comments. The NRC staff responses to these comments can be found in ADAMS Accession No. ML100491287.

**ADDRESSES:** The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by e-mail at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Dr. Kimberly A. Hawkins, Chief, Structural Engineering Branch 2, Division of Engineering, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone at 301-415-0564 or e-mail at [Kimberly.Hawkins@nrc.gov](mailto:Kimberly.Hawkins@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The agency posts its issued staff guidance in the agency external Web page (<http://www.nrc.gov/reading-rm/doc-collections/isg/>).

Dated at Rockville, Maryland, this 15th day of March 2010.

For the Nuclear Regulatory Commission.

**William F. Burton,**

*Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. 2010-6200 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards (ACRS) Planning and Procedures Subcommittee Meeting; Notice of Meeting**

The ACRS Planning and Procedures Subcommittee will hold a meeting on April 7, 2010, at Room T2-B1, at 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, April 7, 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 Officer (DFO), Mr. Peter Wen, (Telephone: 301-415-2832, E-mail: [Peter.Wen@nrc.gov](mailto:Peter.Wen@nrc.gov)) five days prior to the meeting, if possible, so that appropriate arrangements can be made. 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 52829–52830).

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 by contacting the 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 the DFO if such rescheduling would result in major inconvenience.

Dated: March 15, 2010.

**Antonio F. Dias,**

*Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010-6186 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards (ACRS)**

#### **Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting**

The ACRS Reliability and PRA Subcommittee will hold a meeting on April 7, 2010, at 11545 Rockville Pike, T2-B1, Rockville, Maryland.

The entire meeting will be open to public attendance.

The proposed agenda for the subject meeting shall be as follows:

*Wednesday, April 7, 2010, 8:30 a.m.–  
3:30 p.m.*

The Subcommittee will update on staff's activities to address differences in various human reliability analysis models. 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), Peter Wen (Telephone 301-415-2832, E-mail: [Peter.Wen@nrc.gov](mailto:Peter.Wen@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 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. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52828–52829).

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 major inconvenience.

Dated: March 15, 2010.

**Antonio F. Dias,**

*Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2010-6203 Filed 3-19-10; 8:45 am]

**BILLING CODE 7590-01-P**

## **POSTAL REGULATORY COMMISSION**

**[Docket No. MC2010-20; Order No. 423]**

### **New Postal Product**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to transfer selected Post Office Box Service locations from the Market Dominant Product List to the Competitive Product List. This notice addresses procedural steps associated with that filing.

**DATES:** Comments are due: March 31, 2010.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 or [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

- I. Introduction
- II. Notice of Filing
- III. Ordering Paragraphs
- I. Introduction

On March 12, 2010, the Postal Service filed a request, pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, to add a new product to the Competitive Product List. More specifically, it proposes to transfer a small segment of Post Office Box Service, currently classified as a market dominant product and part of the Special Services class, to the Competitive Product List.<sup>1</sup>

The Postal Service supports its Request with conforming Mail Classification Schedule (MCS) language as Attachment A, a Statement of Supporting Justification as required by 39 CFR 3020.32 as Attachment B, an application for non-public treatment of materials, and a redacted version of the spreadsheet used to calculate revenue as Attachments C and D, respectively. *Id.* at 3. The Postal Service separately filed a non-public version of the spreadsheet.

In the Statement of Supporting Justification, Nan McKenzie, Manager, Special Services, asserts that the transfer of Post Office Box Service in a few locations will not impair the ability of competitive products as a whole to comply with 39 U.S.C. 3633(a)(3). *Id.*, Attachment B, at 4. Thus, Ms. McKenzie contends there will be no issue of subsidization of competitive products by market dominant products as a result of the proposed change. *Id.* Post Office Box Service offers secure mail delivery to a receptacle for a fee. The Postal Service states that it intends to establish the new product by moving Post Office Box Service from the Market Dominant Product List to the Competitive Product List in a small number of locations where competitive alternatives exist. Request at 1. The Postal Service describes its initial proposal as modest, involving “a few box sections where competitive conditions can be already demonstrated.” *Id.* It contends because of the limited number of boxes under consideration, the initial proposal “does not require detailed examination of costing and other issues.” *Id.* The Postal Service states that in the event a more substantial transfer of box sections is proposed, costing and other issues can be addressed in more detail. *Id.* It asserts that all of the box sections subject to transfer are in fee group 1 areas, and the proposed transfer of service amounts to less than 0.5 percent

of the market dominant Post Office Box product’s revenue. *Id.* at 2–3. The Postal Service notes that it is undertaking a comprehensive evaluation of all Post Office Box locations and may propose additional transfers if justified. *Id.* at 2.

The Postal Service contends that a Governors’ Decision is not required for this request because it does not propose any changes in the parameters of Post Office Box Service, the proposed MCS language is only modified to identify box locations for the competitive product, the transfer includes only fee group 1 prices, and excludes provisions applicable to Group E boxes which are the only method of delivery for certain customers.<sup>2</sup>

Additionally, the Postal Service advances reasons for the proposed changes to the Post Office Box Service product in conformity with 39 CFR 3020.31, which include: (1) It is not a special classification pursuant to 39 U.S.C. 3622(c)(10) for market dominant products; (2) upon transfer to the Competitive Product List, it will not be a product not of general applicability in accordance with 39 U.S.C. 3632(b)(3) for competitive products; and (3) it is not a nonpostal product. *Id.* at 3.

The Postal Service contends that “transferring a small portion of Post Office box service is appropriate at this time, and is consistent with the standards of section 3642.” *Id.* In its Request, the Postal Service maintains that the supporting financial information, including the calculation of revenue for the ZIP Code locations subject to transfer, should remain under seal. *Id.*, Attachment C.

The Postal Service states it will concurrently file a notice explaining these changes in the **Federal Register**. *Id.* at 4.

The Postal Service urges the Commission to approve the Request. *Id.* at 3.

## II. Notice of Filing

The Commission establishes Docket No. MC2010–20 for consideration of matters identified in the Postal Service’s Request.

The Commission appoints James Callow and Jeremy Simmons to represent the interests of the general public in this proceeding.

*Comments.* Pursuant to section 3020.33, interested persons may submit

<sup>2</sup> The Postal Service notes that the MCS language it offers is based on the current market dominant Post Office Box language with changes necessary to identify the competitive product. It also states that the Group E boxes in the affected ZIP Code locations that are not being included in the transfer are still a part of the Post Office Box Service under evaluation, and Group E boxes may be addressed in the future.

comments on whether the planned transfer is consistent with the policies of 39 U.S.C. 3633 and 3642 and 39 CFR 3020.30 *et seq.*, subpart B. Comments are due no later than March 31, 2010. The public portions of these filings can be accessed via the Commission’s Web site (<http://www.prc.gov>).

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. MC2010–20 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, James Callow and Jeremy Simmons are appointed to serve as officers of the Commission (Public Representatives) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than March 31, 2010.

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

By the Commission.

**Shoshana M. Grove,**  
*Secretary.*

[FR Doc. 2010–6170 Filed 3–19–10; 8:45 am]

**BILLING CODE 7710–FW–S**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

#### *Extension:*

Notice of Exempt Preliminary Roll-Up Communication, OMB Control No. 3235–0452, SEC File No. 270–396

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”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension approval.

A Notice of Exempt Preliminary Roll-Up Communication (“Notice”) (17 CFR 240.14a–104) provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to Exchange Act Rule (17 CFR 240.14a–2(b)(4)) and Exchange Act Rule (17 CFR

<sup>1</sup> Request of the United States Postal Service, March 12, 2010 (Request); *see also* Notice of the United States Postal Service of Filing of USPS-MC2010–20/NP1, March 12, 2010.



240.14a-6(n)). The Notice takes approximately 0.25 hours per response and is filed by 4 respondents for a total of one annual burden hour.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson 6432, General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 16, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6152 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

#### *Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### *Extension:*

Rule 15a-4; SEC File No. 270-7; OMB Control No. 3235-0010.

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") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15a-4 (17 CFR 240.15a-4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act") permits a natural person member of a securities exchange who terminates his or her association with a registered

broker-dealer to continue to transact business on the exchange while the Commission reviews his or her application for registration as a broker-dealer if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual hourly burden imposed by Rule 15a-4 is approximately 42 hours, based on approximately 10 responses (10 Respondents x 1 Response/Respondent), each requiring approximately 4.23 hours to complete.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

The statement submitted by the exchange assures the Commission that the applicant, in the opinion of the exchange, is qualified to transact business on the exchange during the time that the applications are reviewed.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way,

Alexandria, Virginia 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: March 12, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6118 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 25, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 25, 2010 will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Adjudicatory matters; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: March 17, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-6368 Filed 3-18-10; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

### In the Matter of Talisman Enterprises, Inc., Tangent Solutions, Inc., Telepanel Systems, Inc., Telesis North Communications, Inc., Telzuit Medical Technologies, Inc., Tengtu International Corp., Thomaston Mills, Inc., Three D Departments, Inc., Tiger Telematics, Inc., and TIS Mortgage Investment Co.; Order of Suspension of Trading

March 18, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Talisman Enterprises, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tangent Solutions, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telepanel Systems, Inc. because it has not filed any periodic reports since the period ended January 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telesis North Communications, Inc. because it has not filed any periodic reports since the period ended February 28, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Telzuit Medical Technologies, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tengtu International Corp. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Thomaston Mills, Inc. because it has not filed any periodic reports since the period ended December 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information

concerning the securities of Three D Departments, Inc. because it has not filed any periodic reports since the period ended August 1, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tiger Telematics, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TIS Mortgage Investment Co. because it has not filed any periodic reports since the period ended September 30, 2004.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on March 18, 2010, through 11:59 p.m. EDT on March 31, 2010.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2010–6315 Filed 3–18–10; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61695; File No. SR–Phlx–2010–40]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> notice is hereby given that on March 1, 2010, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend: Phlx Rule 1012 (Series of Options Open for Trading) to establish strike-price intervals for options on Index-Linked Securities; <sup>3</sup> and Phlx Rule 101 (Hours of Business) to establish trading hours for these products. The text of the proposed rule change is available on Phlx’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, on the Commission’s Web site at <http://www.sec.gov>, at Phlx, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposal is to amend Rules 1012 and 101 to establish

<sup>3</sup> Index-Linked Securities, also known as exchange-traded notes, are long-term notes that are the non-convertible debt of an issuer with a term of at least one year but not greater than thirty years. These exchange-traded securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes. The Exchange’s listing standards for options on Index-Linked Securities were established in September 2008. See Securities Exchange Act Release No. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR–Phlx–2008–60) (notice of filing and immediate effectiveness). Other exchanges have established similar listing standards. See Securities Exchange Act Release Nos. 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046) (notice of filing and immediate effectiveness); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR–CBOE–2008–64) (approval order); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR–NYSEArca–2008–57) (approval order); and 58985 (November 20, 2008), 73 FR 72538 (November 28, 2008) (SR–ISE–2008–86) (notice of filing and immediate effectiveness).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

strike price intervals and trading hours for options on Index-Linked Securities (“ILS”), also known as exchange-traded notes (“ETN”), prior to the Exchange proposing to list and trade these new products.

The Commission has approved the Exchange’s proposal, as well as the proposals of other options exchanges, to enable the listing and trading of options on ILS (ETN).<sup>4</sup> Options trading has not commenced to date and is contingent upon the Commission’s approval of The Options Clearing Corporation’s (“OCC”) proposed supplement to the Options Disclosure Document (“ODD”) that will provide disclosure regarding options on Index-Linked Securities.<sup>5</sup>

#### \$1 Strikes for ILS (ETN) Options

Prior to the commencement of trading options on Index-Linked Securities, the Exchange is proposing to establish that strike price intervals of \$1 will be permitted where the strike price is less than \$200. Where the strike price is greater than \$200, \$5 strikes will be permitted. These proposed changes are reflected by the addition of Commentary .05(a)(v) to Rule 1012.

The Exchange is seeking to establish \$1 strikes for ILS (ETN) options where the strike price is less than \$200 because the Exchange believes the marketplace and investors will be expecting these types of options to trade in a similar manner to options on exchange-traded funds (“ETFs”). Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>6</sup> Accordingly, the Exchange believes that the rationale for permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for ILS (ETN) options, and that investors will be better served if \$1 strike price intervals are available for ILS (ETN) options where the strike price is less than \$200. The Exchange believes that \$1 strike price intervals for options on Index-Linked Securities will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

#### Trading Hours for ILS (ETN) Options

The Exchange proposes to amend Supplementary Material .01 to Rule 101 to provide that options on exchange-

traded notes including Index-Linked Securities may be traded on the Exchange until 4:15 p.m. each business day. This will establish similar trading hours for ILS (ETN) options as the currently-established trading hours for ETF options.<sup>7</sup>

The Exchange has analyzed its capacity and believes the Exchange and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes where the strike price is less than \$200 for ILS (ETN) options.

The Exchange expects that other option exchanges that have adopted rules providing for the listing and trading of options on Index-Linked Securities will submit similar proposals.<sup>8</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by having strike price intervals and trading hours established prior to the commencement of trading in options on Index-Linked Securities and thereby lessening the likelihood for investor confusion.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2010-40 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-Phlx-2010-40. 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

<sup>4</sup> See supra note 3.

<sup>5</sup> OCC previously received Commission approval to clear options based on Index-Linked Securities. See Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR-OCC-2009-14) (approval order).

<sup>6</sup> See proposed Commentary .05(a)(iv) of Rule 1012, which is renumbered for internal consistency.

<sup>7</sup> See Rule 101.

<sup>8</sup> See, for example, Securities Exchange Act Release No. 61466 (February 2, 2010), 75 FR 6243 (February 8, 2010) (SR-CBOE-2010-005) (notice of filing).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2010-40 and should be submitted on or before April 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6113 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61697; File No. SR-NYSEArca-2010-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the WisdomTree Real Return Fund

March 12, 2010.

#### I. Introduction

On January 25, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares ("Shares") of the WisdomTree Real Return Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on February 23, 2010.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>4</sup> The Fund will

be an actively-managed exchange traded fund, and the Shares will be offered by the WisdomTree Trust ("Trust"), a Delaware statutory trust that is registered with the Commission as an investment company.<sup>5</sup> WisdomTree Asset Management, Inc. ("Adviser") will be the investment adviser to the Fund and is not affiliated with any broker-dealer. The Mellon Capital Management Corporation ("Sub-Adviser"), which will serve as the sub-adviser for the Fund, is affiliated with multiple broker-dealers and, accordingly, has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.<sup>6</sup> The Bank of New York Mellon will be the administrator, custodian and transfer agent for the Fund, and ALPS Distributors, Inc. will serve as the distributor for the Fund.

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d) applicable to Managed Fund Shares<sup>7</sup> and that the Shares will comply with Rule 10A-3 under the Act,<sup>8</sup> as provided by NYSE Arca Equities Rule 5.3.

management investment company or similar entity that invests in a portfolio of securities selected by the investment company's investment adviser consistent with the investment company's investment objectives and policies; (b) are issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. See NYSE Arca Equities Rule 8.600(c)(1).

<sup>5</sup> See Trust Registration Statement on Form N-1A filed on October 28, 2009 (File Nos. 333-132380 and 811-21864) ("Registration Statement").

<sup>6</sup> See Commentary .07 to NYSE Arca Equities Rule 8.600 (requiring the use of "fire walls" between investment advisers and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to the fund portfolio). The Exchange represents that the Adviser and the Sub-Adviser of the Funds, and their respective related personnel, are subject to Rule 204A-1 under the Investment Advisers Act of 1940 ("Advisers Act"), which generally requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act.

<sup>7</sup> The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per share for the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

<sup>8</sup> See 17 CFR 240.10A-3.

The Fund will seek to provide investors with total returns that exceed the rate of inflation over long-term investment horizons. To achieve its objective, the Fund intends to invest in a portfolio of inflation-linked securities, such as U.S. Treasury Inflation Protected Securities ("TIPS") and other investment-grade fixed income securities. The Fund will have targeted exposure to commodities and commodity strategies.

While the Fund intends to invest up to 70% or more of the value of its portfolio in TIPS, the Fund may invest in other types of inflation-linked fixed income securities, such as investment-grade, floating-rate fixed income securities linked to U.S. inflation rates that are issued by the U.S. government, government agencies, or corporations. The Fund may also invest in inflation-linked swaps, securities linked to inflation rates outside the U.S., including securities or instruments linked to rates in emerging market countries, and fixed income securities that are not linked to inflation, such as U.S. government securities. While the Fund intends to invest primarily in investment-grade securities, the Fund may invest up to 10% of its net assets in securities rated "BB" or lower by at least two nationally recognized statistical rating organizations or, if unrated, deemed to be of equivalent quality. The Fund may invest in securities with effective or final maturities of any length and will seek to keep the average effective duration of its portfolio between two and ten years. The Fund may adjust its portfolio holdings or average effective duration based on actual or anticipated changes in interest rates or credit quality.

The Fund also intends to have targeted exposure to commodities across a number of sectors, such as energy, precious metals, and agriculture, primarily through its investments in the WisdomTree Real Return Investment Portfolio, Inc. ("Subsidiary"),<sup>9</sup> a wholly-owned subsidiary organized in the Cayman Islands,<sup>10</sup> as well as in

<sup>9</sup> The Fund intends to invest up to 25% of its assets in the Subsidiary. The Subsidiary intends to invest all of its assets in Commodity-Linked Instruments and/or fixed income securities that serve as collateral for its commodity exposure. The Subsidiary's investments will be consolidated into the Fund's financial statements, and the Fund's and Subsidiary's holdings will be publicly available on a daily basis.

<sup>10</sup> The Exchange states that the Subsidiary is subject to the same investment restrictions as the Fund and will operate in the same manner as the Fund with regard to applicable compliance policies and procedures (other than investments in Commodity-Linked Instruments). Although the Subsidiary is not registered as an investment company under the Investment Company Act of

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61519 (February 16, 2010), 75 FR 8164 ("Notice").

<sup>4</sup> Managed Fund Shares are defined as securities that (a) represent an interest in a registered investment company organized as an open-end

commodity-linked instruments on a limited basis. In addition, the Fund and the Subsidiary may invest in swaps on commodities or commodity indexes, commodity-based structured notes, and exchange-traded commodity-based derivative products (collectively, "Commodity-Linked Instruments"). While the Fund will seek exposure to commodity markets, it generally does not expect to invest in commodities directly in the spot market. The Fund represents that investments in Commodity-Linked Instruments must be consistent with the Fund's investment objective and will not be used to enhance leverage and that neither the Fund nor the Subsidiary will invest in non-U.S. equity securities, except for the Fund's investment in the shares of the Subsidiary.<sup>11</sup>

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.<sup>12</sup> The liquidity of securities purchased by the Fund which are eligible for resale pursuant to Rule 144A will be monitored by the Fund on an ongoing basis. In the event that such a security is deemed to be no longer liquid, the Fund's holdings will be reviewed to determine what action, if any, is required to ensure that the retention of such security does not result in the Fund having more than 15% of its assets invested in illiquid or not readily marketable securities.

Additional information regarding the Trust, the Fund, the Shares, the investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration

1940 ("1940 Act"), the Adviser will manage both the Fund and the Subsidiary, and the Fund's Board of Trustees will oversee the operation of the Fund and its investment in the Subsidiary. Because the Subsidiary's investments are consolidated into those of the Fund, the Fund's combined holdings are required to comply with the 1940 Act. In addition, the Fund is the sole shareholder of the Subsidiary and does not expect shares of the Subsidiary to be offered or sold to other investors.

<sup>11</sup> The Fund intends to maintain the level of diversification necessary to qualify as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.

<sup>12</sup> A security is deemed "illiquid" if it can not be sold or disposed of in the ordinary course of business within seven days at a price that approximates fair market value.

Statement and in the Notice, as applicable.<sup>13</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Shares is consistent with the requirements of Section 6 of the Act<sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>17</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association's high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day before the commencement of trading in Shares in the Core Trading Session the Disclosed Portfolio<sup>18</sup> that will form the basis for

<sup>13</sup> See *supra* notes 3 and 5.

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>18</sup> The Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and

the calculation of the NAV, which will be determined at the end of the business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to NAV. Information regarding the market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

The Commission further believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer that the NAV per share for the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>19</sup> Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.<sup>20</sup> Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>21</sup> The Exchange represents that the Sub-Adviser is affiliated with multiple broker-dealers and, accordingly, has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the

percentage weighting of the security or financial instrument in the portfolio. The Commission notes that the Reporting Authority providing the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>19</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>20</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D).

<sup>21</sup> *Id.* Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

composition and/or changes to the Fund's portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each of the portfolios.<sup>22</sup>

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.<sup>23</sup>

(5) The Fund and the Subsidiary will not invest in non-U.S. equity securities, except that the Fund will invest in shares issued by the Subsidiary.

(6) The Fund's investments in Commodity-Linked Instruments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed

rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Fund.<sup>25</sup> The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposal to list and trade the Shares of the Fund do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSEArca-2010-04) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-6114 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> See, e.g., Securities Exchange Act Release Nos. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-Amex-2008-02) (approving the listing and trading of shares of the Bear Stearns Current Yield Fund); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (approving the listing and trading of shares of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust); and 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR-NYSEArca-2009-114) (approving the listing and trading of shares of two actively-managed funds of the Grail Advisors ETF Trust).

<sup>26</sup> 15 U.S.C. 78s(b)(1).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61699; File No. SR-Phlx-2010-42]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the applicability of Complex Orders to fees and rebates for adding and removing liquidity.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The Commission notes that the fees in this proposed rule change were effective upon filing on March 1, 2010 and apply solely to trades effected on or after that date.

<sup>22</sup> See *supra* note 18.

<sup>23</sup> See *supra* note 8.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to amend the applicability of Complex Orders to remain competitive.

The Exchange proposes modifying the applicability of Complex Orders to the fees and rebates for adding and removing liquidity. Currently, single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged. The Exchange proposes amending this exception to state that individual components of such a Complex Order will be charged according to the fees and rebates for adding and removing liquidity. The Exchange is amending the applicability of Complex Orders to the fees described herein because the Exchange no longer believes that this incentive is necessary.

Currently, the Exchange assesses a per-contract transaction charge in Standard and Poor's Depository Receipts/SPDRs ("SPY")<sup>6</sup>, the PowerShares QQQ Trust ("QQQQ")®; iShares Russell 2000 ("IWM") and Citigroup Inc. ("C") options on five different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.<sup>7</sup>

The market participants are as follows: (i) Specialists, Registered Options Traders ("ROT's"), Streaming

Quote Traders ("SQTs")<sup>8</sup> and Remote Streaming Quote Traders ("RSQTs");<sup>9</sup> (ii) customers;<sup>10</sup> (iii) specialists, ROTs, SQTs and RSQTs that receive Directed Orders ("Directed Participants"<sup>11</sup> or "Directed Specialists, RSQTs, or SQTs"<sup>12</sup>); (iv) Firms; and (v) broker-dealers.

The per-contract transaction charges are assessed on participants who submit proprietary quotes and/or orders that remove liquidity from the Exchange's market in options listed on the Fee Schedule. The Exchange also assesses a transaction charge to Firms and broker-dealers that add liquidity.

Additionally, the Exchange has in place a per-contract rebate relating to transaction charges for orders or quotations that add liquidity to the Exchange's market in options listed on the fee schedule. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx disseminated Best Bid and/or Offer.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the

<sup>8</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>9</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>10</sup> This applies to all customer orders, directed and non-directed.

<sup>11</sup> For purposes of this fee, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on the Exchange's electronic trading platform for options, PHLX XL II.

<sup>12</sup> See Exchange Rule 1080(l), " \* \* \* The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

order types it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). The rate increase to Firms for adding liquidity in the various symbols including the additional Symbols is the same rate that is currently being assessed on Broker-Dealers.

Specifically, the Exchange believes that amending the applicability of the complex orders to these fees is equitable as that will apply equally to all participants.

Accordingly, the Exchange also believes that the addition of the options to this portion of the Fee Schedule is equitable in that it will apply to all categories of participants in the same manner.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and paragraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>6</sup> SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>7</sup> See SR-Phlx-2010-33.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

Number SR-Phlx-2010-42 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-Phlx-2010-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Phlx-2010-42 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-6115 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61703; File No. SR-NASDAQ-2010-023]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 19, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Section 19 under the Act.<sup>3</sup> 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

NASDAQ proposes to amend the NASDAQ Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications. NASDAQ proposes to implement this rule change immediately upon filing. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to amend the NASDAQ Rule 9520 Series, the Exchange's eligibility proceedings section, to conform to recent changes in the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>4</sup> The proposal also includes the proposed Statutory Disqualification Regulatory Alert ("SD Regulatory Alert") that outlines the applicable eligibility procedures. The amended rules would incorporate by reference the procedures in the *SD Regulatory Alert*. As further detailed in the *SD Regulatory Alert*, the need for a member to file an application with NASDAQ for approval, notwithstanding the disqualification would depend on: (1) The type of disqualification; (2) the date of disqualification; or (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

FINRA recently revised its definition of disqualification to incorporate three additional categories of statutory disqualification, including willful violations of the Federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to a disqualification. Although NASDAQ's definition has always included these categories, Commission staff informed NASDAQ at the time of its registration as a national securities exchange that, in light of NASDAQ's origin as a subsidiary of FINRA's predecessor, the National Association of Securities Dealers, Inc., staff would not object if NASDAQ applied FINRA's then more-limited definition, pending adoption of procedures by FINRA to process disqualifications under these additional categories.

The proposed rule change would amend NASDAQ Rule 9522 to address the initiation of eligibility proceedings and the authority of NASDAQ's Department of Member Regulation ("NASDAQ Regulation" or "Member Regulation") to approve applications relating to a disqualification where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or that arise under Section 3(a)(39)(E) of the Act (*i.e.*, the

<sup>4</sup> See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), (SR-FINRA-2009-022).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 200.30-3(a)(12).



added categories of disqualification). Currently, NASDAQ Rule 9522(a)(1) provides, among other things, that if NASDAQ Regulation staff has reason to believe that a disqualification exists, NASDAQ Regulation staff will issue a written notice to the member or applicant for membership under NASDAQ Rule 1013, specifying the grounds for such disqualification. The proposed rule provides that NASDAQ Regulation staff will not issue a written notice to members or applicants for membership under Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, unless the member is instructed to do so by the *SD Regulatory Alert*. Furthermore, a member will not have to file an application or a written request for relief with the Central Registration Depository/Public Disclosure, for any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, unless the member is instructed to do so by the *SD Regulatory Alert*.

Additionally, under the current rules, a member is allowed to withdraw its application after the start of a hearing but prior to the issuance of a decision by the NASDAQ Review Council ("NRC") with prior written consent of the NRC. The proposed rules provide that written consent is no longer required. The member may withdraw its application by filing a written notice with the NRC and the Office of General Counsel pursuant to Rules 9135, 9136 and 9137.

In addition, under the current rules, NASDAQ Regulation is generally responsible for evaluating applications with disqualifications filed by a disqualified member or sponsoring member. The proposed amendments to NASDAQ Rule 9522 would specifically authorize NASDAQ Regulation to approve applications based on the added categories of disqualification that arises from finding or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act.

In addition, if NASDAQ Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed

NASDAQ Rule 9523(b) would authorize NASDAQ Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NRC. Consistent with the current rule regarding the submission of supervisory plans, proposed NASDAQ Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waives the following (in summary):

(a) The right to a hearing and any right of appeal to challenge the validity of the supervisory plan;

(b) The right to claim bias or prejudgment by NASDAQ Regulation or the General Counsel regarding the supervisory plan; and

(c) The right to claim a violation of the *ex parte* prohibitions or the separation of functions provisions of NASDAQ Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under NASDAQ Rule 9524. Furthermore, the proposed rule change would delete all references in NASDAQ Rule 9523 to the "Office of Disciplinary Affairs" as this step will no longer be utilized in the process, consistent with current FINRA rules.

The proposed rule change also would include several technical amendments. For example, the proposed rule change would amend NASDAQ Rule 9522(b) to renumber sections 1, 2, and 3 and NASDAQ Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the NRC by filing a written notice with the NRC and NASDAQ's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend NASDAQ Rule 9522(e) to replace references that NASDAQ Regulation "may grant" or "may approve" certain matters with "is authorized to approve" such matters.

#### b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provision of Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder, in that the proposal does not

significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. While the current rules broadly include the proposed categories of disqualification, the proposed rule change merely conforms to FINRA rules by specifically incorporating the additional categories of disqualification that were not previously specified in FINRA rules. Since these categories were already covered in the current rules, this change just delineates the specifics for conforming purposes. All other changes are administrative to effectuate the conforming changes.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-023 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2010-023. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent 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 offices of NASDAQ. 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-NASDAQ-2010-023, and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6117 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61701; File No. SR-CBOE-2010-022]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Its Fees Schedule**

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 9, 2010, CBOE filed Amendment No. 1 to the proposed rule change. 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**

The Exchange proposes to amend its Fees Schedule to modify its routing charges. The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.org/legal>, on the Commission's Web site at <http://www.sec.gov>, at CBOE, 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 aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, for any non-customer order routed to other exchanges pursuant to the Options Order Protection and Locked/Crossed Market Plan, CBOE assesses the following costs to the member that submitted the non-customer order to CBOE: (i) A charge a \$0.05 per contract routing fee, (ii) a pass through of all related execution fees assessed by the away exchange(s) (these are calculated on an order-by-order basis since different away exchanges charge different amounts), and (iii) CBOE's customary execution fees applicable to the order. The routing fee helps offset costs incurred by the Exchange in connection with using an unaffiliated broker-dealer to access other exchanges. Passing through charges assessed by other exchanges for "linkage" executions and charging for related CBOE executions are appropriate because non-customer order flow can route directly to those exchanges if desired and the Exchange chooses not to absorb those costs at this time.

CBOE now seeks to simplify this fee by charging a flat \$0.50 per contract fee plus CBOE's customary execution fee applicable to the order. This will eliminate the need to track away exchange transaction fees which are constantly changing. The new fee will become effective on March 1, 2010.

CBOE notes that not all exchanges route on behalf of non-customer orders, and that this function is an "extra" service provided by CBOE to its members.<sup>3</sup> Members are always free to route directly to other markets or to specify that CBOE not route orders away on their behalf.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>5</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

<sup>3</sup> For example, see Section VIII of Nasdaq OMX Phlx fee schedule (<http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

### 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

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-022 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2010-022. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2010-022 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6148 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61705; File No. SR-NYSEAmex-2010-23]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 390

March 15, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 5, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its sharing in accounts rule to harmonize its requirements with those of the Financial Industry Regulatory Authority ("FINRA"). A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room. The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in [brackets].

Rules of NYSE Amex, Inc.

\* \* \* \* \*

Rule 390. [Assumption of Loss Prohibited] Prohibition Against Guarantees and *Sharing in Accounts*

(a) Prohibition Against Guarantees

No member or member organization shall guarantee any customer against loss in his account. [or take or receive directly or indirectly a share in the profits of any customer's account or share in any losses sustained in any such account. For the purposes of this rule the term customer shall not be deemed to include the member or member organization or any joint, group, or syndicate account with such member or member organization.]

(b) *Sharing in Accounts; Extent Permissible*

(1)(A) *Except as provided in paragraph (2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if*

- such person associated with a member obtains prior written authorization from the member employing the associated person;*
- such member or person associated with a member obtains prior written authorization from the customer; and*
- such member or person associated with a member shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.*

(B) *Exempt from the direct proportionate share limitation of paragraph (1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For*

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if

(A) such person associated with a member seeking such compensation obtains prior written authorization from the member employing the associated person;

(B) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

\* \* \* \* \*

## 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

Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, the American Stock Exchange, LLC (n/k/a NYSE Amex, LLC), the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (collectively the "Options Self Regulatory Council"), entered into an agreement dated June 5, 2008 (the "17d-2 Agreement") to allocate regulatory

responsibility for common rules. By this proposal, the Exchange seeks to harmonize its 'Sharing in Accounts' rule with FINRA's rule for purposes of the 17d-2 Agreement.

In order to maintain substantial similarity with FINRA rules, the Exchange proposes to delete the language of NYSE Amex Rule 390 related to sharing in the profits and losses of a customer account, and replace it with the language of FINRA 2150(c), Sharing in Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same prohibition against sharing in accounts as NYSE Amex Rule 390, but with additional limited exceptions. The general prohibition contained in NYSE Amex Rule 390 against sharing in the profits or losses of a customer account is currently covered by the 17d-2 Agreement. However, the limited exceptions of FINRA Rule 2150(c) are not covered by the 17d-2 Agreement. The Exchange proposes to add those limited exceptions in order to harmonize its rule with the FINRA rule and add those limited exceptions to the 17d-2 Agreement. The portion of the rule prohibiting the guarantee of a customer against loss will remain in place.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the changes proposed herein, by harmonizing NYSE Amex rules with FINRA rules, provide NYSE Amex Members with a clearer regulatory scheme. The Exchange further notes that the changes proposed herein are neither novel nor controversial and are modeled on existing FINRA rules.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>12</sup> The Exchange requests this waiver so that these changes can be both immediately effective and operative, thus minimizing any possible confusion. The Exchange believes that by harmonizing NYSE Amex rules with FINRA rules, NYSE Amex Members will be provided with a clearer regulatory scheme. The Commission believes that waiving the 30-day operative delay will permit the Exchange to harmonize its rules with the corresponding FINRA rule immediately, thus promoting

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

clarity with respect and minimizing confusion with respect to the requirements regarding guarantees and sharing in accounts.<sup>13</sup> The Commission notes that the FINRA financial responsibility rules are currently in operation. For these reasons, the Commission designates the proposed rule change as operative upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-23 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-2010-23. 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 Section, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2010-23 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-6150 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Co-Location Service Fees

#### I. Introduction

On January 28, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on February 10, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description

For a monthly fee, the Exchange provides members with cabinet space in CBOE's building for placement of network and server hardware. The fee is \$10 per month per "U" of shelf space (which is equal to 1.75 inches).<sup>4</sup> A

member also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge. This "co-location service" provides members with close physical proximity to the Exchange's electronic trading system, which helps meet their need for high performance processing and low latency.

The co-location service is available to any member that requests the service and pays the monthly fee.<sup>5</sup> In the Notice, the Exchange represented that it believes that for the foreseeable future, it has sufficient space to accommodate all members who may request the co-location service. In addition, the Exchange represented that, other than the co-location service, the Exchange does not provide any co-locating member with any advantage over any other co-locating member or any non-co-locating member with respect to access to the Exchange's trading system. Further, the Exchange represented that its systems are designed to minimize, to the extent possible, any advantage for one member over another. The Exchange noted that the above representations apply equally to both inbound and outbound data.

The proposal clarifies the Exchange's Fee Schedule relating to co-location fees in two respects. First, the Exchange proposes to move the co-location fees from Section 17 of the Fees Schedule (Hybrid Fees) to Section 8 (Facility Fees) because it believes that these fees are more accurately described as facility fees. Second, the Exchange proposes to clarify that the co-location fees are charged in increments of 4 "U" (which is equal to 7 inches) because the cabinet space is available in 4 U increments.

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

The fee for a Sponsored User is \$20 per month per "U." See Securities Exchange Act Release No. 58189 (July 18, 2008), 73 FR 43274 (July 24, 2008).

<sup>5</sup> A member using the co-location service may also pay certain CBOEdirect Connectivity Charges that are set forth in Section 16 of the Fee Schedule. The Exchange represents that these fees are charged for member connectivity to CBOEdirect regardless of whether or not a member is using the co-location service. These fees include a \$40 per month "CMi Application Server" fee for server hardware used to connect to the CBOE CMi API, a \$40 per month "Network Access Port" fee for use of the CMi API, and a \$40 per month "FIX Port" fee for use of the FIX API. See Securities Exchange Act Release No. 57191, *supra* note 1. Each of the foregoing fees is \$80 per month for a Sponsored User. See Securities Exchange Act Release No. 58189, *supra* note 1.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61489 (February 4, 2010), 75 FR 6764 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location services are offered to all members who request them and pay the appropriate fees; (2) as represented by CBOE, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and (3) the Exchange has stated that for the foreseeable future, it has sufficient space to accommodate all members who may request the co-location service.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2010-008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-6184 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61715; File No. SR-CBOE-2010-028]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Market-Maker Joint Accounts

March 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 8, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Rule 6.55, *Multiple Representation Prohibited*, and to eliminate related Regulatory Circulars pertaining to joint account activity. The Exchange is also proposing related amendments to CBOE Rule 8.9, *Securities Accounts and Orders of Market-Makers*. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

##### Background

CBOE Rule 6.55 pertains to multiple representation by an individual Market-Maker in open outcry. Currently, the rule provides in relevant part that, except in accordance with procedures established by the Exchange or with respect to the Exchange's permission in individual cases, no Market-Maker shall enter or be present in a trading crowd while a Floor Broker present in the trading crowd is holding an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest.

In addition, Interpretation and Policy .02 to CBOE Rule 6.55 advises members to consult CBOE's Regulatory Circulars for procedures governing the simultaneous presence in a trading crowd of participants in and orders for the same joint account. The relevant circulars, RG01-60 and RG01-128, set forth Exchange procedures and requirements for trading in joint accounts that vary depending upon whether the particular trading occurs in equity options or in index options and options on exchange-traded funds ("ETFs").<sup>5</sup> While certain restrictions apply to joint account activity in equity options,<sup>6</sup> there are generally no

<sup>5</sup> The Regulatory Circular governing joint account trading in equity products, RG01-60, was last amended through Securities Exchange Act Release No. 44152 (April 5, 2001), 66 FR 19262 (April 13, 2001) (SR-CBOE-00-13). The Regulatory Circular governing joint account trading in certain index options and options on ETFs was last amended through Securities Exchange Act Release No. 44433 (June 15, 2001), 66 FR 33589 (June 22, 2001) (SR-CBOE-2001-30).

<sup>6</sup> For equity option classes, RG01-60 currently provides in part that: (i) A joint account may be simultaneously represented in a trading crowd only by participants trading in-person; orders for a joint account may not be entered in a crowd where a participant of the joint account is trading in-person for the joint account; however, if no participant is trading in-person for the joint account, orders may be entered via Floor Broker so long as the same option series is not represented by more than one Floor Broker; (ii) members may alternate trading in-person between their individual and joint accounts while in the crowd; members who alternate trading between accounts must ensure that while trading the joint account another participant does not enter orders through a Floor Broker for the joint account in the same crowd or that an order is not being continuously represented for the joint account in

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

restrictions on the joint account activity of an individual Market-Maker vis-à-vis other joint account participants in certain index and ETF options except that the members ensure that they do not trade in-person or by orders such that (i) a trade occurs between a joint account participant's individual Market-Maker account and the joint account of which he is a participant, or (ii) a trade occurs in which the buyer and seller are representing the same joint account and are on opposite sides of a transaction.<sup>7</sup> These limitations on trading between a Market-Maker's individual account or a

the same crowd; (iii) it is the responsibility of a joint account participant to ascertain whether joint account orders have been entered in a crowd prior to trading the joint account in-person; (iv) joint account participants may not act as a Floor Broker for the joint account of which they are a participant; (v) when a joint account participant is trading in a crowd for his individual account or actively as a Floor Broker for accounts unrelated to his joint account, another participant of the joint account may either trade in-person for the joint account or enter orders for the joint account with other Floor Brokers; (vi) members are prohibited from entering orders in a particular crowd with Floor Brokers for their individual or joint account whenever they are trading in-person in that crowd; this applies even though the orders are for an account they are not then actively trading. Other exceptions to these procedures and requirements may apply. For example, exceptions to item (vi) above are currently outlined in Interpretations and Policies .01, .03 and .04 of CBOE Rule 6.55.

<sup>7</sup> For certain index and ETF option classes, RG01-128 currently provides in part that: (i) Joint accounts may be simultaneously represented in a trading crowd by participants trading in-person for the joint account; (ii) joint account participants who are not trading in-person in a trading crowd, may enter orders for the joint account with Floor Brokers even if other participants are trading the same joint account in-person; (iii) when series are simultaneously opened during rotation, joint account participants trading the joint account in-person may enter orders for the joint account with Floor Brokers in series where they are unable to trade the joint account in-person; (iv) there is no restriction on the number of joint account participants that may participate on behalf of the joint account on the same trade in the option; (v) when joint account participants are trading in a trading crowd for their individual account or as a Floor Broker, another participant of the joint account may trade for the joint account in-person or enter orders for the joint account with Floor Brokers; (vi) except for the exemption described in (vii) below, members are prohibited from entering orders for their individual or joint accounts while they are trading in-person in a trading crowd even if the orders are for an account they are not then actively trading; (vii) managers of Exchange approved RAES joint accounts may enter orders with Floor Brokers for the RAES joint account if the manager is trading in-person for his individual account in the trading crowd; if the manager is trading in-person for the joint account the manager may not enter an order for the joint account with a Floor Broker; (viii) joint account participants may not act as a Floor Broker for the joint account of which they are a participant; and (ix) members may alternate trading in-person for their individual account and their joint account while in a trading crowd. Other exceptions to these procedures and requirements may apply. For example, exceptions to item (vi) above are currently outlined in Interpretations and Policies .01, .03 and .04 of CBOE Rule 6.55.

joint account in which he is a participant and another member acting on behalf of the joint account are provided in RG01-60 and RG01-128, as well as in Interpretation and Policy .06 to CBOE Rule 8.9. Interpretation and Policy .03 to CBOE Rule 6.55 also sets forth in relevant part an exception procedure that applies to any options class and allows a Market-Maker to enter or be present in the trading crowd when a Floor Broker holds a solicited order on behalf of a Market-Maker's joint account.<sup>8</sup> This procedure is in addition to, and not a limitation of, the joint account exception procedures identified in Interpretation and Policy .02.

#### Proposed Changes

In order to simplify the rule and create uniform requirements in all options classes for joint account activity of an individual Market-Maker vis-à-vis other joint account participants, the Exchange is proposing to apply the terms of the circular currently applicable to trading in certain index and ETF options (RG01-128) to trading in all options classes. To accomplish this change, the provisions of the index and ETF options circular (RG01-128) will be incorporated into the rule text, replacing existing Interpretation and Policy .02. CBOE does not propose to modify any of the existing joint account trading policies or procedures set forth in RG01-128, except as noted below. The equity option circular (RG01-60) will no longer be applicable and will be superseded by revised Interpretation and Policy .02.

The joint account trading policies and procedures applicable to all options classes will be the same as is set forth in RG01-128,<sup>9</sup> except as follows. First, references to CBOE's Retail Automatic Execution System ("RAES") will not be incorporated into the rule text. CBOE no longer utilizes RAES and, therefore, the references in RG01-128 are outdated.

<sup>8</sup> CBOE Rule 6.55.03 currently provides that, subject to the requirements of CBOE Rule 6.9, *Solicited Transactions*, or 6.74, *Crossing Orders*, as applicable, a Market-Maker may permissibly enter or be present in a trading crowd in which a Floor Broker is present who holds (a) a solicited order on behalf of the Market-Maker's individual or joint account or (b) a solicited order initiated by the Market-Maker for an account in which the Market-Maker has an interest, provided that the Market-Maker makes the Floor Broker aware of the Market-Maker's intention to enter or to be present in the trading crowd and the Market-Maker refrains from trading in-person on the same trade as the original order. It is the responsibility of the Market-Maker utilizing these procedures to ascertain whether solicited orders for the Market-Maker's joint account have been entered in a trading crowd prior to the Market-Maker trading the joint account in-person.

<sup>9</sup> See note 7, *supra*, and related discussion.

Second, RG01-128 includes a description of a manual process for identifying joint account transactions on trade tickets that is outdated and no longer applicable, and thus will not be incorporated into the rule text.<sup>10</sup> Proposed Rule 6.55.02(j) and amended Rule 8.9.03 will set forth the updated process. In particular, proposed Rule 6.55.02(j) will provide that, when completing a trade ticket for a joint account, it must contain such information as may be required by the Exchange under Rule 6.51(d). Rule 8.9.03, as proposed to be amended, would provide that, for purposes of evaluating Market-Maker performance in accordance with Rule 8.7.03, trading activity in the joint account shall be credited to the Market-Maker either individually or collectively with the Market-Makers of the same member organization.<sup>11</sup> Third, with respect to the prohibitions on Market-Makers trading with their joint account and on trades in which the buyer and seller represent the same joint account and are on opposite sides of the transaction, the rule text will provide that it is the responsibility of a joint account participant to ascertain whether joint account orders have been entered in a crowd prior to trading the joint account in-person.

Lastly, CBOE is proposing to delete Interpretation and Policy .03 to Rule 6.55.<sup>12</sup> The provisions in Interpretation and Policy .03 pertaining to simultaneous joint account activity are no longer necessary given the above-described proposed changes to Interpretation and Policy .02. The

<sup>10</sup> Specifically, RG01-128 provides that the proper procedure for completing a trade ticket for joint account transactions is that both the member's and joint account acronym must be included. The circular also indicates that this information is required to ensure that the initiating joint account member receives credit for such transactions as they relate to reporting and market performance obligations set forth in Exchange Rules 6.51(d) and 8.7.03. Rule 6.51(d) provides that each member shall file with the Exchange trade information showing for each transaction certain trade information specified in the Rule as well as such other information as may be required by the Exchange. Rule 8.7.03 provides for certain percentage requirements that apply to Market-Maker trading activity in appointed classes and in-person requirements for Market-Makers in Hybrid 3.0 classes.

<sup>11</sup> This change is intended to update Rule 8.9.03 to be consistent with the provisions of Rule 8.7.03. In accordance with Rule 6.51(d)(m), the Exchange may require that other information beyond that specified in Rule 6.51(d) shall be reported for Exchange transactions. In this regard, the Exchange intends to specify that transactions for Market-Maker joint accounts be identified with the joint account acronym. This trade information reporting requirement for joint account transactions, and any changes thereto, will be announced to the membership via circular.

<sup>12</sup> See note 8, *supra*.

remaining provisions in Interpretation and Policy .03 pertaining to multiple representation by an individual Market-Maker (for solicited orders entered on behalf of the Market-Maker's individual account or solicited orders initiated by the Market-Maker himself for an account in which the Market-Maker has an interest) are no longer necessary since they are duplicative of Interpretation and Policy .04.<sup>13</sup>

The proposed changes will make the policy governing joint account trading in equity options the same as the current policy governing index option trading (subject to the changes described above), where multiple representation of orders for the same joint account is permitted by participants in the joint account trading in-person at the trading post and/or by Floor Brokers representing orders at the post. (The current equity option policy is more restrictive in that it only permits joint representation by participants trading in-person and does not permit multiple representation of orders for the same joint account if one or more of the orders is represented by a Floor Broker.) In this regard, the Exchange believes the proposed changes to the equity option policy reflect changes that have occurred in the trading environment since that policy was enacted over 13 years ago, including the Exchange's migration from a floor-based market to a hybrid environment where Market-Makers can trade in-person on the floor or remotely in a larger number of option classes (which may present more need for the services of Floor Brokers), and the increasing prevalence of CBOE Market-Maker member organizations

<sup>13</sup> CBOE Rule 6.55.04, which is proposed to be renumbered to CBOE Rule 6.55.01(b), applies to a Market-Maker's orders generally, including solicited orders. In [sic] provides that a Market-Maker may permissibly enter or be present in a trading crowd in which a Floor Broker is present who holds an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest, provided that (i) the Market-Maker makes the Floor Broker aware of the Market-Maker's intention to enter or to be present in the trading crowd and (ii) the Market-Maker refrains from trading in-person on the same trade as the order being represented by the Floor Broker. In addition to renumbering Rule 6.55.04 to 6.55.01(b), the Exchange is proposing to clarify that, with respect to the condition in (ii) above, the Market-Maker does not need to refrain from trading in-person on the same order if other in-crowd market participants choose not to trade the remaining portion of the order. This allowance to trade when other in-crowd market participants choose not to trade is similar to language in other CBOE rules. See, e.g., subparagraph (d)(viii) of Rule 6.74, *Crossing Orders*, which provides that nothing prohibits a Floor Broker, On-Floor DPM or On-Floor LMM, as applicable, from trading more than his percentage entitlement if the other in-crowd market participants do not choose to trade the remaining portion of an order.

utilizing joint accounts (as compared to individual accounts). The proposed changes ensure that member organizations that choose to employ a joint account for their Exchange trading are not disadvantaged in participating in trades vis-à-vis those member organizations that choose to employ individual Market-Maker accounts.<sup>14</sup> The Exchange also believes the proposed changes will reduce unnecessary complexity and confusion, and delineate an unambiguous standard for multiple representation across all option classes.<sup>15</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>16</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>17</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed changes will eliminate a distinction that currently exists between member organizations that manage their equity option positions differently and, overall,

<sup>14</sup> Some member organizations choose to have their various Market-Makers trade in a joint account so that the member organization's positions can be more easily monitored and managed. Under the current equity options policy regarding joint accounts, however, a joint account may be simultaneously represented in a trading crowd only by participants trading in-person. Orders for a joint account may not be entered with a Floor Broker in a crowd where a participant of the joint account is trading in-person for the joint account (unless the in-crowd participant and Floor Broker refrain from participating on the same trade). However, if no participant is trading in-person for the joint account, orders may be entered via Floor Broker so long as the same option series is not represented by more than one Floor Broker. On the other hand, under the current equity options policy, a member organization using individual Market-Maker accounts is able to be simultaneously represented by each Market-Maker's individual account, whether the accounts are being traded in-person and/or by order. The proposed change would eliminate the disadvantage currently suffered by member organizations using joint account structures.

<sup>15</sup> For example, the Exchange notes that many trading crowds no longer exclusively trade equity options or index options. In that regard, the proposed rule change will reduce unnecessary complexity and confusion over which policy applies.

<sup>16</sup> 15 U.S.C. 78s(b)(1).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

will reduce unnecessary complexity and confusion, and delineate an unambiguous standard for multiple representation across all option classes.

## 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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).



- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-CBOE-2010-028 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-2010-028. 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 available publicly. All submissions should refer to File Number SR-CBOE-2010-028 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-6183 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61713; File No. SR-NASDAQ-2010-006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Modify the Press Release Requirements for Listed Companies

March 15, 2010.

#### I. Introduction

On January 13, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify certain of Nasdaq's rules pertaining to its press release requirements for listed companies. The proposed rule change was published for comment in the **Federal Register** on February 8, 2010.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of Proposed Rule Change

Nasdaq is proposing to modify certain of its rules related to the issuer compliance process that currently require a company to disclose information in a press release or through the news media. Nasdaq notes that these rules were generally adopted to address inconsistent issuer disclosure practices and reflected the view that issuing a press release was the only way to assure wide dissemination of an important event. However, in 2002, the Commission adopted Regulation FD,<sup>4</sup> and Nasdaq amended its rules to allow listed companies to provide disclosure of material news via any Regulation FD compliant means.<sup>5</sup> Nasdaq asserts that there is now broad acceptance of Regulation FD compliant methods of disclosure, such as through the use of a Form 8-K. Additionally, Nasdaq argues that its requirements in some instances are duplicative of the Form 8-K requirements, and notes that Form 8-K disclosures are readily available to investors and the information contained in them is widely reported on by the news media. As such, Nasdaq is

proposing to modify certain of its rules, as described below, to permit disclosure either through a press release or by filing a Form 8-K where required by Commission rules.<sup>6</sup>

First, Nasdaq proposes to amend Rules 5250(b)(3), 5810(b), 5840(k) and IM-5810-1, which require disclosure of notifications from Nasdaq staff or an Adjudicatory Body<sup>7</sup> regarding a company's compliance with the listing standards. Rules 5250(b)(3) and 5810(b) require a company to "make a public announcement through the news media"<sup>8</sup> disclosing the receipt of a notice that the company does not meet a listing standard, that staff has determined to delist the company, or that the company has received a Public Reprimand Letter. IM-5810-1 provides the time frame for companies to make these disclosures and describes the consequences of failing to do so. Rule 5840(k) requires that a company that receives a Public Reprimand Letter from an Adjudicatory Body must make "a public announcement through the news media" disclosing receipt of that letter. Nasdaq proposes to modify these rules to allow the company, in each case, to make a public announcement by "filing a Form 8-K, where required by SEC rules, or by issuing a press release."<sup>9</sup> However, Nasdaq proposes that a company that is late in filing a required periodic report with the Commission would still be required to issue a press release announcing that it has received notice that it does not meet that requirement, and would not be permitted to fulfill this requirement by only filing a Form 8-K. Nasdaq also proposes to clarify in each of these rules that notification of these disclosures should be made to the Nasdaq MarketWatch Department through

<sup>6</sup> The Commission notes that Nasdaq is not proposing any change to Rule 5840(j), regarding the voluntary delisting of a company, because the press release requirement in that rule is required by Exchange Act Rule 12d2-2(c); 17 CFR 240.12d2-2(c). Nasdaq is also maintaining the requirements in Rule 5635(c)(4) and IM-5365-1, which require that a company relying on the inducement exception to the requirement to obtain shareholder approval for equity compensation awards must "disclose in a press release" specific information about the equity award. Finally, as noted above, late filers will still be required to issue a press release. See Rule 5250(b)(2) and Rule 5810(b).

<sup>7</sup> Rule 5805(a) defines an "Adjudicatory Body" as the Hearings Panel, the Nasdaq Listing and Hearing Review Council, or the Nasdaq Board, or a member thereof.

<sup>8</sup> Nasdaq interprets the requirement to disclose information through the news media to be satisfied by the issuance of a press release.

<sup>9</sup> The Commission notes that under Item 3.01 of Form 8-K, a company is required to file a Form 8-K when it receives notice from Nasdaq that the company does not satisfy a listing standard or when Nasdaq issues a Public Reprimand Letter to the company.

<sup>1</sup> 15 U.S.C. 78s(b)(1)

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61461 (February 1, 2010), 75 FR 6241 ("Notice").

<sup>4</sup> 17 CFR 243.100-103.

<sup>5</sup> See Securities Exchange Act Release No. 46901 (November 25, 2002), 67 FR 72011 (December 3, 2002).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

Nasdaq's electronic disclosure submission system at least ten minutes prior to the notification to the public.<sup>10</sup>

Second, Nasdaq proposes to modify Rule 5635(f), which requires a company to "make a public announcement through the news media" when it receives an exception to the shareholder approval requirements because compliance would jeopardize the company's financial viability. Nasdaq proposes instead to allow companies to make this announcement "by filing a Form 8-K, where required by SEC rules, or by issuing a press release." Nasdaq is retaining its current requirement that companies that receive an exemption are also required to mail this notice to all shareholders at least ten days before issuing securities in reliance on the exception.

Third, Nasdaq proposes to revise Rule 5225(a)(3), which requires a company to "publicize through, at a minimum, a public announcement through the news media" any change in the terms of a listed unit. Nasdaq proposes to modify this rule to allow the company to "make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release" of any change in the terms of the unit.

Nasdaq is also proposing to make a number of other modifications to its rules requiring public disclosure through press releases. In particular, Nasdaq proposes to amend Rule 5250(c)(2), which requires a company that is a foreign private issuer to disclose interim financial results "in a press release and on a Form 6-K." Nasdaq proposes to eliminate the requirement that this information be published in a press release, while maintaining the requirement that it be on a Form 6-K. A foreign private issuer would still be free to disclose this information in a press release if it chooses.

Nasdaq also proposes to eliminate the requirement contained in Rule 5250(b)(2) that a company must issue a press release announcing the receipt of an audit opinion that expresses doubt about the ability of the company to continue as a going concern. Nasdaq

argues that this requirement, which was adopted in 2003,<sup>11</sup> is duplicative of disclosure already provided in the Company's annual filing with the Commission, which must be made available to all shareholders under Nasdaq rules, and which must be distributed to shareholders under the Commission's Proxy Rules. Nasdaq noted in its Notice, however, that if a company fails to include the audit opinion in its annual filing, Nasdaq would consider the filing deficient and would move to delist the company on that basis.

In addition, Nasdaq proposes to revise Rules 5810(b) and 5840(k), which require companies to notify multiple Nasdaq departments before they issue certain disclosures.<sup>12</sup> Nasdaq proposes to modify these rules to require companies to provide these disclosures to the MarketWatch Department using the electronic disclosure submission system accessible at <http://www.nasdaq.net>.<sup>13</sup> Nasdaq noted that MarketWatch will notify other Nasdaq departments when necessary.<sup>14</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>16</sup>

The Commission notes that full and fair disclosure of information by issuers of securities to the public is of critical

importance to financial markets and the investing public. As such, the Commission believes that exchange compliance standards requiring a company to disclose information should be designed to provide broad public access to such information. As discussed below, the Commission believes that Nasdaq's proposal to modify certain of its rules pertaining to its press release requirements for listed companies will eliminate duplicative requirements from Nasdaq's disclosure rules in certain situations where a company is already required by Commission rules to file a Form 8-K, while still ensuring that issuers disseminate material information to the public in a broad and inclusive manner.

In 2000, the Commission adopted Regulation FD to curtail the selective disclosure of material non-public information by issuers to analysts and institutional investors.<sup>17</sup> Regulation FD provides that public disclosure by issuers can be made by filing a Form 8-K with the Commission or through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of information to the public.<sup>18</sup> The Commission is cognizant, in reviewing Nasdaq's proposal, that in approving Regulation FD, the Commission specifically noted that it was not intended to alter or supplement self-regulatory organization rules that typically require companies to issue a press release to announce material developments.<sup>19</sup> Despite this, the Commission believes that, in many instances, the filing of a Form 8-K provides an effective, broad, and non-exclusionary means of distributing material disclosures. The Commission notes that the information required to be reported on a Form 8-K is material information that could impact an investor's decision to buy, sell or hold a security. For this reason, the Form 8-K is made easily obtainable by investors on the Commission's EDGAR Web site, as well as many major financial web sites, and the information it provides is also commonly reported by the news media. The Commission also believes that the public has become more familiar with the Form 8-K method of dissemination since the original adoption of Regulation FD.

The Commission notes that since investors have broad access to the

<sup>11</sup> See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003).

<sup>12</sup> Under these rules, a company must notify the MarketWatch, Listing Qualifications, and Hearings Departments.

<sup>13</sup> Companies are already required to use the electronic disclosure submission service to notify MarketWatch prior to the distribution of material news. See Rule 5250(b)(1) and IM-5250-1. See also Exchange Act Release No. 55856 (June 4, 2007), 72 FR 32383 (June 12, 2007).

<sup>14</sup> Nasdaq also proposes to: (i) Add a title to Rule 5250(b)(1) to clarify the text; and (ii) use capitalization for a defined term in Rule 5615. The Commission notes that these are non-substantive changes.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> See Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) ("Regulation FD Adopting Release").

<sup>18</sup> See Regulation FD, 17 CFR 243.100-103.

<sup>19</sup> See Regulation FD Adopting Release, *supra* note 17 at n.70.

<sup>10</sup> The Commission notes that Nasdaq recently changed its rules to provide that if the public release of material information is made outside of Nasdaq market hours, companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. See Securities Exchange Act Release No. 61521 (February 16, 2010), 75 FR 8156 (February 23, 2010). The Exchange has represented that once this proposed rule change (SR-NASDAQ-2010-006) is approved by the Commission, it will file a separate filing pursuant to Section 19(b) of the Act to make corresponding changes to the rule provisions adopted in this filing to reflect the previously adopted changes.

information provided by the Form 8-K, in certain instances where a company is required to file a Form 8-K pursuant to Commission rules as well as issue a press release under Nasdaq rules, the information provided may overlap, resulting in duplicate disclosures of the same information. Although the Commission would prefer to ensure that investors have as many channels as possible to receive material disclosures, in these particular situations, the Commission recognizes that requiring both a Form 8-K and a press release may be unnecessary and may place an additional burden on issuers while providing no additional significant benefit to investors. The Commission notes, however, that while it believes that it is appropriate to eliminate the requirement to make these duplicate disclosures, in certain situations it continues to believe that there are benefits to the market and investors to issuing a press release when disclosing material information that issuers should consider.<sup>20</sup> Thus, a company would, of course, be permitted to issue a press release in addition to their filing of a required Form 8-K.

The Commission also notes that, in those cases where a Form 8-K is not required to be filed under Commission rules, under its proposal, Nasdaq rules will still require an issuer to make public disclosures through a press release. We believe these requirements adequately balance the situation where investors, the public and the press have an expectation to find information about a company in a Form 8-K, since the information is required to be filed with the Commission in that format, with the need to provide adequate disclosure to the public through a press release on other matters as required under Nasdaq rules.<sup>21</sup> For the aforementioned reasons, the Commission believes that Nasdaq's proposal to modify certain of its rules to permit disclosure either through a press release or by filing a Form 8-K where required by Commission rules is reasonable and consistent with the Act.

In particular, the Commission believes that Nasdaq's proposed changes to Rules 5250(b)(3), 5810(b), 5840(k) and IM-5810-1—requiring disclosure of notifications regarding a company's compliance with listing standards—to allow the company, in each case, to

make a public announcement by "filing a Form 8-K, where required by SEC rules, or by issuing a press release," are examples where the filing of a single Form 8-K is an appropriate alternative to requiring both a Form 8-K and a press release. The Commission notes that Item 3.01 of Form 8-K would require a company to file a Form 8-K when it receives notice that the company does not satisfy a listing standard or when Nasdaq issues a Public Reprimand Letter to the company. The Commission believes that the Form 8-K, in these instances, addresses the Commission's material disclosure concerns for investors, as investors could easily obtain the information in the Form 8-K and the information may likely result in media coverage. In addition, the Commission notes that Nasdaq is not proposing that this change will be applicable to its late filer rules and instead will continue to require that a company that is late in filing a required periodic report with the Commission must issue a press release, even though they are also required to file a Form 8-K, which is consistent with the Commission's current treatment of late filers.<sup>22</sup>

Similarly, the Commission believes that Nasdaq's proposal to permit either the filing of a Form 8-K where required by SEC rules or the issuance of a press release when a company receives an exception to the shareholder approval requirements because compliance would jeopardize the company's financial viability is appropriate and consistent with the Act. The Commission notes that, in addition to the Form 8-K or a press release, Nasdaq will continue to require that notice be provided to shareholders by mail at least ten days before issuing securities in reliance on this exception.

Finally, the Commission believes that Nasdaq's proposal to allow the filing of a Form 8-K where required by Commission rules in lieu of issuing a press release where there is any change in the terms of a unit is another instance where the duplicate disclosure is unnecessary and an extra burden on listed companies. As such, the Commission believes that this proposed rule change is appropriate and consistent with the Act.

As noted above, Nasdaq also proposes several other changes to its rules pertaining to its press release requirements for listed companies. First, Nasdaq proposes to modify Rule 5250(c)(2) to require a company that is a foreign private issuer to disclose interim financial results on a Form 6-

K, instead of both a Form 6-K and a press release as required under current Nasdaq rules. The Commission believes that this change also adequately addresses the Commission's investor protection concerns regarding broad availability of disclosure of material information and is consistent with the Act. The Commission notes that pursuant to Regulation FD, foreign companies are permitted to meet the requirements of Regulation FD by making filings on Form 6-K, rather than on a Form 8-K. Like the Form 8-K, the Form 6-K provides material disclosures and, similarly, is widely available and utilized by investors, as it is also accessible on the Commission's EDGAR Web site and its contents may be widely reported in the news media. While foreign companies will now be required to only file a Form 6-K to meet Nasdaq's disclosure requirement for interim reports, Nasdaq notes in its filing that foreign issuers would still be free to disclose this information in a press release, in addition to the filing of a Form 6-K, if it chooses.

In addition, Nasdaq proposes to eliminate the requirement from Rule 5250(b)(2), that a company must issue a press release announcing the receipt of an audit opinion expressing doubt about the ability of the company to continue as a going concern. The Commission notes that the audit opinion is required to be provided in a company's annual filing with the Commission, which must also be distributed to shareholders under the Commission's Proxy Rules,<sup>23</sup> and must be made available to all shareholders under the Nasdaq rules. Although the Commission understands that a negative audit opinion constitutes important material information that could impact an investor's decision to buy, sell or hold a security, the Commission, after careful consideration, also believes that publication of this opinion in the annual filing, which the Commission already requires to be distributed to all shareholders, should provide broad notice to investors. Additionally, if a company fails to include the audit opinion in its annual filing, the Commission notes that Nasdaq would consider the filing deficient and would move to delist the company on that basis, recognizing the importance of the audit opinion disclosure to investors.<sup>24</sup> Accordingly,

<sup>23</sup> 17 CFR 240.14a-1. See Item 13 of Schedule 14A, 17 CFR 240.14a-101.

<sup>24</sup> Nasdaq is also proposing to make a conforming change to Rule 5615(a)(3) to eliminate the reference to the going concern requirement because it will no longer apply. In addition, Nasdaq is proposing to remove the reference in Rule 5615(a)(3) to the

<sup>20</sup> See Regulation FD Adopting Release, *supra* note 17.

<sup>21</sup> The Commission would generally be concerned if, on matters not required under Commission rules to be filed on Form 8-K, Nasdaq rules required such matters to be disclosed in that format because such Form 8-K filings would become a requirement through Nasdaq rules, even though the requirement had not been adopted by the Commission.

<sup>22</sup> See NYSE Rule 802.01E.

the Commission believes that this change will eliminate unnecessary duplicate disclosures, while continuing to provide investors with sufficient notice of such material information.

Finally, Nasdaq proposes to eliminate the requirements in Rule 5810(b) and 5840(k) that companies must notify multiple Nasdaq departments before issuing certain disclosures. The Commission is satisfied that Nasdaq's proposed changes will continue to provide for adequate notification to the MarketWatch Department, as well as other departments,<sup>25</sup> since Nasdaq has represented that the MarketWatch Department will notify other Nasdaq departments of the disclosures when necessary.<sup>26</sup> As such, the Commission believes that Nasdaq's notification procedures will be streamlined, eliminating unnecessary duplicative notification requirements for listed companies, while still ensuring that the necessary departments will be notified by the MarketWatch Department if necessary for regulatory or other reasons.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>27</sup> and will, among other things, protect investors and the public interest by assuring that the investing public has broad and easy access to full disclosure of corporate matters. As discussed above, the Commission believes that the changes proposed by Nasdaq will continue to require issuers to disseminate necessary information to the public in a broad and inclusive manner, while at the same time minimizing duplicative disclosures.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-NASDAQ-2010-006) be, and it hereby is, approved.

requirement for a foreign private issuer to enter into a listing agreement because there is no need to single out this requirement from all the others of the requirements of the Rule 5000 Series to which a foreign private issuer is subject.

<sup>25</sup> Companies are already required to use the electronic disclosure submission service to notify MarketWatch prior to the distribution of material news. See Rule 5250(b)(1) and IM-5250-1. See also Securities Exchange Act Release No. 55856 (June 4, 2007), 72 FR 32383 (June 12, 2007) (approving SR-NASDAQ-2007-029).

<sup>26</sup> Nasdaq is also proposing: (i) To add a title to Rule 5250(b)(1) to clarify the text; and (ii) to use capitalization for a defined term in Rule 5615. These are non-substantive changes.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-6182 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61706; File No. SR-FINRA-2009-047]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions) in the Consolidated FINRA Rulebook

March 15, 2010.

#### I. Introduction

On July 21, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt NASD Rule 2350 (Broker/Dealer Conduct on the Premises of Financial Institutions) as FINRA Rule 3160 in the consolidated FINRA rulebook, subject to certain amendments.

The proposed rule change was published for comment in the **Federal Register** on August 11, 2009.<sup>3</sup> The Commission received five comments on the proposed rule change.<sup>4</sup> On February

5, 2010, FINRA responded to the comments.<sup>5</sup> Also on February 5, 2010, FINRA filed Amendment No. 1 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of Proposed Rule Change

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>7</sup> FINRA proposed to adopt NASD Rule 2350 (Broker/Dealer Conduct on the Premises of Financial Institutions), subject to certain amendments, as FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions). The details of the proposed rule change are described below.

##### *NASD Rule 2350*

NASD Rule 2350 governs the activities of broker-dealers on the premises of financial institutions.<sup>8</sup> Also known as the "bank broker-dealer rule," Rule 2350 generally requires broker-dealers that conduct business on the premises of a financial institution where retail deposits are taken to: (1) Enter into a written agreement with the financial institution specifying each party's responsibilities and the terms of compensation (networking agreement); (2) segregate the securities activities conducted on the premises of the financial institution from the retail deposit-taking area; (3) allow access for inspection and examination by the SEC and FINRA; (4) ensure that communications with customers clearly identify that the broker-dealer services are provided by the member; (5) disclose to customers that the securities

<sup>5</sup> See letter from Gary L. Goldsholle, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 5, 2010 ("FINRA Response").

<sup>6</sup> Amendment No. 1 made minor edits to the rule text and the description of the proposal.

<sup>7</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>8</sup> Under the rule, the term "financial institution" includes federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 60475 (August 11, 2009), 74 FR 41774 (August 18, 2009).

<sup>4</sup> See letter from Frederick T. Greene, Woodforest Financial Services, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 4, 2009 ("Woodforest Letter"); letter from William A. Jacobson and Eric D. Johnson, Cornell Securities Law Clinic, to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("Cornell Letter"); letter from Dale E. Brown, Financial Services Institute, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("FSI Letter"); letter from Jill I. Gross and Ed Pekarek, Pace University School of Law Investor Rights Clinic, operating through John Jay Legal Services, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 8, 2009 ("PIRC Letter"); letter from Ronald C. Long, Wells Fargo Advisors, to Elizabeth M. Murphy, Secretary, Commission, dated September 18, 2009 ("WFA Letter").

products offered by the broker-dealer are not insured like other banking products; and (6) make reasonable efforts at account opening to obtain a customer's written acknowledgement of the receipt of such disclosure. Rule 2350 applies only when broker-dealer services are conducted either in person, over the telephone, or through any other electronic medium, on the premises of a financial institution where retail deposits are taken, by a broker-dealer that has a physical presence on those premises.<sup>9</sup>

NASD Rule 2350 was adopted to reduce potential customer confusion in dealing with broker-dealers that conduct business on the premises of financial institutions, and to clarify the relationship between a broker-dealer and a financial institution entering into a networking agreement.<sup>10</sup>

#### *The Gramm-Leach Bliley Act and Regulation R*

In 2007, the SEC and the Board of Governors of the Federal Reserve jointly adopted rules, known as Regulation R,<sup>11</sup> that implement the bank broker provisions of the Gramm-Leach Bliley Act of 1999 ("GLB").<sup>12</sup> These provisions replaced what had been a blanket exception for banks from the definition of "broker" under the Exchange Act with eleven exceptions from the definition of "broker" that are codified in Exchange Act Section 3(a)(4)(B).<sup>13</sup>

Exchange Act Section 3(a)(4)(B)(i) provides an exception from the definition of "broker" for banks that enter into third-party brokerage (or networking) arrangements with a broker-dealer (the networking exception). Under this exception, a bank is not considered to be a broker if it enters into a contractual or other written arrangement with a registered broker-dealer under which the broker-dealer offers brokerage services on or off bank premises, subject to certain conditions (this differs from NASD Rule 2350, which only applies to broker-dealers offering brokerage services on a financial institution's premises).<sup>14</sup> Although this exception generally provides that a bank may not pay its unregistered employees incentive compensation for referring a customer to

a broker-dealer, it does permit a bank employee to receive a "nominal one-time cash fee of a fixed dollar amount" that is not contingent on whether the referral results in a transaction with the broker-dealer.<sup>15</sup> Further, Rule 701 of Regulation R provides an exemption for referrals of certain institutional and high net worth clients that may result in the payment of a higher referral fee (*i.e.*, incentive compensation of more than a nominal amount) to bank employees and may be contingent on the occurrence of a securities transaction, subject to certain additional requirements.<sup>16</sup>

#### *Proposed FINRA Rule 3160*

FINRA proposed to adopt NASD Rule 2350 into the Consolidated FINRA Rulebook as FINRA Rule 3160, subject to certain amendments to streamline the rule and to reflect applicable provisions of GLB and Regulation R.

First, the proposed rule change would amend the scope of the rule to conform to the networking exception in GLB. NASD Rule 2350 applies only to broker-dealer conduct on the premises of a financial institution where retail deposits are taken. However, the networking exception in GLB applies to networking arrangements in which a broker or dealer offers brokerage services on or off the premises of a bank.<sup>17</sup> Accordingly, with the exception of those requirements addressing the physical setting, proposed FINRA Rule 3160 would apply to a member that is a party to a networking arrangement with a financial institution under which the member offers broker-dealer services, regardless of whether the member is conducting broker-dealer services on or off the premises of a financial institution.<sup>18</sup>

Second, the proposed rule change would make certain minor changes to the provisions addressing setting, as set forth in NASD Rule 2350(c)(1) (Setting). The setting provision establishes the requirements regarding a member's presence on the premises of a financial institution. To better align the rule text with the language in the networking exception in GLB and its associated rules in Regulation R, proposed FINRA Rule 3160 would provide that a member

conducting broker-dealer services on the premises of a financial institution: (1) Be clearly identified as the person performing broker-dealer services and distinguish its broker-dealer services from the services of the financial institution; (2) conduct its broker-dealer services in an area that displays clearly the member's name; and (3) to the extent practicable, maintain its broker-dealer services in a location physically separate from the routine retail deposit-taking activities of the financial institution.

Third, the proposed rule change would amend the provisions addressing networking agreements, in NASD Rule 2350(c)(2) (Networking and Brokerage Affiliate Agreements), to reference certain requirements in GLB and Regulation R regarding written agreements between banks and broker-dealers. As noted above, Rule 701 of Regulation R allows a bank employee to receive a contingent referral fee not subject to the "nominal amount" restriction, so long as the client referred to the broker-dealer by the bank employee is an "institutional" or "high net worth" customer, as defined in Rule 701, and the other conditions of the rule are satisfied.

Rule 701 requires that the written agreement between a bank relying on the exception from the definition of "broker" under Exchange Act Section 3(a)(4)(B)(i) and the exemption under Rule 701 for institutional and high net worth customers and its networking broker-dealer include terms that obligate the broker-dealer to take certain actions.<sup>19</sup> In particular, the written agreement between the bank and broker-dealer must require that the broker-dealer:

(1) Determine that a bank employee is not subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act, have a reasonable basis to believe that the customer is a "high net worth customer" or an "institutional customer" and conduct a suitability or sophistication analysis for customers and securities transactions by customers;<sup>20</sup>

(2) promptly inform the bank if the broker-dealer determines that the customer referred to the broker-dealer is not a "high net worth customer" or an "institutional customer," as applicable, or the bank employee receiving

<sup>9</sup> See *Notice to Members* 97–89 (December 1997).

<sup>10</sup> See Securities Exchange Act Release No. 39294 (November 4, 1997), 62 FR 60542, 60547 (November 10, 1997) (Approval Order).

<sup>11</sup> See 17 CFR 247.700–781.

<sup>12</sup> Pub. L. 106–102, 113 Stat. 1338 (1999).

<sup>13</sup> See 15 U.S.C. 78c(a)(4).

<sup>14</sup> The exceptions in Section 3(a)(4)(B) of the Exchange Act apply to "banks" as defined in Exchange Act Section 3(a)(6). NASD Rule 2350 addresses "financial institutions." See *supra* note 8.

<sup>15</sup> See 17 CFR 247.700 for definitions of the terms "nominal one-time cash fee of a fixed dollar amount," "referral," "contingent on whether the referral results in a transaction" and "incentive compensation."

<sup>16</sup> See 17 CFR 247.701.

<sup>17</sup> See 15 U.S.C. 78c(a)(4)(B)(i).

<sup>18</sup> The title of the rule would be changed from "Broker/Dealer Conduct on the Premises of Financial Institutions" to "Networking Arrangements Between Members and Financial Institutions."

<sup>19</sup> See 17 CFR 247.701(a)(3). See also Securities Exchange Act Release No. 56501, 72 FR 56514, 56523 (October 3, 2007) (Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks) ("Banks and broker-dealers are expected to comply with the terms of their written networking arrangements. If a bank or broker-dealer does not comply with the terms of the agreement, however, the bank would not become a 'broker' under Section 3(a)(4) of the Exchange Act or lose its ability to operate under the proposed exemption.").

<sup>20</sup> See 17 CFR 247.701(a)(3)(ii)–(iii).

the referral fee is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act;<sup>21</sup> and

(3) inform the customer if the customer or the securities transaction(s) to be conducted by the customer does not meet the applicable standard set forth in the suitability or sophistication determination in Rule 701;<sup>22</sup>

In addition, the broker-dealer may be contractually obligated to provide certain disclosures to a referred customer.<sup>23</sup>

Proposed FINRA Rule 3160 would clarify that networking agreements must include all broker-dealer obligations, as applicable, in Rule 701, and that independent of their contractual obligations, members must comply with all such broker-dealer obligations. In this regard, the release adopting Regulation R specifically contemplated that FINRA might adopt a rule to require that broker-dealers comply with the requirements of Rule 701.<sup>24</sup>

Next, the proposed rule change would modify the provisions addressing customer disclosure and acknowledgements, in NASD Rule 2350(c)(3) (Customer Disclosure and Written Acknowledgement), which require members to make certain disclosures to customers regarding securities products, at or prior to account opening, and to make reasonable efforts to obtain a customer's written acknowledgement of the receipt of such disclosures at account opening. Such disclosures include that the securities products are: (1) Not insured by the Federal Deposit Insurance Corporation ("FDIC"); (2) not deposits or other obligations of the financial institution and not guaranteed by the financial institution; and (3) subject to investment risk, including possible loss of the principal invested.

The proposal would not incorporate the written acknowledgement requirement into proposed FINRA Rule 3160, in light of the application of the rule to networking arrangements regardless of whether the member is

conducting broker-dealer services on or off the premises of a financial institution and the obligation that members provide the requisite disclosures orally and in writing. In this context, FINRA believes that oral and written disclosure to customers regarding securities products is sufficient and that requiring a written acknowledgement of receipt from customers is unnecessary.

Lastly, the proposed rule change would amend the provisions addressing communications with the public in NASD Rule 2350(c)(4) (Communications with the Public), consistent with the extension of proposed FINRA Rule 3160 to networking arrangements where the member conducts broker-dealer services on or off the premises of a financial institution. NASD Rule 2350(c)(4) requires a member to make the same disclosures regarding securities products discussed above on advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the member or that are distributed by the member on the premises of a financial institution. To further reduce potential customer confusion, proposed FINRA Rule 3160 would extend this requirement to include all of the member's advertisements and sales literature that promote the name or services of the financial institution or that are distributed by the member at any other location where the financial institution is present or represented.

### III. Summary of Comments and Amendment No. 1

The Commission received five comments in response to the rule proposal. Four of the commenters generally supported the proposed rule change,<sup>25</sup> and one opposed it, stating that the proposal did not go far enough to distinguish between banking and investment activities.<sup>26</sup> The comments also raised specific issues, discussed below.

#### *Networking Arrangements on and off the Premises of Financial Institutions*

One commenter<sup>27</sup> stated that the application of proposed FINRA Rule 3160 to broker-dealer services off the premises of a financial institution would unreasonably expand the requirements of NASD Rule 2350 to provide certain disclosures orally and in writing to customers beyond bank

brokerage clients to include all other customers of the broker-dealer, including institutional clients, on-line brokerage clients and off-shore clients. In its response, FINRA stated that it believes that extending proposed FINRA Rule 3160 to apply to member conduct pursuant to a networking arrangement, regardless of where such activities take place, will enhance investor protection. However, in light of comments received regarding the application of the proposed rule to customer accounts that are not opened as a result of a member's networking arrangement with a financial institution, FINRA amended the proposal to require that oral disclosures only be provided at or prior to the time that a customer account is opened on the premises of a financial institution by a member that is a party to a networking arrangement with the financial institution. Written disclosures that the broker-dealer services are being provided by the member and not by the financial institution, and that the securities products purchased or sold in a transaction with the member are not insured by the FDIC, not obligations of or guaranteed by the financial institution, and are subject to investment risks, including possible loss of principal, would still be required as set forth in the original proposal. FINRA notes that a written acknowledgement is not required under GLB or Regulation R. FINRA believes that this change will retain the benefits of applying the rule to member conduct on or off the premises of a financial institution without imposing potentially unnecessary oral disclosures to customers whose account openings may be wholly unrelated to the networking arrangement.<sup>28</sup>

One commenter<sup>29</sup> suggested that if a member's networking agreement with a financial institution does not explicitly address off premises brokerage services to be provided by the member, then the member should not have to comply with the proposed rule in its application to off premises activities. In its response, FINRA disagreed with this interpretation of the proposed rule. Proposed FINRA Rule 3160 would apply to a member conducting broker-dealer services under a networking arrangement off the premises of a financial institution, regardless of the specific contractual agreements between the parties. FINRA stated that the proposed rule is intended to impose certain requirements on members in networking arrangements that apply

<sup>21</sup> See 17 CFR 247.701(a)(3)(v).

<sup>22</sup> See 17 CFR 247.701(a)(3)(iv). See Securities Exchange Act Release No. 56501 (October 3, 2007) (re: Suitability or Sophistication Analysis by Broker-Dealer). The "sophistication" analysis is based on the elements of NASD IM-2310-3 (Suitability Obligations to Institutional Customers). FINRA is seeking comment on a proposal regarding a consolidated FINRA rule addressing suitability obligations. See *Regulatory Notice* 09-25 (May 2009).

<sup>23</sup> See 17 CFR 247.701(b).

<sup>24</sup> See Securities Exchange Act Release No. 56501, 72 FR 56514, 56528 n.135 (October 3, 2007) ("As stated in the proposal, the Commission anticipates that it may be necessary for either FINRA or the Commission to propose a rule that would require broker-dealers to comply with the written agreements entered into pursuant to Rule 701.").

<sup>25</sup> See Cornell Letter, FSI Letter, WFA Letter and Woodforest Letter.

<sup>26</sup> See PIRC Letter.

<sup>27</sup> See WFA Letter.

<sup>28</sup> See FINRA Response.

<sup>29</sup> See WFA Letter.

notwithstanding any contractual obligations of the parties.

One commenter<sup>30</sup> opposed proposed FINRA Rule 3160 stating that it appears designed to maintain the status quo. The commenter stated that the proposed rule is insufficient and does not adequately protect investors, and specifically noted that senior citizens are often confused regarding the role of financial institutions with respect to securities activities through networking arrangements. In its response, FINRA stated that it does not believe that the proposed rule maintains the status quo, and noted that the proposed rule change expands existing requirements to encompass activities of a broker-dealer operating under a networking agreement with a financial institution occurring off the premises of a financial institution. Moreover, FINRA stated that its examination and enforcement mechanisms will continue to bolster the application of FINRA's requirements governing members' networking arrangements with financial institutions.<sup>31</sup>

#### *Written Acknowledgement of Receipt of Disclosures*

Certain commenters<sup>32</sup> suggested that FINRA maintain in proposed FINRA Rule 3160 a requirement that a member make a reasonable effort to obtain from each customer during the account opening process a written acknowledgement of receipt of the disclosures required under the rule. One commenter<sup>33</sup> noted that, if this requirement was eliminated, members would have less incentive to ensure that associated persons are making the required disclosures. Another commenter<sup>34</sup> viewed FINRA's reasons for removing the acknowledgement requirement as unpersuasive. This commenter suggested that members have the technology to obtain adequate written acknowledgement from customers, and any administrative burden imposed upon members by a written acknowledgment requirement would be greatly outweighed by the benefit of reducing customer confusion. One commenter<sup>35</sup> asserted that notwithstanding the current requirement to obtain written acknowledgment from customers, many investors do not know that they are acquiring a securities product as opposed to a bank product.

Additionally, one commenter<sup>36</sup> noted that FINRA's proposal may conflict with the *Interagency Statement on Retail Sales of Nondeposit Investment Products*,<sup>37</sup> which requires firms to obtain written acknowledgement for the receipt of nondepository product disclosures. While the commenter did not oppose FINRA's proposal in this respect, it views the proposal as an opportunity for regulatory harmonization in this area. In its response, FINRA stated that it continues to believe that retaining a written acknowledgement in its rule is unnecessary. Moreover, FINRA opined that its proposal would not conflict with a firm's obligations under the *Interagency Statement*, and a written acknowledgement is not required under GLB or Regulation R.

#### *Setting Provision*

One commenter<sup>38</sup> expressed the view that it is common industry practice for a registered representative to use conference rooms at a bank location to meet with customers because many representatives' "offices" are cubicles within the operations area of the financial institution. The commenter<sup>39</sup> suggested that FINRA eliminate proposed FINRA Rule 3160(a)(1)(B), which would require members to conduct broker-dealer activities in an area that clearly displays the member's name so that the use of shared conference rooms may continue. Another commenter<sup>40</sup> added that the "to the extent practicable" language in the setting provision is problematic because it invites a subjective and self-serving interpretation of this provision by the financial institution and the member. One commenter<sup>41</sup> read proposed FINRA Rule 3160 as excluding electronic broker-dealer activities and noted that the setting provision ignores that bank deposits are often done electronically.

In its response, FINRA stated that it does not believe that the proposed rule prevents a registered person from using a conference room at a financial institution inasmuch as each of the elements of paragraph (a)(1) of the

proposed rule, including the signage requirement in subparagraph (B), can be satisfied. FINRA also noted that the language "to the extent practicable" exists in current NASD Rule 2350 and was not amended under the proposal. Additionally, GLB includes identical language in a corresponding provision.<sup>42</sup> Finally, although the provisions of proposed FINRA Rule 3160(a)(1) provide specific guidance for physical separation on the premises of a financial institution, other provisions in the proposed rule (*i.e.*, paragraphs (a)(3) and (a)(4)) address potential customer confusion for electronic or otherwise off-premises broker-dealer conduct. With respect to electronic deposits made on the premises of a financial institution, FINRA noted that the "retail deposit-taking area" would include areas that have ATMs where electronic deposits are made.

#### *Disclosures on Advertisements and Sales Literature*

One commenter<sup>43</sup> suggested clarifying proposed FINRA Rule 3160(a)(4)(B), stating that the rule appears to require financial institutions to include disclosures on advertisements that do not refer to the broker-dealer or its services. In its response, FINRA noted that proposed FINRA Rule 3160 would apply to the conduct and communications of a FINRA member in a networking arrangement, and not to the activities or communications of a financial institution that are unrelated to the networking arrangement. As such, FINRA declined to amend the proposal in response to this comment.

Proposed FINRA Rule 3160(a)(4)(C) would provide a list of certain advertisements and sales literature that do not have to include the disclosures required under the proposed rule. One commenter<sup>44</sup> recommended adding business cards of a registered representative that are printed on a standard size 2" x 3" card to this list, stating that it would be difficult to fit the disclosures on such communications. In its response, FINRA stated that it does not intend to amend proposed FINRA Rule 3160(a)(4)(C) to exclude business cards from the required disclosures. FINRA explained that, to the extent business cards are sales literature, disclosures should be provided to assist customers in recognizing the distinctions between the brokerage services offered by the member and the banking services

<sup>30</sup> See WFA Letter.

<sup>37</sup> Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, "Interagency Statement on Retail Sale of Nondeposit Investment Products," Feb. 15, 1994, as supplemented by Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, Sept. 12, 1995 (the "Interagency Statement").

<sup>38</sup> See Woodforest Letter.

<sup>39</sup> See *id.*

<sup>40</sup> See PIRC Letter.

<sup>41</sup> See *id.*

<sup>42</sup> See Exchange Act Section 3(a)(4)(B)(i)(II).

<sup>43</sup> See FSI Letter.

<sup>44</sup> See Woodforest Letter.

<sup>30</sup> See PIRC Letter.

<sup>31</sup> See FINRA Response.

<sup>32</sup> See Woodforest Letter, Cornell Letter and PIRC Letter.

<sup>33</sup> See PIRC Letter.

<sup>34</sup> See Cornell Letter.

<sup>35</sup> See PIRC Letter.

offered by the financial institution.<sup>45</sup> FINRA also noted that, where necessary, members may use the short form legend as provided in proposed FINRA Rule 3160(a)(4)(B) on business cards.

#### IV. Discussion and Finding

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>46</sup> The Commission believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>47</sup> In particular, the proposed rule change, as amended, will clarify and streamline the FINRA requirements for broker-dealer networking arrangements and better align FINRA requirements with GLB and Regulation R. This, in turn, should promote member firm's compliance efforts.

#### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>48</sup> for approving the proposed rule change, as amended by Amendment No. 1 thereto, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 1 are minor, and do not raise novel regulatory concerns. Moreover, accelerated approval of this proposal should benefit FINRA member firms and investors by more closing aligning, without undue delay, FINRA requirements with both GLB and Regulation R.

#### VI. 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-047 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-FINRA-2009-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-047 and should be submitted on or before April 12, 2010.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>49</sup> that the proposed rule change (SR-FINRA-2009-047), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>50</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-6214 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61710; File No. SR-ISE-2010-02]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change To Amend Exchange Rules Related to Cut-Off Time for Contrary Exercise Advice Submissions

March 15, 2010.

#### I. Introduction

On January 11, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the cut-off time for submitting contrary exercise advices to the Exchange. The proposed rule change was published for comment in the **Federal Register** on February 8, 2010.<sup>3</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange has proposed to amend Rule 1100 to extend the cut-off time to submit contrary exercise advices ("CEAs")<sup>4</sup> to the Exchange to 7:30 p.m. The Exchange also has proposed to make certain non-substantive changes to reorganize the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language.

Pursuant to Rule 805 of the Options Clearing Corporation ("OCC"), certain options that are in-the-money by a specified amount will be automatically exercised. This procedure is known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no

<sup>45</sup> See FINRA Interpretive Letter to Tamara K. Salmon, Investment Company Institute (September 6, 2007).

<sup>46</sup> In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>47</sup> See 15 U.S.C. 78o-3(b)(6).

<sup>48</sup> 15 U.S.C. 78o-3(b)(5).

<sup>49</sup> 15 U.S.C. 78s(b)(2).

<sup>50</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61458 (February 1, 2010), 75 FR 6237.

<sup>4</sup> Contrary exercise advices are also referred to as Expiring Exercise Declarations in the OCC rules.



further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under parameters different than the Ex-by-Ex procedures must instruct OCC of their "contrary intention." Pursuant to ISE Rule 1100 option holders must also file a CEA with the Exchange notifying the Exchange of the option holder's contrary intention. ISE Rule 1100 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by submitting a CEA directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with ISE Rule 1100.

ISE Rule 1100 currently provides option holders until 5:30 p.m. on the day prior to expiration to make a final decision to exercise or not exercise an option that would otherwise either expire or be automatically exercised. An Exchange member may not accept CEA instructions from its customer or non-customer accounts after 5:30 p.m. The current rule, however, gives Exchange members up to 6:30 p.m. to actually submit these CEA instructions to the Exchange where such member uses an electronic submission process. Pursuant to the rule, if members do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This 5:30 p.m. deadline for manual submission of CEAs for non-customer accounts is earlier than the electronic submission deadline to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option.<sup>5</sup> In either case, whether or not submitting the CEA electronically or manually, the final decision to issue a CEA instruction must be made at 5:30 p.m.

This current process of submitting CEAs was approved by the Commission in 2003.<sup>6</sup> The Exchange represents that

in 2003, the Ex-by-Ex thresholds were \$0.75 for customers and \$0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold had narrowed significantly to \$0.01 for all accounts. The Exchange notes that this decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the burden on firms to process and submit instructions on a timely basis.

As a result of these concerns, the Exchange has proposed to extend the current 6:30 p.m. deadline for electronic submission of CEA instructions to the Exchange by one additional hour, to 7:30 p.m. In its filing, the Exchange stated that the proposed rule change is necessary to address concerns expressed by members that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. According to the Exchange, the proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange.

The Exchange also proposes to allow a member to submit a CEA to the Exchange by 7:30 p.m. on a day when there is a modified close of trading. The current rule allows a member to submit an electronic CEA to the Exchange up to 2 hours and 30 minutes after the close of trading on a day when there is a modified close of trading. The proposed rule change will make the submission deadline for electronic CEAs on both regular and modified close expiration days uniform and, according to the Exchange, this should help to reduce errors.

The ISE noted in its filing that the proposed rule change does not change the substantive requirement that option holders make a final decision by 5:30 p.m. whether to exercise or not exercise an option that would otherwise either expire or be automatically exercised. The Exchange represented that it will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. As noted in the filing, the Exchange believes that the proposed rule change will benefit the marketplace, particularly back-office processing. The Exchange also represents that the

additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

### III. Discussion and Commission's Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that ISE rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate because, by extending the deadline to submit electronic CEAs from 6:30 p.m. to 7:30 p.m., the proposal should provide Exchange members with sufficient additional time to process the CEAs submitted by options holders which, according to the Exchange, have steadily increased with the increased options trading volume of recent years and the narrowing of the Ex-by-Ex threshold. Thus, consistent with Section 6(b)(5) of the Act,<sup>9</sup> the proposal will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, by addressing the back-office processing problems noted by the Exchange that exist under the current 6:30 p.m. deadline for electronic submission of CEAs.

In approving the proposal, the Commission emphasizes that the Exchange is not changing the time by which options holders must notify Exchange members of the contrary intention, which will remain at 5:30 p.m., and will continue to be enforced by the Exchange as it is currently.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> *Id.*

<sup>5</sup> According to the Exchange, this requirement is based on the difficulty of monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

<sup>6</sup> See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92); 48505 (September 17, 2003), 68

FR 55680 (September 26, 2003) (SR-ISE-2003-20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR-Phlx-2003-65).

Because the deadline for options holders to make a decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised is not changing, the Commission also believes that proposal will not compromise one key goal of the rule, which is to prevent individuals from taking improper advantage of late-breaking news.

The Commission also notes that the time for submission of CEAs for non-customer accounts on a manual basis will remain at 5:30 p.m. The Commission continues to believe that this time difference for manual submissions is warranted given the potential difficulties in monitoring compliance with a manual procedure, as noted by the Exchange.<sup>10</sup>

The Commission also believes that the Exchange's proposal to change the deadline for submitting CEAs to the Exchange to 7:30 p.m. on days when there is a modified close of trading is appropriate. A uniform deadline for submitting CEAs, irrespective of the closing time, will eliminate any possibility for error when determining what the submission deadline is on a modified close expiration day. As described above, current rules set the deadline on modified close expiration day at 2 hours and 30 minutes after the close. Since the modified close time does vary on these modified days, the CEA times could vary as well, which may have proved confusing to Exchange members. Thus, the change to a 7:30 p.m. cut-off for all electronic submission of CEAs, irrespective of the market's closing time, should help to avoid confusion and reduce the potential for errors. Finally, the Commission also finds that the Exchange's non-substantive changes to the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language is appropriate.

Based on the above, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>11</sup> in that it will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-ISE-2010-002) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6204 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61711; File No. SR-Phlx-2010-37]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Controller Space Fee

March 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to offer the Controller Space storage service at no charge. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to offer the Controller Space service at no charge. Currently, the Exchange assesses a Controller Space storage fee of \$250.00 per month on Members, Member Organizations, participants and participant organizations on the options and foreign currency trading floors. The Controller Space storage refers to space near the Exchange's trading floor that stores Member equipment that is used by Members, Member Organizations, participants and participant organizations to support their floor operations.

Previously, NASDAQ OMX PHLX's match infrastructure was located at 1900 Market Street in Philadelphia, PA, the location of the NASDAQ OMX PHLX trading floor. The NASDAQ OMX PHLX match infrastructure was relocated to the New York City area. As a result of this relocation, NASDAQ OMX PHLX now only offers a storage facility at the 1900 Market Street location for member equipment. The Controller Space storage services being offered to Members by NASDAQ OMX PHLX have been subsumed by co-location services which are currently being offered by NASDAQ Technology Services LLC ("NTS") pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.<sup>3</sup> A recent proposed rule change proposes to codify fees for these existing co-location

<sup>3</sup> Currently, the Exchange provides its current co-location services through data centers located in the New York City and Mid-Atlantic areas.

<sup>10</sup> See footnote 5 and accompanying text.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

services in a single uniform fee schedule.<sup>4</sup>

Exchange members may subscribe to co-location services provided by NTS. These co-location services are generally available to all qualified market participants who desire them. The Exchange will continue to offer the storage service to its Members at no charge. If the Exchange determines at a later date to charge a fee for this service, it will file a proposed rule change with the Commission.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that Members benefit in that the Exchange will continue to offer all Members the ability to store equipment at the Exchange's facility at no charge.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and paragraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-37 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-Phlx-2010-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 available publicly. All submissions should refer to File Number SR-Phlx-2010-37 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6181 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61704; File No. SR-NYSEArca-2010-11]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 9.1(f)

March 15, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 1, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its sharing in accounts rule to harmonize its requirements with the Financial Industry Regulatory Authority ("FINRA"). A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room. The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in [brackets].

Rules of NYSE Arca Equities, Inc.

\* \* \* \* \*

Rule 9.1(f). [Sharing Profits—Losses] *Sharing in Accounts; Extent Permissible*  
[No registered employee shall directly or indirectly take or receive a share in the profits of any customer's account or share in any losses sustained in any such account.]

(1)(A) *Except as provided in paragraph (2) no member or person associated with a member shall share directly or indirectly in the profits or*

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

<sup>4</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 61486 (February 3, 2010), 75 FR 6426 (February 9, 2010) (SR-Phlx-2010-18).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if

- (i) such person associated with a member obtains prior written authorization from the member employing the associated person;
- (ii) such member or person associated with a member obtains prior written authorization from the customer; and
- (iii) such member or person associated with a member shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of paragraph (1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if

(A) such person associated with a member seeking such compensation obtains prior written authorization from the member employing the associated person;

(B) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

\* \* \* \* \*

## 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

In order to harmonize its sharing in accounts rule with FINRA rules, the Exchange proposes to delete NYSE Arca Rule 9.1(f), Sharing Profits—Losses, in its entirety, and replace it with the language of FINRA 2150(c), Sharing in Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same general prohibition as NYSE Arca Rule 9.1(f), but with additional limited exceptions. The Exchange proposes to add those limited exceptions in order to bring its rule in line with the FINRA rule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. Specifically, the changes proposed herein, by harmonizing NYSE Arca rules with FINRA rules, provide NYSE Arca Members with a clearer regulatory scheme. The Exchange further notes that the changes proposed herein are neither novel nor controversial and are modeled on existing FINRA rules.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule

19b-4(f)(6) thereunder.<sup>7</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>12</sup> The Exchange requests this waiver so that these changes can be both immediately effective and operative, thus minimizing any confusion. As noted above, the changes proposed herein, by harmonizing NYSE Arca rules with FINRA rules, provide NYSE Arca Members with a clearer regulatory scheme. The Commission notes that the FINRA financial responsibility rules are currently in operation. The Commission believes that waiving the 30-day operative delay will permit the Exchange to harmonize its rules with the corresponding FINRA rule immediately, thus promoting clarity and minimizing confusion with respect to the requirements regarding guarantees and sharing in accounts.<sup>13</sup> For this reason, the Commission designates the proposed rule change as operative upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-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-NYSEArca-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 such filing also will be available for inspection and copying at the principal office of NYSEArca. 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-2010-11 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6149 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61702; File No. SR-BX-2010-016]

### Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 12, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 19, 2010, NASDAQ OMX BX ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by BX. BX has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Section 19 under the Act.<sup>3</sup> 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

BX proposes to amend the BX Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications. BX proposes to implement this rule change immediately upon filing. The text of the proposed rule change is available at <http://BXomx.cchwallstreet.com/>, at BX's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to amend the BX Rule 9520 Series, the Exchange's eligibility proceedings section, to conform to recent changes in the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>4</sup> The proposal also includes the proposed Statutory Disqualification Regulatory Alert ("*SD Regulatory Alert*") that outlines the applicable eligibility procedures. The amended rules would incorporate by reference, the procedures in the *SD Regulatory Alert*. As further detailed in the *SD Regulatory Alert*, the need for a member to file an application with BX for approval, notwithstanding the disqualification would depend on (1) the type of disqualification; (2) the date of disqualification; or (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

FINRA recently revised its definition of disqualification to incorporate three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification. Although the Exchange's definition has always included these categories, Commission staff informed the NASDAQ Stock Market LLC ("NASDAQ") at the time of its registration as a national securities exchange that, in light of the NASDAQ's origin as a subsidiary of FINRA's predecessor, the National Association of Securities Dealers, Inc., staff would not object if NASDAQ applied FINRA's then more-limited definition, pending adoption of procedures by FINRA to process disqualifications under these additional categories. BX, an affiliate of NASDAQ, adopted the same definition as NASDAQ.

The proposed rule change would amend BX Rule 9522 to address the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), (SR-FINRA-2009-022).

initiation of eligibility proceedings and the authority of the Exchange's Department of Member Regulation ("BX Regulation" or "Member Regulation") to approve applications relating to a disqualification where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arises under Section 3(a)(39)(E) of the Act (*i.e.*, the added categories of disqualification). Currently, BX Rule 9522(a)(1) provides, among other things, that if the Exchange Regulation Department staff has reason to believe that a disqualification exists, the Exchange Regulation Department staff will issue a written notice to the member or applicant for membership under BX Rule 1013, specifying the grounds for such disqualification. The proposed rule provides that the Exchange Regulation Department staff will not issue a written notice to members or applicants for membership under BX Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, unless the member is instructed to do so by the *SD Regulatory Alert*. Furthermore, a member will not have to file an application or a written request for relief with the Central Registration Depository/Public Disclosure, for any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, unless the member is instructed to do so by the *SD Regulatory Alert*.

Additionally, under the current rules, a member is allowed to withdraw its application after the start of a hearing but prior to the issuance of a decision by the Exchange Review Council ("Review Council") with prior written consent of the Review Council. The proposed rules provide that written consent is no longer required. The member may withdraw its application by filing a written notice with the Review Council and the Office of General Counsel pursuant to Rules 9135, 9136 and 9137.

In addition, under the current rules, the Exchange Regulation Department is generally responsible for evaluating applications with disqualifications filed by a disqualified member or sponsoring member. The proposed amendments to BX Rule 9522 would specifically authorize the Exchange Regulation Department to approve applications based on the added categories of disqualification that arises from finding or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or

arises under Section 3(a)(39)(E) of the Act.

In addition, if the Exchange Regulation Department determines that an application relating to a disqualification that arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Act or arises under Section 3(a)(39)(E) of the Act should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then proposed BX Rule 9523(b) would authorize the Exchange Regulation Department to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the Review Council. Consistent with the current rule regarding the submission of supervisory plans, proposed BX Rule 9523(b)(1) would provide that, by submitting an executed letter consenting to a supervisory plan, a disqualified member, sponsoring member and/or disqualified person waives the following (in summary):

(a) The right to a hearing and any right of appeal to challenge the validity of the supervisory plan;

(b) The right to claim bias or prejudice by the Exchange Regulation Department or the General Counsel regarding the supervisory plan; and

(c) The right to claim a violation of the *ex parte* prohibitions or the separation of functions provisions of BX Rules 9143 and 9144, respectively, in connection with participation in the supervisory plan.

If the supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person would have the right to proceed under BX Rule 9524. Furthermore, the proposed rule change would delete all references in BX Rule 9523 to the "Office of Disciplinary Affairs" as this step will no longer be utilized in the process, consistent with current FINRA rules.

The proposed rule change also would include several technical amendments. For example, the proposed rule change would amend BX Rule 9522(b) to renumber sections 1, 2, and 3 and the Exchange Rule 9522(c) to allow a member that has filed a statutory disqualification application to withdraw that application after the start of a hearing but prior to the issuance of a decision by the Review Council by filing a written notice with the Review Council and the Exchange's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend BX Rule 9522(e) to replace references that

the Exchange Regulation Department "may grant" or "may approve" certain matters with "is authorized to approve" such matters.

#### b. Statutory Basis

BX believes that the proposed rule change is consistent with the provision of Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6)<sup>6</sup> thereunder, in that the proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. While the current rules broadly include the proposed categories of disqualification, the proposed rule change merely conforms to FINRA rules by specifically incorporating the additional categories of disqualification that were not previously specified in FINRA rules. Since these categories were already covered in the current rules, this change just delineates the specifics for conforming purposes. All other changes are administrative to effectuate the conforming changes.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-016 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BX-2010-016. 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 offices of BX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-BX-2010-016, and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6116 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

#### DEPARTMENT OF STATE

##### [Public Notice 6909]

#### Industry Advisory Panel: Notice of Open Meeting

The Industry Advisory Panel of the Bureau of Overseas Buildings Operations will meet on Wednesday, April 14, 2010 from 9:30 a.m. until 3:30 p.m. Eastern Daylight Time. The meeting is open to the public, as seating permits, and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street, NW. (entrance on 23rd Street) Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance. The majority of the meeting will be devoted to an exchange of ideas between the Department's senior management and the panel members on design, operations, and building maintenance. There will be a reasonable time provided for members of the public to provide comment.

Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by April 1, 2010, their name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (*i.e.*, U.S. government ID, U.S. military ID, passport, or drivers license) by e-mailing: [FousheeCT@state.gov](mailto:FousheeCT@state.gov). Requests for reasonable accommodation should be sent to the same e-mail address by April 1, 2010. Requests made after that time will be considered, but may not be able to be fulfilled.

Please contact Christy Foushee at [FousheeCT@state.gov](mailto:FousheeCT@state.gov) or on (703) 875-5751 with any questions.

Dated: March 9, 2010.

**Adam E. Namm,**

*Director, Acting U.S. Department of State, Bureau of Overseas Buildings Operations.*

[FR Doc. 2010-6242 Filed 3-19-10; 8:45 am]

**BILLING CODE 4710-24-P**

<sup>9</sup> 17 CFR 200.30-3(a)(12).

#### DEPARTMENT OF TRANSPORTATION

#### ITS Joint Program Office; Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

**AGENCY:** Research and Innovative Technology Administration, U.S. Department of Transportation.

**ACTION:** Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72-363; 5 U.S.C. app. 2), a meeting of the Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC). The meeting will be held on April 7, 2010, 8 a.m. to 4:30 p.m., in the Oklahoma Conference Room of the U.S. Department of Transportation (U.S. DOT) Conference Center on the lobby level of the U.S. DOT West Building, 1200 New Jersey Avenue, SE., Washington DC.

The ITSPAC, established under Section 5305 of Public Law 109-59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-chartered on February 7, 2010, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITSPAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

Following is the meeting preliminary agenda: (1) U.S. DOT Welcome Remarks; (2) Committee Chairman Welcome Remarks; (3) Committee Member Interest Areas; (4) U.S. DOT Governance Through ITS Management Council, Strategic Planning Group, and JPO Management Plan; (5) Evolution of IntelliDrive<sup>SM</sup>; (6) ITS Strategic Research Plan, 2010-2014; (7) University Transportation Centers Engagement; (8) Applications for the Environment: Real-Time Information Synthesis (AERIS) Program; (9) ITS America 20th Annual Meeting and Exposition: Committee Attendance and Exhibition Tour; and (10) Committee Governance and Staying Connected.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Since access to the U.S. DOT building is controlled, non-committee members who plan to attend the meeting must notify Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366-9126 not later than April 2, 2010. Individuals

attending the meeting must report to the 1200 New Jersey Avenue entrance of the U.S. DOT Building for admission. Members of the public who wish to present oral statements at the meeting must request approval from Mr. Glasscock not later than April 2, 2010.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue, SE., HOIT, Washington, DC 20590 or faxed to (202) 493-2027. The JPO requests that written comments be submitted prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102-3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 15th day of March 2010.

**John Augustine,**

*Deputy Director, ITS Joint Program Office.*

[FR Doc. 2010-6197 Filed 3-19-10; 8:45 am]

**BILLING CODE 4910-HY-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[USCG-2006-24644]

#### **TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port License Application; Final Amended Application Public Hearing and Final Supplemental Environmental Impact Statement**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of availability; notice of public meeting; request for comments.

**SUMMARY:** The Maritime Administration, in cooperation with the U.S. Coast Guard, announces the availability of the Final Supplemental Environmental Impact Statement (FSEIS) for the TORP Terminal LP, Bienville Offshore Energy Terminal (BOET) Liquefied Natural Gas (LNG) Deepwater Port amended license application. The amended application describes an LNG deepwater port project that would be located in the Gulf of Mexico, in Main Pass block MP 258, approximately 63 miles south of Mobile Point, Alabama. The Maritime Administration and U.S. Coast Guard will hold a public meeting, and request public comments on matters relevant to the approval or denial of the amended license application. Publication of this notice begins a 30-day comment period

and provides information on how to participate in the process.

**DATES:** The public meeting will be held in Mobile, Alabama on March 31, 2010, from 6 p.m. to 8 p.m., and will be preceded by an open house from 5 p.m. to 6 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak. Material submitted in response to the request for comments must reach the Docket Management Facility by April 30, 2010.

**ADDRESSES:** The open house and public meeting will be held at the Mobile Convention Center, One South Water Street, Mobile, Alabama 36602; telephone: 251-208-2100.

The Draft and Final Supplemental EIS, the amended application, comments and associated documentation are available for viewing at the Federal Docket Management System (FDMS) Web site: <http://www.regulations.gov> under docket number USCG-2006-24644.

Docket submissions for USCG-2006-24644 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202-366-9329, the fax number is 202-493-2251, and the Web site for electronic submissions or for electronic access to docket contents is <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Patrick Marchman, Maritime Administration, telephone: 202-366-8805, e-mail: [Patrick.Marchman@dot.gov](mailto:Patrick.Marchman@dot.gov); or LT Hannah Kawamoto, U.S. Coast Guard, telephone: 202-372-1437, e-mail: [Hannah.K.Kawamoto@uscg.mil](mailto:Hannah.K.Kawamoto@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Meeting and Open House**

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on the proposed action and the evaluation contained in the FSEIS, and on matters relevant to the approval or denial of the license application. In order to allow

everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. Before speaking, you must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility (*see Request for Comments*).

Our public meeting location is wheelchair-accessible. If you plan to attend the open house or public meeting and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Maritime Administration (*see FOR FURTHER INFORMATION CONTACT*) at least three (3) business days in advance. Include your contact information as well as information about your specific needs.

#### **Request for Comments**

We request public comments or other relevant information on the FSEIS and on matters relevant to the approval or denial of the license application. The public meeting is not the only opportunity you have to comment. In addition to or in place of attending this meeting, you can submit comments to the Docket Management Facility during the public comment period (*see DATES*). We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG-2006-24644.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, <http://www.regulations.gov>.

- Fax, mail, or hand delivery to the Docket Management Facility (*see ADDRESSES*). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (<http://www.regulations.gov>) and will include any personal information you provide. Therefore, submitting this information



makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS Web site and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477) (see Privacy Act). You may view docket submissions at the Department of Transportation Docket Management Facility or electronically on the FDMS Web site (see **ADDRESSES**).

### Background

The Notice of Intent To Prepare a Supplemental EIS for the proposed action was published in the **Federal Register** at 74 FR 39136, August 5, 2009 and the Draft Supplemental EIS was published in the **Federal Register** at 74 FR 60310, November 20, 2009. The Draft and Final Supplemental EIS, application materials and associated comments are available on the docket at <http://www.regulations.gov> under docket number USCG–2006–24644. Information from the “Summary of the Application” from previous **Federal Register** notices is included below for your convenience.

### Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in the “Summary of the Application” below. The alternatives to approving and licensing the proposed port are: (1) Approving and licensing with conditions (including conditions designed to mitigate environmental impact), or (2) denying the application, which for purposes of environmental review is the “no-action” alternative. These alternatives are more fully discussed in the FSEIS. The Maritime Administration and the U.S. Coast Guard are the lead Federal agencies for the preparation of the Supplemental EIS. You may address any questions about the proposed action or the FSEIS to the Maritime Administration project manager or the U.S. Coast Guard project manager, both are identified in **FOR FURTHER INFORMATION CONTACT**.

### Summary of the Application

TORP Terminal LP proposes to own, construct, and operate a deepwater port, the Bienville Offshore Energy Terminal (BOET), in the Federal waters of the Outer Continental Shelf on Main Pass block MP 258, located approximately 63 miles south of Mobile Point, Alabama, in a water depth of approximately 425 feet. The proposed BOET deepwater port would be capable of mooring a single LNG carrier (LNGC) of up to approximately 265,000 cubic meters

(m3) (8.8 million cubic feet [ft3]) in capacity.

The LNGC would be off-loaded using a HiLoad LNG off-loading and regasification unit (HiLoad), which is proprietary technology consisting of a remotely operated floating LNG transfer and regasification unit that connects to the hull of the LNGC. The HiLoad unit would regasify the LNG and deliver the gas via flexible gas pipes to the floating regasification unit (FRU) located approximately 300 meters (984 ft) from the HiLoad unit. Ambient air vaporizers (AAVs) with methanol as an intermediate fluid (IF) would be located aboard the FRU and would provide the heat required to regasify the LNG as part of a closed-loop vaporization system design.

At the FRU, the gas would be metered and sent out via interconnect pipelines to four existing offshore pipelines (Dauphin Natural Gas Pipeline, Williams Natural Gas Pipeline, Destin Natural Gas Pipeline, and Viosca Knoll Gathering System [VKGS] Gas Pipeline) that connect to the onshore natural gas transmission pipeline system. Natural gas would be delivered to customers through existing facilities. BOET would have an average throughput capacity of 1.2 billion standard cubic feet of gas per day (Bscfd) (33.9 million cubic meters of gas per day [m3/day]).

BOET’s major components would include a turret mooring system (TMS), a FRU, a HiLoad unit, two mooring lines that connect the HiLoad to the FRU, two high pressure (HP) flexible gas pipes, two floating IF hoses, two umbilicals, and 22.7 mi (36. km) of new subsea pipelines.

No new onshore pipelines or LNG storage facilities are proposed as part of the construction and operation of BOET. A shore-based facility will be used to facilitate movement of personnel, equipment, supplies, and disposable materials between the terminal and shore.

BOET will require permits from the U.S. Environmental Protection Agency pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

Should a license be issued, construction of the deepwater port would be expected to take thirty (30) months, with startup of commercial operations anticipated for 2014. The deepwater port, if licensed, would be designed, constructed, and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years.

### Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit <http://www.regulations.gov>.

**Authority:** 49 CFR 1.66.

Dated: March 15, 2010.

By Order of the Maritime Administrator.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010–6125 Filed 3–19–10; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2010 0023]

### Inventory of U.S.-Flag Launch Barges

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Inventory of U.S.-Flag Launch Barges.

**SUMMARY:** The Maritime Administration is updating its inventory of U.S.-flag launch barges. Additions, changes and comments to the list are requested. Launch barge information may be found at [http://www.marad.dot.gov/ships\\_shipping\\_landing\\_page/domestic\\_shipping/launch\\_barge\\_program/Launch\\_Barge\\_Program.htm](http://www.marad.dot.gov/ships_shipping_landing_page/domestic_shipping/launch_barge_program/Launch_Barge_Program.htm).

**DATES:** Any comments on this inventory should be submitted in writing to the contact person by April 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, Office of Cargo Preference and Domestic Trade, Maritime Administration, MAR–730, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone 202–366–5979 or 800–9US–FLAG; e-mail: [Joann.Spittle@dot.gov](mailto:Joann.Spittle@dot.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to 46 CFR Part 389 (Docket No. MARAD–2008–0045) Determination of Availability of Coastwise Qualified Launch Barges, the Interim Final Rule requires that the Maritime Administration publish a notice in the **Federal Register** requesting that owners or operators (or potential owners or operators) of coastwise qualified launch barges notify us of: (1) Their interest in participating in the transportation and,

if needed, the launching or installation of offshore platform jackets; (2) the contact information for their company; and, (3) the specifications of any currently owned or operated coastwise qualified launch barges or plans to construct same. In addition, we are also seeking information on non-coastwise

qualified (U.S.-flag) launch barges as well.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: March 15, 2010.

By Order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

**REPORTED U.S.-FLAG LAUNCH BARGES**  
[March 2009]

Vessel name	Owner	Built	Length (ft.)	Beam (ft.)	DWT (L.T.)	Approx launch capacity (L.T.)	Coastwise qualified
Julie B	Crowley Marine Services	2008	400	130	23,600	23,100	X
Marty J	Crowley Marine Services	2008	400	105	19,226	18,766	X
Barge 455-3	Crowley Marine Services	2008	400	105	19,226	18,766	X
Barge 400L	Crowley Marine Services	1997	400	100	19,646	19,146	X
Barge 500-1	Crowley Marine Services	1982	400	105	16,397	15,897	X
Barge 410	Crowley Marine Services	1974	400	99.5	12,035	11,535	X
Barge 416	Crowley Marine Services	1975	400	99.5	12,035	11,535	X
Barge 420	Crowley Marine Services	1975	400	99.5	10,700	6,000	
MWB 403	HMC Leasing, Inc.	1979	400	105	16,322	6,800	X
H-851	Heerema Shipping	1987	853	206.7	128,452	60,000	
H-114	Heerema Shipping	1982	525	137.8	39,226	25,000	
H-122	Heerema Shipping	1978	400	100	16,788	5,500	
H-541	Heerema Shipping	2000	540	138	41,067	20,500	
H-627	Heerema Shipping	1978	580	160	51,829	26,000	
McDermott Tideland 021	J. Ray McDermott, Inc.	1980	240	72	4,700	2,200	X
McDermott Tideland No. 012	J. Ray McDermott, Inc.	1973	240	72.2	4,217	4,000	X
McDermott Tideland No. 014	J. Ray McDermott, Inc.	1973	240	72.2	4,217	4,000	X
McDermott Tideland 020	J. Ray McDermott, Inc.	1980	240	72	5,186	5,000	X
McDermott Tideland 021	J. Ray McDermott, Inc.	1981	240	72	5,186	5,000	X
INTERMAC 600	J. Ray McDermott, Inc.	1973	500	120	32,290	15,600	
MARMAC 400	McDonough Marine Service	2001	400	99'-9"	10,861	4,400	X
MARMAC 300	McDonough Marine Service	1998	300	100	10,267	4,200	X
MARMAC 22	McDonough Marine Service	2003	260	72	5,198	2,400	X
MARMAC 21	McDonough Marine Service	2002	260	72	5,120	2,400	X
MARMAC 20	McDonough Marine Service	1999	250	72	4,943	2,200	X
MARMAC 19	McDonough Marine Service	1999	250	72	4,765	2,200	X
MARMAC 18	McDonough Marine Service	1998	250	72	4,765	2,200	X
MARMAC 17	McDonough Marine Service	1997	250	72	4,765	2,200	X
MARMAC 16	McDonough Marine Service	1995	250	72	4,765	2,200	X
MARMAC 15	McDonough Marine Service	1995	250	72	4,765	2,200	X
MARMAC 12	McDonough Marine Service	1994	250	72	4,765	2,200	X
MARMAC 11	McDonough Marine Service	1994	250	72	4,765	2,200	X
MARMAC 9	McDonough Marine Service	1993	250	72	4,765	2,200	X
COLUMBIA NORFOLK	Moran Towing	1982	329' 3 1/2"	78	8,035.7	8,000	X

[FR Doc. 2010-6146 Filed 3-19-10; 8:45 am]

BILLING CODE 4910-81-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Public Meeting With Interested Persons To Discuss the Proposed AC 20-42D, Hand Fire Extinguishers for Use in Aircraft**

**ACTION:** Notice of public meeting.

**SUMMARY:** The Federal Aviation Administration (FAA) will hold an informational meeting to discuss the content and comments received regarding proposed advisory circular (AC) 20-42D, Hand Fire Extinguishers for use in Aircraft.

*Background:* Beginning in 2006, the FAA asked the International Aircraft Systems Fire Protection Working Group (IASFPWG) to draft a revision to the current AC 20-42C, issued on March 1984, by incorporating updated guidance for the fire-fighting effectiveness, selection, location, mounting and safe-use of hand fire extinguishers in aircraft. The proposed AC also identifies three FAA approved replacement agents for Halon 1211 and establishes an FAA approved minimum performance standard (MPS) for halon replacement agents which includes a hidden fire test and a seat fire/toxicity test. We also recommend that users of halon extinguishers transition to using these new halocarbon clean replacement agents in hand-held fire extinguishers. The AC also explains how to gain

certification for halocarbon clean agent extinguishers intended to replace Halon 1211 hand-held extinguishers.

*Meeting Dates and Locations:* The meeting is scheduled for the afternoon of May 19 and the morning of May 20, 2010 in London, England, and is open to all interested persons.

If you plan to attend the meeting, please notify us via the following e-mail address: *April.CTR.horner@faa.gov* before March 31, 2010. Specific information pertaining to the meeting locations and times will be forwarded to those who respond to the above e-mail address.

**DATES:** The meeting will be held on May 19-20, 2010, in London, England.

**ADDRESSES:** The address for the specific meeting will be provided at a later date to those individuals planning to attend.

**FOR FURTHER INFORMATION CONTACT:** John Petrakis, Senior Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR-120, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. Telephone (202) 385-6341, FAX (202) 385-6475, or e-mail at: [john.petrakis@faa.gov](mailto:john.petrakis@faa.gov).

Issued in Washington, DC on March 10, 2010.

**Susan J.M. Cabler,**

*Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 2010-6145 Filed 3-19-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket ID. FMCSA-2009-0322]

#### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemptions from the diabetes standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 53 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

**DATES:** Comments must be received on or before April 21, 2010.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2009-0322 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 53 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMV in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the

exemption will achieve the required level of safety mandated by the statutes.

#### Qualifications of Applicants

##### Deanna R. Alvarado

Ms. Alvarado, age 48, has had ITDM since 2002. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Alvarado meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class B Commercial Driver's License (CDL) from Arizona.

##### Howard H. Armstrong

Mr. Armstrong, 45, has had ITDM since 1969. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Armstrong meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable proliferative diabetic retinopathy. He holds a Class C operator's license from California.

##### Samuel D. Bentle

Mr. Bentle, age 56, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bentle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

*Mark S. Boettcher*

Mr. Boettcher, 53, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boettcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Steven C. Boudreau*

Mr. Boudreau, 53, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boudreau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

*Charles Boulware, Jr.*

Mr. Boulware, 34, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boulware meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington, DC.

*Roy L. Brokaw*

Mr. Brokaw, 68, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brokaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Chris D. Chambers*

Mr. Chambers, 54, has had ITDM since 1982. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chambers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D chauffeur's license from Louisiana.

*Charles A. Cinert, Sr.*

Mr. Cinert, 61, has had ITDM since 1998. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cinert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*John D. Clark, IV*

Mr. Clark, 30, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Jersey.

*Dale J. Cleaver*

Mr. Cleaver, 41, has had ITDM since 1999. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cleaver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*James H. Collins*

Mr. Collins, 49, has had ITDM since 1986. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Collins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

*William A. Donais*

Mr. Donais, 45, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Donais meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy.

He holds a Class A CDL from Washington.

*Lance L. Fuller*

Mr. Fuller, 34, has had ITDM since 1993. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fuller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Johnny Gardner, Jr.*

Mr. Gardner, 45, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gardner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Carolina.

*Gregory S. Ghent*

Mr. Ghent, 44, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ghent meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Mark D. Golden*

Mr. Golden, 53, has had ITDM since 2009. His endocrinologist examined him

in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Golden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

*Nathaniel W. Gorham*

Mr. Gorham, 21, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gorham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*Younge W. Hooper*

Mr. Hooper, 63, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hooper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Eugene H. Johannes*

Mr. Johannes, 65, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes

management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johannes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

*Reginald K. Johnson*

Mr. Johnson, 53, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maryland.

*Sheldon R. Koehn*

Mr. Koehn, 32, has had ITDM since 2000. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koehn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

*David L. Kreitzer*

Mr. Kreitzer, 57, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kreitzer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy.

He holds a Class A CDL from Minnesota.

*Jason R. Kropp*

Mr. Kropp, 28, has had ITDM since 2003. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kropp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

*Joseph A. Laperle*

Mr. Laperle, 62, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Laperle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*David W. Letto*

Mr. Letto, 67, has had ITDM since 1986. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Letto meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

*Robert D. Marquart*

Mr. Marquart, 56, has had ITDM since 1957. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marquart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Francis E. Martinez*

Mr. Martinez, 26, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martinez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New Mexico.

*Stephen A. Miles*

Mr. Miles, 50, has had ITDM since 1975. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable proliferative diabetic retinopathy. He holds a Class D operator's license from Ohio.

*Raymond A. Montoya*

Mr. Montoya, 60, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss

of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Montoya meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Mexico.

*Adolfo Moreno, Jr.*

Mr. Moreno, 38, has had ITDM since 1990. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moreno meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Washington.

*Chad D. Morrison*

Mr. Morrison, 26, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morrison meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Kevin R. Murphy*

Mr. Murphy, 42, has had ITDM since 1978. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes

management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Murphy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Michigan.

*Kenneth S. Napieralski*

Mr. Napieralski, 57, has had ITDM since 1984. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Napieralski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Lowell G. Neumann*

Mr. Neumann, 64, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neumann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

*John T. Oliver, Jr.*

Mr. Oliver, 50, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oliver meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Georgia.

*Steven G. Petersen*

Mr. Petersen, 40, has had ITDM since 2003. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petersen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Edgar R. Polk*

Mr. Polk, 57, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Polk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Damian J. Porter*

Mr. Porter, 37, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Porter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Robert W. Prabucki*

Mr. Prabucki, 50, has had ITDM since 1989. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Prabucki meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Oregon.

*Edward R. Ramm*

Mr. Ramm, 63, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ramm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

*Wayne F. Richards*

Mr. Richards, 34, has had ITDM since 1988. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Richards meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

*George H. Rollins*

Mr. Rollins, 49, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss

of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rollins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Hampshire.

*Jo Ellen Roshak*

Ms. Roshak, 45, has had ITDM since 2000. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Roshak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from Ohio.

*Gary G. Sironen*

Mr. Sironen, 66, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sironen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Montana.

*Rodney L. Stoltenberg*

Mr. Stoltenberg, 42, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring;

and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stoltenberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*David Switala*

Mr. Switala, 53, has had ITDM since 1981. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Switala meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Colorado.

*Stanley C. Tarvidas*

Mr. Tarvidas, 40, has had ITDM since 1980. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tarvidas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Illinois.

*Jim D. Thomas*

Mr. Thomas, 72, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that

he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Florence E. Thompson*

Ms. Thompson, 62, has had ITDM since 2008. Her endocrinologist examined her in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from New Jersey.

*Joshua C. Thompson*

Mr. Thompson, 31, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

*Phillip M. Vinson*

Mr. Vinson, 35, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from South Carolina.

*Camella C. Wilkins*

Ms. Wilkins, 26, has had ITDM since 2009. Her endocrinologist examined her



in 2009 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Wilkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2009 and certified that she does not have diabetic retinopathy. She holds a chauffeur's license from Indiana.

### Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of

limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: March 12, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 2010-6230 Filed 3-19-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. **FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-1999-6156; FMCSA-1999-6480; FMCSA-2000-8398; FMCSA-2003-15892; FMCSA-2003-16564; FMCSA-2005-23099; FMCSA-2005-23238; FMCSA-2005-22194; FMCSA-2005-22727; FMCSA-2006-23773**]

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the 31 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective April 14, 2010. Comments must be received on or before April 21, 2010.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID **FMCSA-1999-5578; FMCSA-1999-5748; FMCSA-1999-6156; FMCSA-1999-6480; FMCSA-2000-8398; FMCSA-2003-15892; FMCSA-2003-16564; FMCSA-2005-23099; FMCSA-2005-23238; FMCSA-2005-22194; FMCSA-2005-22727; FMCSA-2006-23773**, using any of the following methods.

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

• **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• **Fax:** 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**Privacy Act:** Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202)-366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

### SUPPLEMENTARY INFORMATION:

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from

<sup>1</sup> Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

### Exemption Decision

This notice addresses 31 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 31 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Scott E. Ames, Otto J. Ammer, Jr., Nick D. Bacon, Mark A. Baisden, Eric D. Bennett, Johnny W. Bradford Sr., Levi A. Brown, Charlie F. Cook, Clifford H. Dovel, Arthur L. Fields, John W. Forgy, Glenn E. Gee, Rupert G. Gilmore, III, Albert L. Gschwind, Walter R. Hardiman, Michael W. Jones, Matthew J. Konecki, Paul E. Lindon, John K. Love, Jack D. Miller, Eric M. Moats, Sr., Robert W. Nicks, Joseph S. Nix, IV, Monte L. Purciful, Luis F. Saavedra, Earl W. Sheets, Robert V. Sloan, Steven L. Valley, Thomas E. Voyles, Jr., Darel G. Wagner, Bernard J. Wood.

*These exemptions are extended subject to the following conditions:* (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

### Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 31 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 27027; 64 FR 51568; 67 FR 10475; 69 FR 8260; 71 FR 16410; 73 FR 28188; 64 FR 40404; 64 FR 66962; 66 FR 66969; 68 FR 69432; 71 FR 6825; 73 FR 8392; 64 FR 54948; 65 FR 159; 69 FR 8260; 71 FR 6824; 67 FR 17102; 9 FR 17267; 71 FR 16410; 64 FR 68195; 65 FR 20251; 65 FR 78256; 66 FR 16311; 68 FR 64944; 70 FR 67776; 68 FR 52811; 68 FR 61860; 70 FR 61165; 68 FR 61860; 68 FR 75715; 68 FR 61857; 68 FR 74699; 69 FR 10503; 71 FR 4194; 71 FR 13450; 73 FR 22458; 71 FR 5105; 71 FR 19600; 70 FR 57353; 70 FR 72689; 73 FR 222; 70 FR 71884; 71 FR 4632; 71 FR 6826; 71 FR 19602). Each of these 31 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

### Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 21, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published

notices of final disposition announcing its decision to exempt these 31 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 12, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 2010-6243 Filed 3-19-10; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number MARAD 2010-0031]

### Use of Foreign-Flag Anchor Handling Vessels in the Beaufort Sea or Chukchi Sea Adjacent to Alaska

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice and request for comments.

**SUMMARY:** As authorized by Public Law 109-347, the Secretary of Transportation, as represented by the Maritime Administration, is authorized to make determinations permitting the use of foreign-flag anchor handling vessels in certain cases (and for a limited period of time) if no U.S.-flag vessels are found to be suitable and reasonably available.

A request for such a determination regarding anchor handling vessels with a minimum ice class A3 has been received by the Maritime Administration. If the Maritime Administration determines that U.S.-flag vessels are not suitable and

reasonably available for the proposed service, a determination will be granted allowing for the conditional use of these vessels, within a set time frame. Those interested in providing the names of suitable and available vessels for the proposed service should refer to the docket number, and identify the U.S.-flag vessels available.

**DATES:** Submit U.S.-flag anchor handling ice class A3 or above vessel nominations on or before April 21, 2010.

**ADDRESSES:** U.S.-flag vessel nominations should refer to docket number MARAD 2010-0031. Written nominations may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. You may also send documents electronically via the Internet at <http://www.regulations.gov> or <http://smses.dot.gov/submit/>. All submissions will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document, and all documents entered into this docket, is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Harrelson, U.S. Department of Transportation, Maritime Administration, MAR-730 Room W21-316, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone 202-366-5515.

**SUPPLEMENTARY INFORMATION:**

The Maritime Administration has received a request from an attorney on behalf of a client seeking permission to charter a foreign-flag ice-classed A3 anchor handling vessel adjacent to the coast of Alaska. The foreign-flag anchor handling vessel (TOR VIKING #9199622) would operate in the Beaufort Sea or Chukchi Sea adjacent to Alaska, under certain conditions, and for a limited period of time. Section 705 of Public Law 109-347 allows the use of foreign-flag vessels in this regard if the Maritime Administration determines that U.S.-flag vessels are not suitable or reasonably available and if the lessee has entered into a binding contract to obtain and employ an eligible vessel. The lessee has entered into a long term time charter to build and employ such an eligible vessel. The Maritime Administration is posting this notice in the **Federal Register** providing the public 30 days notice of our intention to provide a determination allowing for the use of a foreign-flag vessel in this

regard, if suitable and available U.S.-flag vessels are not otherwise identified. The Maritime Administration's determination will be for the period through December 31, 2011.

By Order of the Maritime Administrator.

Dated: March 15, 2010.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010-6144 Filed 3-19-10; 8:45 am]

**BILLING CODE 4910-81-P**

---

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 1363**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1363, Export Exemption Certificate.

**DATES:** Written comments should be received on or before *May 21, 2010* to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, at (202) 622-3933, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at [Dawn.E.Bidne@irs.gov](mailto:Dawn.E.Bidne@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Export Exemption Certificate.

*OMB Number:* 1545-0685.

*Form Number:* Form 1363.

*Abstract:* Internal Revenue Code section 427(b)(2) exempts exported property from the excise tax on transportation of property. Regulation § 49.4271-1(d)(2) authorizes the filing of Form 1363 by the shipper to request tax exemption for a shipment or a series of shipments. The information on the form is used by the IRS to verify shipments of property made tax-free.

*Current Actions:* One line was deleted from the form. This caused the total burden to decrease by 25,000, resulting in a new total burden of 425,000 hours.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals or households.

*Estimated Number of Respondents:* 100,000.

*Estimated Time per Respondent:* 4 hours, 15 minutes.

*Estimated Total Annual Burden Hours:* 425,000.

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: March 8, 2010.

**R. Joseph Durbala,**

*IRS Supervisory Tax Analyst.*

[FR Doc. 2010-6147 Filed 3-19-10; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Revenue Procedure RP-125212-09, Rules for Certain Rental Real Estate Activities**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure RP-125212-09, Rules for Certain Rental Real Estate Activities.

**DATES:** Written comments should be received on or before May 21, 2010 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger (202)-927-9368, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at [joel.p.goldberger@irs.gov](mailto:joel.p.goldberger@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* RP-125212-09 Rules for Certain Rental Real Estate Activities.

*Abstract:* This Revenue Procedure Grants Relief Under Section 1.469-9(g) for Certain Taxpayers to Make Late Elections to Treat All Interests in Rental Real Estate as a Single Rental Real Estate Activity.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* This is a new collection.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 2000.

*Estimated Total Annual Burden Hours:* 300.

*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: March 11, 2010.

**R. Joseph Durbala,**

*IRS Supervisory Tax Analyst.*

[FR Doc. 2010-6151 Filed 3-19-10; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency**

[Docket ID OCC-2010-0004]

**FEDERAL RESERVE SYSTEM**

[Docket No. OP-1362]

**FEDERAL DEPOSIT INSURANCE CORPORATION****DEPARTMENT OF THE TREASURY****Office of Thrift Supervision**

[Docket ID OTS-2010-0005]

**NATIONAL CREDIT UNION ADMINISTRATION****Interagency Policy Statement on Funding and Liquidity Risk Management**

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

**ACTION:** Final policy statement.

**SUMMARY:** The OCC, FRB, FDIC, OTS, and NCUA (the agencies) in conjunction with the Conference of State Bank Supervisors (CSBS), are adopting this policy statement. The policy statement summarizes the principles of sound liquidity risk management that the agencies have issued in the past and, when appropriate, supplements them with the "Principles for Sound Liquidity Risk Management and Supervision" issued by the Basel Committee on Banking Supervision (BCBS) in September 2008.<sup>1</sup> This policy statement emphasizes supervisory expectations for all depository institutions including banks, thrifts, and credit unions.

**DATES:** This policy statement is effective on May 21, 2010. Comments on the Paperwork Reduction Act burden estimates only may be submitted on or before April 21, 2010.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874-5670 or J. Ray Diggs, Group Leader: Balance Sheet Management, Credit and Market Risk Division, (202) 874-5670.

<sup>1</sup> NCUA is not a member of the Basel Committee on Banking Supervision and federally insured credit unions are not directly referenced in the principles issued by the Committee.

*FRB*: James Embersit, Deputy Associate Director, Market and Liquidity Risk, 202-452-5249 or Mary Arnett, Supervisory Financial Analyst, Market and Liquidity Risk, 202-721-4534 or Brendan Burke, Supervisory Financial Analyst, Supervisory Policy and Guidance, 202-452-2987.

*FDIC*: Kyle Hadley, Chief Capital Markets Examination Support, (202) 898-6532.

*OTS*: Rich Gaffin, Financial Analyst, Risk Modeling and Analysis, (202) 906-6181 or Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906-6639.

*NCUA*: Amy Stroud, Program Officer, Office of Examination and Insurance, (703) 518-6372.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The recent turmoil in the financial markets clearly demonstrated the importance of good liquidity risk management to the safety and soundness of financial institutions. In light of this experience, supervisors worked on an international and national level through various groups<sup>2</sup> to assess the lessons learned on individual institutions' management of liquidity risk and inform future supervisory efforts on this topic. As one result of these efforts, the Basel Committee on Banking Supervision issued in September 2008, *Principles for Sound Liquidity Risk Management and Supervision*, which contains 17 principles detailing international supervisory guidance for sound liquidity risk management.

##### II. Comments on the Proposed Policy Statement

On July 6, 2009, the agencies requested public comment on all aspects of a proposed interagency policy statement<sup>3</sup> on funding and liquidity risk management. The comment period closed on September 4, 2009. The agencies received 22 letters from financial institutions, bank consultants, industry trade groups, and individuals. Overall, the commenters generally supported the agencies' efforts to consolidate and supplement supervisory expectations for liquidity risk management.

Many commenters expressed concern regarding the proposed policy statement's articulation of the principle that separately regulated entities would

be expected to maintain liquidity commensurate with their own profiles on a stand-alone basis. These commenters indicated that the language in the proposed statement suggested that each regulated entity affiliated with a parent financial institution would be required to maintain its own cushion of liquid assets. This could result in restrictions on the movement of liquidity within an organization in a time of stress. Such restrictions are commonly referred to as "trapped pools of liquidity". These commenters assert that there are advantages to maintaining liquidity on a centralized basis that were evident during the current market disruption. Further, they assert that requiring separate pools of liquidity may discourage the use of operating subsidiaries.

The agencies recognize the need for clarification of the principles surrounding the management of liquidity with respect to the circumstances and responsibilities of various types of legal entities and supervisory interests pertaining to them, and, therefore, have clarified the scope of application of the policy statement with regard to the maintenance of liquidity on a legal entity basis. Specifically, the policy statement indicates that the agencies expect depository institutions to maintain adequate liquidity both at the consolidated level and at significant legal entities. The agencies recognize that a depository institution's approach to liquidity risk management will depend on the scope of its business operations, business mix, and other legal or operational constraints. As an overarching principle, depository institutions should maintain sufficient liquidity to ensure compliance during economically stressed periods with applicable legal and regulatory restrictions on the transfer of liquidity among regulated entities. The agencies have modified the language in the policy statement to reflect this view.

The principles of liquidity risk management articulated in this policy statement are broadly applicable to bank and thrift holding companies, and non-insured subsidiaries of holding companies. However, because such institutions may face unique liquidity risk profiles and liquidity management challenges, the Federal Reserve and Office of Thrift Supervision are articulating the applicability of the policy statement's principles to these institutions in transmittal letters of the policy statement to their regulated institutions. As a result, the guidance for holding companies contained in the original proposal issued for comment

has been omitted from this final policy statement.

Many commenters expressed concern over whether the agencies were being too prescriptive in the policy statement regarding expectations for contingency funding plans (CFPs). These commenters asserted that there needs to be flexibility in the design of CFPs such that institutions can respond quickly to rapidly moving events that may not have been anticipated during the design of the CFP. Other commenters asked whether the policy statement requires institutions to use certain funding sources (e.g., FHLB advances or brokered deposits) in order to show diversification of funding within their CFP.

The agencies believe that the policy statement provides adequate flexibility in supervisory expectations for the development and use of CFPs. In fact the policy statement provides a basic framework that allows for compliance across a broad range of business models whether financial institutions are large or small. While the policy statement addresses the need to diversify an institution's funding sources, there is no requirement to use a particular funding source. The agencies believe that a diversification of funding sources strengthens an institution's ability to withstand idiosyncratic and market wide liquidity shocks.

Many commenters representing financial institution trade organizations (both domestic and international) and special-purpose organizations such as banker's banks and clearing house organizations expressed concern over the treatment of federal funds purchased as a concentration of funding. As of this writing, under a separate issuance, the agencies issued for public comment, "Correspondent Concentrations Risks."<sup>4</sup> That guidance covers supervisory expectations for the risks that can occur in correspondent relationships. The draft guidance can be found at <http://www.occ.treas.gov/fr/fedregister/74fr48956.pdf>.

Some commenters expressed concern over limiting the high-quality liquid assets used in the liquidity buffer to securities such as U.S. Treasuries. These commenters assert that limiting the liquidity buffer to these instruments would limit diversification of funding sources and potentially harm market liquidity.

The agencies agree with some comments on the need for a liquidity buffer of unencumbered high-quality assets sized to cover an institution's risk

<sup>4</sup> NCUA did not participate in this proposed guidance.

<sup>2</sup> Significant international groups addressing these issues include the Basel Committee on Banking Supervision (BCBS), Senior Supervisors Group, and the Financial Stability Board.

<sup>3</sup> 74 FR 32035, (July 9, 2009).

given an appropriate stress test. The agencies believe that such buffers form an essential part of an effective liquidity risk management system. The question centers on the composition of assets that make up an institution's liquidity buffer. This is an issue that not only resonates with this domestic policy statement but with the Basel Committee on Banking Supervision's (BCBS) "Principles for Sound Liquidity Risk Management and Supervision." It is the intention of the agencies for institutions to maintain a buffer of liquid assets that are of such high quality that they can be easily and immediately converted into cash. Additionally, these assets should have little or no loss in value when converted into cash. In addition to the example used in the policy statement, other examples of high-quality liquid assets may include government guaranteed debt, excess reserves at the Federal Reserve, and securities issued by U.S. government sponsored agencies. The policy statement was amended to include additional examples.

Some commenters expressed concern over supervisory expectations for CFP testing. These commenters assert that the agencies need to clarify their expectations for testing of components of the CFP.

The agencies agreed with the commenters and have amended the policy statement to include a recognition that testing of certain elements of the CFP may be impractical. For example, this may include the sale of assets in which the sale of such assets may have unintended market consequences. However, other components of the CFP can and should be tested (e.g., operational components such as ensuring that roles and responsibilities are up-to-date and appropriate; ensuring that legal and operational documents are current and appropriate; and ensuring that cash collateral can be moved where and when needed and back-up liquidity lines can be drawn).

Two credit union commenters questioned the need for NCUA to adopt the proposed policy statement in light of existing guidance in NCUA's Examiner's Guide. The commenters questioned the appropriateness of imposing new requirements on credit unions. The purpose of the policy statement is to reiterate the process and liquidity risk management measures that depository institutions, including federally insured credit unions, should follow to appropriately manage related risks. The policy statement does not impose requirements and contemplates flexibility in its application. The policy statement is also not intended to replace

the NCUA's Examiner's Guide but provides a uniform set of sound business practices, with the expectation that each institution will scale the guidance to its complexity and risk profile. The policy statement, when issued by NCUA, will likely be an attachment to an NCUA Letter to Credit Unions. The letter will provide additional guidance to federally insured credit unions on NCUA's expectations. The two credit union commenters also characterized the policy statement as imposing additional burden on federally insured credit unions, specifically as it relates to stress testing and overall liquidity management reporting. Depending on a credit union's risk profile, such testing and reporting is already expected. NCUA "Letter to Credit Unions 02-CU-05, Examination Program Liquidity Questionnaire", issued in March of 2002, includes examiner review of stress testing performed as well as an overall assessment of the adequacy of management reporting.<sup>5</sup> The policy statement does not add to a credit union's current burden in this regard but rather clarifies NCUA's expectation for those credit unions with risk profiles warranting a higher degree of liquidity risk management.

Lastly, the two credit union commenters encouraged NCUA to not include corporate credit unions within the scope of this policy statement as the corporate credit union network may be restructured. NCUA's intent is for the policy statement to apply only to federally insured, natural person credit unions, not corporate credit unions and the policy statement has been modified to clarify that point.

Accordingly, for all the reasons discussed above, the agencies have determined that it is appropriate to adopt as final the proposed policy statement as amended.

### III. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521 (PRA), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this guidance have been submitted to OMB for approval.

On July 6, 2009,<sup>6</sup> the agencies sought comment on the burden estimates for

this information collection. The comments are summarized below.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection 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.

Comments on these questions should be directed to:

*OCC*: Communications Division, Office of the Comptroller of the Currency, Mailstop 2-3, Attention 1557-NEW, 250 E Street, SW., Washington, DC 20219. In addition comments may be sent by fax to (202) 874-5274, or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

*FRB*: You may submit comments, identified by Docket No. OP-1362, by any of the following methods:

- *Agency Web site*: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

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

- *E-mail*: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.

- *FAX*: 202/452-3819 or 202/452-3102.

- *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

<sup>5</sup> The letter can be found at NCUA's Web site at <http://www.ncua.gov/letters/2002/02-CU-05.html>.

<sup>6</sup> 74 FR 32035.

All public comments are available from the FRB's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP-500 of the FRB's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FDIC:** Interested parties are invited to submit written comments. All comments should refer to the name of the collection, "Liquidity Risk Management." Comments may be submitted by any of the following methods:

- <http://www.FDIC.gov/regulations/laws/federal/propose.html>.

- *E-mail:* [comments@fdic.gov](mailto:comments@fdic.gov).

- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, PA1730-3000, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

**OTS:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725-17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to

[infocollection.comments@ots.treas.gov](mailto:infocollection.comments@ots.treas.gov). OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-7755.

**NCUA:** You may submit comments by any of the following methods (Please send comments by one method only):

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

- *NCUA Web Site:* <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/>

*ProposedRegulations.aspx* Follow the instructions for submitting comments.

- *E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include "[Your name] Comments on Proposed Interagency Guidance—Funding and Liquidity Risk Management," in the e-mail subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for e-mail.

- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

**Public inspection:** All public comments are available on the agency's Web site at <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [\\_OGC\\_Mail@ncua.gov](mailto:_OGC_Mail@ncua.gov).

You should send a copy of your comments to the OMB Desk Officer for the agencies, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

**Title of Information Collection:** Funding and Liquidity Risk Management.

**OMB Control Numbers:** New collection; to be assigned by OMB.

**Abstract:** Section 14 states that institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for liquidity risk exposure as well as profitability. More complex and sophisticated institutions should incorporate liquidity costs, benefits, and risks in the internal product pricing, performance measurement, and new product approval process for all material business lines, products and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level and should include consideration of how liquidity would be affected under stressed conditions.

Section 20 would require that liquidity risk reports provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors. Institutions should also report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

**Comment Summary:** The OCC, FRB, and OTS received one comment regarding its burden estimates under the Paperwork Reduction Act. The comment, which was from a trade association, stated that some community banks with less than \$10 billion in assets reported to them that the estimate of 80 burden hours for small respondents is accurate. Other community banks estimated that it would take significantly longer, especially in the first year of implementation. The agencies have determined that, on average, the burden estimate is accurate and, therefore they have not changed the burden estimates in the final policy statement.

The NCUA received two comments from trade organizations regarding the Paperwork Reduction Act, section III, items (a) through (e). One commenter stated that no additional information should be required of credit unions if they are following current procedures addressed in NCUA's Examiner's Guide. Sections 14 and 20 of the proposed guidance include specific analysis and reporting expectations based on the complexity of the credit union and risk profile. The time estimates provided by NCUA reflect the estimated amount of time if credit unions complied with those expectations. The time burden estimate is not in addition to complying with NCUA Examiner's Guide and such analysis and reporting are existing expectations for complex, higher risk credit unions (refer to Letter to Credit Unions 02-CU-05). It is difficult to accurately estimate how many credit unions would have an implementation burden for Sections 14 and 20 under the proposed guidance and the extent of that additional burden. It is largely dependent upon the structure of the credit union and the inherent risks present, which will fluctuate over time. The initial comment period for the guidance solicited comments on time burden estimates. No specific responses were provided from credit unions to support or challenge the time estimates provided. The time estimates provided

are an average per credit union based on asset size alone and may not accurately reflect the time necessary for a particular credit union to comply with the expectations of Sections 14 and 20.

*Affected Public:*

*OCC:* National banks, their subsidiaries, and federal branches or agencies of foreign banks.

*FRB:* Bank holding companies, state member banks, state-licensed branches and agencies of foreign banks (other than insured branches), and corporations organized or operating under sections 25 or 25A of the Federal Reserve Act (Agreement corporations and Edge corporations).

*FDIC:* Insured state nonmember banks.

*OTS:* Federal savings associations and their affiliated holding companies.

*NCUA:* Federally-insured credit unions.

*Type of Review:* Regular.

*Estimated Burden:*

*OCC:*

*Number of respondents:* 1,560 total (13 large (over \$100 billion in assets), 29 mid-size (\$10–\$100 billion), 1,518 small (less than \$10 billion)).

*Burden Under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 212,640 hours.

*FRB:*

*Number of respondents:* 6,156 total (29 large (over \$100 billion in assets); 117 mid-size (\$10–\$100 billion); and 6,010 small (less than \$10 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 825,248 hours.

*FDIC:*

*Number of respondents:* 5,076 total (10 large (over \$20 billion in assets), 309 mid-size (\$1–\$20 billion), 4,757 small (less than \$1 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 705,564.

*OTS:*

*Number of respondents:* 801 total (14 large (over \$100 billion in assets), 104 mid-size (\$10–\$100 billion), 683 small (less than \$10 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 128,128.

*NCUA:*

*Number of respondents:* 7,736 total (153 large (over \$1 billion in assets), 501 mid-size (\$250 million to \$1 billion), and 7,082 small (less than \$250 million)).

*Burden under Section 14:* 240 hours per large respondent, 80 hours per mid-size respondent, and 20 hours per small respondent.

*Burden under Section 20:* 2 hours per month.

*Total estimated annual burden:* 404,104.

#### IV. Guidance

The text of the Interagency Policy Statement on Funding and Liquidity Risk Management is as follows:

##### *Interagency Policy Statement on Funding and Liquidity Risk Management*

1. The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the agencies) in conjunction with the Conference of State Bank Supervisors (CSBS)<sup>7</sup> are issuing this guidance to provide consistent interagency expectations on sound practices for managing funding and liquidity risk. The guidance summarizes the principles of sound liquidity risk management that the agencies have issued in the past<sup>8</sup> and, where appropriate, harmonizes

<sup>7</sup> The various state banking supervisors may implement this policy statement through their individual supervisory process.

<sup>8</sup> For national banks, see the *Comptroller's Handbook on Liquidity*. For state member banks and bank holding companies, see the Federal Reserve's *Commercial Bank Examination Manual* (section 4020), *Bank Holding Company Supervision Manual* (section 4010), and *Trading and Capital Markets Activities Manual* (section 2030). For state non-member banks, see the FDIC's *Revised Examination Guidance for Liquidity and Funds Management* (Trans. No. 2002–01) (Nov. 19, 2001) as well as Financial Institution Letter 84–2008, *Liquidity Risk Management* (August 2008). For savings associations, see the Office of Thrift Supervision's *Examination Handbook*, section 530, "Cash Flow and Liquidity Management"; and the *Holding Companies Handbook*, section 600. For federally insured credit unions, see Letter to Credit Unions No. 02–CU–05, *Examination Program Liquidity Questionnaire* (March 2002). Also see Basel Committee on Banking Supervision, "Principles for Sound Liquidity Risk Management and Supervision," (September 2008).

these principles with the international statement recently issued by the Basel Committee on Banking Supervision titled "Principles for Sound Liquidity Risk Management and Supervision."<sup>9</sup>

2. Recent events illustrate that liquidity risk management at many financial institutions is in need of improvement. Deficiencies include insufficient holdings of liquid assets, funding risky or illiquid asset portfolios with potentially volatile short-term liabilities, and a lack of meaningful cash flow projections and liquidity contingency plans.

3. The following guidance reiterates the process that institutions should follow to appropriately identify, measure, monitor, and control their funding and liquidity risk. In particular, the guidance re-emphasizes the importance of cash flow projections, diversified funding sources, stress testing, a cushion of liquid assets, and a formal well-developed contingency funding plan (CFP) as primary tools for measuring and managing liquidity risk. The agencies expect every depository financial institution<sup>10</sup> to manage liquidity risk using processes and systems that are commensurate with the institution's complexity, risk profile, and scope of operations. Liquidity risk management processes and plans should be well documented and available for supervisory review. Failure to maintain an adequate liquidity risk management process will be considered an unsafe and unsound practice.

##### Liquidity and Liquidity Risk

4. *Liquidity* is a financial institution's capacity to meet its cash and collateral obligations at a reasonable cost. Maintaining an adequate level of liquidity depends on the institution's ability to efficiently meet both expected and unexpected cash flows and collateral needs without adversely affecting either daily operations or the financial condition of the institution.

5. *Liquidity risk* is the risk that an institution's financial condition or overall safety and soundness is adversely affected by an inability (or perceived inability) to meet its

<sup>9</sup> Basel Committee on Banking Supervision, "Principles for Sound Liquidity Risk Management and Supervision," September 2008. See <http://www.bis.org/publ/bcb144.htm>. Federally insured credit unions are not directly referenced in the principles issued by the Basel Committee.

<sup>10</sup> Unless otherwise indicated, this interagency guidance uses the term "depository financial institutions" or "institutions" to include banks, saving associations, and federally insured natural person credit unions. Federally insured credit unions (FICUs) do not have holding company affiliations, and, therefore, references to holding companies contained within this guidance are not applicable to FICUs.



obligations. An institution's obligations, and the funding sources used to meet them, depend significantly on its business mix, balance-sheet structure, and the cash flow profiles of its on- and off-balance-sheet obligations. In managing their cash flows, institutions confront various situations that can give rise to increased liquidity risk. These include funding mismatches, market constraints on the ability to convert assets into cash or in accessing sources of funds (*i.e.*, market liquidity), and contingent liquidity events. Changes in economic conditions or exposure to credit, market, operation, legal, and reputation risks also can affect an institution's liquidity risk profile and should be considered in the assessment of liquidity and asset/liability management.

#### Sound Practices of Liquidity Risk Management

6. An institution's liquidity management process should be sufficient to meet its daily funding needs and cover both expected and unexpected deviations from normal operations. Accordingly, institutions should have a comprehensive management process for identifying, measuring, monitoring, and controlling liquidity risk. Because of the critical importance to the viability of the institution, liquidity risk management should be fully integrated into the institution's risk management processes. Critical elements of sound liquidity risk management include:

- Effective corporate governance consisting of oversight by the board of directors and active involvement by management in an institution's control of liquidity risk.
- Appropriate strategies, policies, procedures, and limits used to manage and mitigate liquidity risk.
- Comprehensive liquidity risk measurement and monitoring systems (including assessments of the current and prospective cash flows or sources and uses of funds) that are commensurate with the complexity and business activities of the institution.
- Active management of intraday liquidity and collateral.
- An appropriately diverse mix of existing and potential future funding sources.
- Adequate levels of highly liquid marketable securities free of legal, regulatory, or operational impediments, that can be used to meet liquidity needs in stressful situations.
- Comprehensive contingency funding plans (CFPs) that sufficiently address potential adverse liquidity

events and emergency cash flow requirements.

- Internal controls and internal audit processes sufficient to determine the adequacy of the institution's liquidity risk management process.

Supervisors will assess these critical elements in their reviews of an institution's liquidity risk management process in relation to its size, complexity, and scope of operations.

#### Corporate Governance

7. The board of directors is ultimately responsible for the liquidity risk assumed by the institution. As a result, the board should ensure that the institution's liquidity risk tolerance is established and communicated in such a manner that all levels of management clearly understand the institution's approach to managing the trade-offs between liquidity risk and short-term profits. The board of directors or its delegated committee of board members should oversee the establishment and approval of liquidity management strategies, policies and procedures, and review them at least annually. In addition, the board should ensure that it:

- Understands the nature of the liquidity risks of its institution and periodically reviews information necessary to maintain this understanding.
- Establishes executive-level lines of authority and responsibility for managing the institution's liquidity risk.
- Enforces management's duties to identify, measure, monitor, and control liquidity risk.
- Understands and periodically reviews the institution's CFPs for handling potential adverse liquidity events.
- Understands the liquidity risk profiles of important subsidiaries and affiliates as appropriate.

8. Senior management is responsible for ensuring that board-approved strategies, policies, and procedures for managing liquidity (on both a long-term and day-to-day basis) are appropriately executed within the lines of authority and responsibility designated for managing and controlling liquidity risk. This includes overseeing the development and implementation of appropriate risk measurement and reporting systems, liquid buffers (*e.g.*, cash, unencumbered marketable securities, and market instruments), CFPs, and an adequate internal control infrastructure. Senior management is also responsible for regularly reporting to the board of directors on the liquidity risk profile of the institution.

9. Senior management should determine the structure, responsibilities, and controls for managing liquidity risk and for overseeing the liquidity positions of the institution. These elements should be clearly documented in liquidity risk policies and procedures. For institutions comprised of multiple entities, such elements should be fully specified and documented in policies for each material legal entity and subsidiary. Senior management should be able to monitor liquidity risks for each entity across the institution on an ongoing basis. Processes should be in place to ensure that the group's senior management is actively monitoring and quickly responding to all material developments and reporting to the boards of directors as appropriate.

10. Institutions should clearly identify the individuals or committees responsible for implementing and making liquidity risk decisions. When an institution uses an asset/liability committee (ALCO) or other similar senior management committee, the committee should actively monitor the institution's liquidity profile and should have sufficiently broad representation across major institutional functions that can directly or indirectly influence the institution's liquidity risk profile (*e.g.*, lending, investment securities, wholesale and retail funding). Committee members should include senior managers with authority over the units responsible for executing liquidity-related transactions and other activities within the liquidity risk management process. In addition, the committee should ensure that the risk measurement system adequately identifies and quantifies risk exposure. The committee also should ensure that the reporting process communicates accurate, timely, and relevant information about the level and sources of risk exposure.

#### Strategies, Policies, Procedures, and Risk Tolerances

11. Institutions should have documented strategies for managing liquidity risk and clear policies and procedures for limiting and controlling risk exposures that appropriately reflect the institution's risk tolerances. Strategies should identify primary sources of funding for meeting daily operating cash outflows, as well as seasonal and cyclical cash flow fluctuations. Strategies should also address alternative responses to various

adverse business scenarios.<sup>11</sup> Policies and procedures should provide for the formulation of plans and courses of actions for dealing with potential temporary, intermediate-term, and long-term liquidity disruptions. Policies, procedures, and limits also should address liquidity separately for individual currencies, legal entities, and business lines, when appropriate and material, and should allow for legal, regulatory, and operational limits for the transferability of liquidity as well. Senior management should coordinate the institution's liquidity risk management with disaster, contingency, and strategic planning efforts, as well as with business line and risk management objectives, strategies, and tactics.

12. Policies should clearly articulate a liquidity risk tolerance that is appropriate for the business strategy of the institution considering its complexity, business mix, liquidity risk profile, and its role in the financial system. Policies should also contain provisions for documenting and periodically reviewing assumptions used in liquidity projections. Policy guidelines should employ both quantitative targets and qualitative guidelines. For example, these measurements, limits, and guidelines may be specified in terms of the following measures and conditions, as applicable:

- Cash flow projections that include discrete and cumulative cash flow mismatches or gaps over specified future time horizons under both expected and adverse business conditions.

- Target amounts of unencumbered liquid asset reserves.

- Measures used to identify unstable liabilities and liquid asset coverage ratios. For example, these may include ratios of wholesale funding to total liabilities, potentially volatile retail (e.g., high-cost or out-of-market) deposits to total deposits, and other liability dependency measures, such as short-term borrowings as a percent of total funding.

- Asset concentrations that could increase liquidity risk through a limited ability to convert to cash (e.g., complex financial instruments,<sup>12</sup> bank-owned

(corporate-owned) life insurance, and less marketable loan portfolios).

- Funding concentrations that address diversification of funding sources and types, such as large liability and borrowed funds dependency, secured versus unsecured funding sources, exposures to single providers of funds, exposures to funds providers by market segments, and different types of brokered deposits or wholesale funding.

- Funding concentrations that address the term, re-pricing, and market characteristics of funding sources with consideration given to the nature of the assets they fund. This may include diversification targets for short-, medium-, and long-term funding; instrument type and securitization vehicles; and guidance on concentrations for currencies and geographical markets.

- Contingent liability exposures such as unfunded loan commitments, lines of credit supporting asset sales or securitizations, and collateral requirements for derivatives transactions and various types of secured lending.

- Exposures of material activities, such as securitization, derivatives, trading, transaction processing, and international activities, to broad systemic and adverse financial market events. This is most applicable to institutions with complex and sophisticated liquidity risk profiles.

- Alternative measures and conditions may be appropriate for certain institutions.

13. Policies also should specify the nature and frequency of management reporting. In normal business environments, senior managers should receive liquidity risk reports at least monthly, while the board of directors should receive liquidity risk reports at least quarterly. Depending upon the complexity of the institution's business mix and liquidity risk profile, management reporting may need to be more frequent. Regardless of an institution's complexity, it should have the ability to increase the frequency of reporting on short notice, if the need arises. Liquidity risk reports should impart to senior management and the board a clear understanding of the institution's liquidity risk exposure, compliance with risk limits, consistency between management's strategies and tactics, and consistency between these strategies and the board's expressed risk tolerance.

14. Institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for both liquidity

risk exposure and profitability. More complex and sophisticated institutions should incorporate liquidity costs, benefits, and risks in the internal product pricing, performance measurement, and new product approval process for all material business lines, products, and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level and should include consideration of how liquidity would be affected under stressed conditions.

Liquidity Risk Measurement, Monitoring, and Reporting

15. The process of measuring liquidity risk should include robust methods for comprehensively projecting cash flows arising from assets, liabilities, and off-balance-sheet items over an appropriate set of time horizons. For example, time buckets may be daily for very short timeframes out to weekly, monthly, and quarterly for longer time frames. Pro forma cash flow statements are a critical tool for adequately managing liquidity risk. Cash flow projections can range from simple spreadsheets to very detailed reports depending upon the complexity and sophistication of the institution and its liquidity risk profile under alternative scenarios. Given the critical importance that assumptions play in constructing measures of liquidity risk and projections of cash flows, institutions should ensure that the assumptions used are reasonable, appropriate, and adequately documented. Institutions should periodically review and formally approve these assumptions. Institutions should focus particular attention on the assumptions used in assessing the liquidity risk of complex assets, liabilities, and off-balance-sheet positions. Assumptions applied to positions with uncertain cash flows, including the stability of retail and brokered deposits and secondary market issuances and borrowings, are especially important when they are used to evaluate the availability of alternative sources of funds under adverse contingent liquidity scenarios. Such scenarios include, but are not limited to, deterioration in the institution's asset quality or capital adequacy.

16. Institutions should ensure that assets are properly valued according to relevant financial reporting and supervisory standards. An institution should fully factor into its risk

<sup>11</sup> In formulating liquidity management strategies, members of complex banking groups should take into consideration their legal structures (e.g., branches versus separate legal entities and operating subsidiaries), key business lines, markets, products, and jurisdictions in which they operate.

<sup>12</sup> Financial instruments that are illiquid, difficult to value, or marked by the presence of cash flows that are irregular, uncertain, or difficult to model.

management practices the consideration that valuations may deteriorate under market stress and take this into account in assessing the feasibility and impact of asset sales on its liquidity position during stress events.

17. Institutions should ensure that their vulnerabilities to changing liquidity needs and liquidity capacities are appropriately assessed within meaningful time horizons, including intraday, day-to-day, short-term weekly and monthly horizons, medium-term horizons of up to one year, and longer-term liquidity needs of one year or more. These assessments should include vulnerabilities to events, activities, and strategies that can significantly strain the capability to generate internal cash.

#### Stress Testing

18. Institutions should conduct stress tests regularly for a variety of institution-specific and marketwide events across multiple time horizons. The magnitude and frequency of stress testing should be commensurate with the complexity of the financial institution and the level of its risk exposures. Stress test outcomes should be used to identify and quantify sources of potential liquidity strain and to analyze possible impacts on the institution's cash flows, liquidity position, profitability, and solvency. Stress tests should also be used to ensure that current exposures are consistent with the financial institution's established liquidity risk tolerance. Management's active involvement and support is critical to the effectiveness of the stress testing process. Management should discuss the results of stress tests and take remedial or mitigating actions to limit the institution's exposures, build up a liquidity cushion, and adjust its liquidity profile to fit its risk tolerance. The results of stress tests should also play a key role in shaping the institution's contingency planning. As such, stress testing and contingency planning are closely intertwined.

#### Collateral Position Management

19. An institution should have the ability to calculate all of its collateral positions in a timely manner, including the value of assets currently pledged relative to the amount of security required and unencumbered assets available to be pledged. An institution's level of available collateral should be monitored by legal entity, jurisdiction, and currency exposure, and systems should be capable of monitoring shifts between intraday and overnight or term collateral usage. An institution should be aware of the operational and timing

requirements associated with accessing the collateral given its physical location (i.e., the custodian institution or securities settlement system with which the collateral is held). Institutions should also fully understand the potential demand on required and available collateral arising from various types of contractual contingencies during periods of both marketwide and institution-specific stress.

#### Management Reporting

20. Liquidity risk reports should provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors. The types of reports or information and their timing will vary according to the complexity of the institution's operations and risk profile. Reportable items may include but are not limited to cash flow gaps, cash flow projections, asset and funding concentrations, critical assumptions used in cash flow projections, key early warning or risk indicators, funding availability, status of contingent funding sources, or collateral usage. Institutions should also report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

#### Liquidity Across Currencies, Legal Entities, and Business Lines

21. A depository institution should actively monitor and control liquidity risk exposures and funding needs within and across currencies, legal entities, and business lines. Also, depository institutions should take into account operational limitations to the transferability of liquidity, and should maintain sufficient liquidity to ensure compliance during economically stressed periods with applicable legal and regulatory restrictions on the transfer of liquidity among regulated entities. The degree of centralization in managing liquidity should be appropriate for the depository institution's business mix and liquidity risk profile.<sup>13</sup> The agencies expect depository institutions to maintain adequate liquidity both at the

consolidated level and at significant legal entities.

22. Regardless of its organizational structure, it is important that an institution actively monitor and control liquidity risks at the level of individual legal entities, and the group as a whole, incorporating processes that aggregate data across multiple systems in order to develop a group-wide view of liquidity risk exposures. It is also important that the institution identify constraints on the transfer of liquidity within the group.

23. Assumptions regarding the transferability of funds and collateral should be described in liquidity risk management plans.

#### Intraday Liquidity Position Management

24. Intraday liquidity monitoring is an important component of the liquidity risk management process for institutions engaged in significant payment, settlement, and clearing activities. An institution's failure to manage intraday liquidity effectively, under normal and stressed conditions, could leave it unable to meet payment and settlement obligations in a timely manner, adversely affecting its own liquidity position and that of its counterparties. Among large, complex organizations, the interdependencies that exist among payment systems and the inability to meet certain critical payments has the potential to lead to systemic disruptions that can prevent the smooth functioning of all payment systems and money markets. Therefore, institutions with material payment, settlement and clearing activities should actively manage their intraday liquidity positions and risks to meet payment and settlement obligations on a timely basis under both normal and stressed conditions. Senior management should develop and adopt an intraday liquidity strategy that allows the institution to:

- Monitor and measure expected daily gross liquidity inflows and outflows.
- Manage and mobilize collateral when necessary to obtain intraday credit.
- Identify and prioritize time-specific and other critical obligations in order to meet them when expected.
- Settle other less critical obligations as soon as possible.
- Control credit to customers when necessary.
- Ensure that liquidity planners understand the amounts of collateral and liquidity needed to perform payment-system obligations when assessing the organization's overall liquidity needs.

<sup>13</sup> Institutions subject to multiple regulatory jurisdictions should have management strategies and processes that recognize the potential limitations of liquidity transferability, as well as the need to meet the liquidity requirements of foreign jurisdictions.

### Diversified Funding

25. An institution should establish a funding strategy that provides effective diversification in the sources and tenor of funding. It should maintain an ongoing presence in its chosen funding markets and strong relationships with funds providers to promote effective diversification of funding sources. An institution should regularly gauge its capacity to raise funds quickly from each source. It should identify the main factors that affect its ability to raise funds and monitor those factors closely to ensure that estimates of fund raising capacity remain valid.

26. An institution should diversify available funding sources in the short-, medium-, and long-term. Diversification targets should be part of the medium- to long-term funding plans and should be aligned with the budgeting and business planning process. Funding plans should take into account correlations between sources of funds and market conditions. Funding should also be diversified across a full range of retail as well as secured and unsecured wholesale sources of funds, consistent with the institution's sophistication and complexity. Management should also consider the funding implications of any government programs or guarantees it uses. As with wholesale funding, the potential unavailability of government programs over the intermediate- and long-term should be fully considered in the development of liquidity risk management strategies, tactics, and risk tolerances. Funding diversification should be implemented using limits addressing counterparties, secured versus unsecured market funding, instrument type, securitization vehicle, and geographic market. In general, funding concentrations should be avoided. Undue over-reliance on any one source of funding is considered an unsafe and unsound practice.

27. An essential component of ensuring funding diversity is maintaining market access. Market access is critical for effective liquidity risk management as it affects both the ability to raise new funds and to liquidate assets. Senior management should ensure that market access is being actively managed, monitored, and tested by the appropriate staff. Such efforts should be consistent with the institution's liquidity risk profile and sources of funding. For example, access to the capital markets is an important consideration for most large complex institutions, whereas the availability of correspondent lines of credit and other

sources of wholesale funds are critical for smaller, less complex institutions.

28. An institution should identify alternative sources of funding that strengthen its capacity to withstand a variety of severe institution-specific and marketwide liquidity shocks. Depending upon the nature, severity, and duration of the liquidity shock, potential sources of funding include, but are not limited to, the following:

- Deposit growth.
- Lengthening maturities of liabilities.
- Issuance of debt instruments.<sup>14</sup>
- Sale of subsidiaries or lines of business.
- Asset securitization.
- Sale (either outright or through repurchase agreements) or pledging of liquid assets.
- Drawing down committed facilities.
- Borrowing.

### Cushion of Liquid Assets

29. Liquid assets are an important source of both primary (operating liquidity) and secondary (contingent liquidity) funding at many institutions. Indeed, a critical component of an institution's ability to effectively respond to potential liquidity stress is the availability of a cushion of highly liquid assets without legal, regulatory, or operational impediments (i.e., unencumbered) that can be sold or pledged to obtain funds in a range of stress scenarios. These assets should be held as insurance against a range of liquidity stress scenarios including those that involve the loss or impairment of typically available unsecured and/or secured funding sources. The size of the cushion of such high-quality liquid assets should be supported by estimates of liquidity needs performed under an institution's stress testing as well as aligned with the risk tolerance and risk profile of the institution. Management estimates of liquidity needs during periods of stress should incorporate both contractual and noncontractual cash flows, including the possibility of funds being withdrawn. Such estimates should also assume the inability to obtain unsecured and uninsured funding as well as the loss or impairment of access to funds secured by assets other than the safest, most liquid assets.

<sup>14</sup> Federally insured credit unions can borrow funds (which includes issuing debt) as given in section 106 of the Federal Credit Union Act (FCUA). Section 106 of the FCUA as well as section 741.2 of the NCUA Rules and Regulations establish specific limitations on the amount that can be borrowed. Federal Credit Unions can borrow from natural persons in accordance with the requirements of part 701.38 of the NCUA Rules and Regulations.

30. Management should ensure that unencumbered, highly liquid assets are readily available and are not pledged to payment systems or clearing houses. The quality of unencumbered liquid assets is important as it will ensure accessibility during the time of most need. An institution could use its holdings of high-quality securities, for example, U.S. Treasury securities, securities issued by U.S. government-sponsored agencies, excess reserves at the central bank or similar instruments, and enter into repurchase agreements in response to the most severe stress scenarios.

### Contingency Funding Plan<sup>15</sup>

31. All financial institutions, regardless of size and complexity, should have a formal CFP that clearly sets out the strategies for addressing liquidity shortfalls in emergency situations. A CFP should delineate policies to manage a range of stress environments, establish clear lines of responsibility, and articulate clear implementation and escalation procedures. It should be regularly tested and updated to ensure that it is operationally sound. For certain components of the CFP, affirmative testing (e.g., liquidation of assets) may be impractical. In these instances, institutions should be sure to test operational components of the CFP. For example, ensuring that roles and responsibilities are up-to-date and appropriate; ensuring that legal and operational documents are up-to-date and appropriate; and ensuring that cash and collateral can be moved where and when needed, and ensuring that contingent liquidity lines can be drawn when needed.

32. Contingent liquidity events are unexpected situations or business conditions that may increase liquidity risk. The events may be institution-specific or arise from external factors and may include:

- The institution's inability to fund asset growth.
- The institution's inability to renew or replace maturing funding liabilities.
- Customers unexpectedly exercising options to withdraw deposits or exercise off-balance-sheet commitments.
- Changes in market value and price volatility of various asset types.
- Changes in economic conditions, market perception, or dislocations in the financial markets.

<sup>15</sup> Financial institutions that have had their liquidity supported by temporary government programs administered by the Department of the Treasury, Federal Reserve and/or FDIC should not base their liquidity strategies on the belief that such programs will remain in place indefinitely.

- Disturbances in payment and settlement systems due to operational or local disasters.

33. Insured institutions should be prepared for the specific contingencies that will be applicable to them if they become less than Well Capitalized pursuant to Prompt Correction Action (PCA) provisions under the Federal Deposit Insurance Corporation Improvement Act.<sup>16</sup> Contingencies may include restricted rates paid for deposits, the need to seek approval from the FDIC/NCUA to accept brokered deposits, and the inability to accept any brokered deposits.<sup>17</sup>

34. A CFP provides a documented framework for managing unexpected liquidity situations. The objective of the CFP is to ensure that the institution's sources of liquidity are sufficient to fund normal operating requirements under contingent events. A CFP also identifies alternative contingent liquidity resources<sup>18</sup> that can be employed under adverse liquidity circumstances. An institution's CFP should be commensurate with its complexity, risk profile, and scope of operations. As macroeconomic and institution-specific conditions change, CFPs should be revised to reflect these changes.

35. Contingent liquidity events can range from high-probability/low-impact events to low-probability/high-impact events. Institutions should incorporate planning for high-probability/low-impact liquidity risks into the day-to-day management of sources and uses of funds. Institutions can generally accomplish this by assessing possible variations around expected cash flow projections and providing for adequate liquidity reserves and other means of raising funds in the normal course of business. In contrast, all financial institution CFPs will typically focus on

events that, while relatively infrequent, could significantly impact the institution's operations. A CFP should:

- *Identify Stress Events.* Stress events are those that may have a significant impact on the institution's liquidity given its specific balance-sheet structure, business lines, organizational structure, and other characteristics. Possible stress events may include deterioration in asset quality, changes in agency credit ratings, PCA capital categories and CAMELS<sup>19</sup> ratings downgrades, widening of credit default spreads, operating losses, declining financial institution equity prices, negative press coverage, or other events that may call into question an institution's ability to meet its obligations.

- *Assess Levels of Severity and Timing.* The CFP should delineate the various levels of stress severity that can occur during a contingent liquidity event and identify the different stages for each type of event. The events, stages, and severity levels identified should include temporary disruptions, as well as those that might be more intermediate term or longer-term. Institutions can use the different stages or levels of severity identified to design early-warning indicators, assess potential funding needs at various points in a developing crisis, and specify comprehensive action plans. The length of the scenario will be determined by the type of stress event being modeled and should encompass the duration of the event.

- *Assess Funding Sources and Needs.* A critical element of the CFP is the quantitative projection and evaluation of expected funding needs and funding capacity during the stress event. This entails an analysis of the potential erosion in funding at alternative stages or severity levels of the stress event and the potential cash flow mismatches that may occur during the various stress levels. Management should base such analysis on realistic assessments of the behavior of funds providers during the event and incorporate alternative contingency funding sources. The analysis also should include all material on- and off-balance-sheet cash flows and their related effects. The result should be a realistic analysis of cash inflows, outflows, and funds availability at different time intervals during the potential liquidity stress event in order

to measure the institution's ability to fund operations. Common tools to assess funding mismatches include:

- *Liquidity gap analysis*—A cash flow report that essentially represents a base case estimate of where funding surpluses and shortfalls will occur over various future time frames.

- *Stress tests*—A pro forma cash flow report with the ability to estimate future funding surpluses and shortfalls under various liquidity stress scenarios and the institution's ability to fund expected asset growth projections or sustain an orderly liquidation of assets under various stress events.

- *Identify Potential Funding Sources.* Because liquidity pressures may spread from one funding source to another during a significant liquidity event, institutions should identify alternative sources of liquidity and ensure ready access to contingent funding sources. In some cases, these funding sources may rarely be used in the normal course of business. Therefore, institutions should conduct advance planning and periodic testing to ensure that contingent funding sources are readily available when needed.

- *Establish Liquidity Event Management Processes.* The CFP should provide for a reliable crisis management team and administrative structure, including realistic action plans used to execute the various elements of the plan for given levels of stress. Frequent communication and reporting among team members, the board of directors, and other affected managers optimize the effectiveness of a contingency plan during an adverse liquidity event by ensuring that business decisions are coordinated to minimize further disruptions to liquidity. Such events may also require the daily computation of regular liquidity risk reports and supplemental information. The CFP should provide for more frequent and more detailed reporting as the stress situation intensifies.

- *Establish a Monitoring Framework for Contingent Events.* Institution management should monitor for potential liquidity stress events by using early-warning indicators and event triggers. The institution should tailor these indicators to its specific liquidity risk profile. The early recognition of potential events allows the institution to position itself into progressive states of readiness as the event evolves, while providing a framework to report or communicate within the institution and to outside parties. Early-warning signals may include, but are not limited to, negative publicity concerning an asset class owned by the institution, increased potential for deterioration in

<sup>16</sup> See 12 U.S.C. 1831o; 12 CFR 6 (OCC), 12 CFR 208.40 (FRB), 12 CFR 325.101 (FDIC), and 12 CFR 565 (OTS) and 12 U.S.C. 1790d; 12 CFR 702 (NCUA).

<sup>17</sup> Section 38 of the FDI Act (12 U.S.C. 1831o) requires insured depository institutions that are not well capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. Section 216 of the Federal Credit Union Act and part 702 of the NCUA Rules and Regulations establish the requirements and restrictions for federally insured credit unions under Prompt Corrective Action. For brokered, nonmember deposits, additional restrictions apply to federal credit unions as given in parts 701.32 and 742 of the NCUA Rules and Regulations.

<sup>18</sup> There may be time constraints, sometimes lasting weeks, encountered in initially establishing lines with FRB and/or FHLB. As a result, financial institutions should plan to have these lines set up well in advance.

<sup>19</sup> Federally insured credit unions are evaluated using the "CAMEL" rating system, which is substantially similar to the "CAMELS" system without the "S" component for rating Sensitivity to market risk. Information on NCUA's rating system can be found in Letter to Credit Unions 07-CU-12, CAMEL Rating System.

the institution's financial condition, widening debt or credit default swap spreads, and increased concerns over the funding of off-balance-sheet items.

36. To mitigate the potential for reputation contagion, effective communication with counterparties, credit-rating agencies, and other stakeholders when liquidity problems arise is of vital importance. Smaller institutions that rarely interact with the media should have plans in place for how they will manage press inquiries that may arise during a liquidity event. In addition, groupwide contingency funding plans, liquidity cushions, and multiple sources of funding are mechanisms that may mitigate reputation concerns.

37. In addition to early-warning indicators, institutions that issue public debt, use warehouse financing, securitize assets, or engage in material over-the-counter derivative transactions typically have exposure to event triggers embedded in the legal documentation governing these transactions. Institutions that rely upon brokered deposits should also incorporate PCA-related downgrade triggers into their CFPs since a change in PCA status could have a material bearing on the availability of this funding source. Contingent event triggers should be an integral part of the liquidity risk monitoring system. Institutions that originate and/or purchase loans for asset securitization programs pose heightened liquidity risk concerns due to the unexpected funding needs associated with an early amortization event or disruption of warehouse funding. Institutions that securitize assets should have liquidity contingency plans that address these risks.

38. Institutions that rely upon secured funding sources also are subject to potentially higher margin or collateral requirements that may be triggered upon the deterioration of a specific portfolio of exposures or the overall financial condition of the institution. The ability of a financially stressed institution to meet calls for additional collateral should be considered in the CFP. Potential collateral values also should

be subject to stress tests since devaluations or market uncertainty could reduce the amount of contingent funding that can be obtained from pledging a given asset. Additionally, triggering events should be understood and monitored by liquidity managers.

39. Institutions should test various elements of the CFP to assess their reliability under times of stress. Institutions that rarely use the type of funds they identify as standby sources of liquidity in a stress situation, such as the sale or securitization of loans, securities repurchase agreements, Federal Reserve discount window borrowing, or other sources of funds, should periodically test the operational elements of these sources to ensure that they work as anticipated. However, institutions should be aware that during real stress events, prior market access testing does not guarantee that these funding sources will remain available within the same time frames and/or on the same terms.

40. Larger, more complex institutions can benefit by employing operational simulations to test communications, coordination, and decision making involving managers with different responsibilities, in different geographic locations, or at different operating subsidiaries. Simulations or tests run late in the day can highlight specific problems such as difficulty in selling assets or borrowing new funds at a time when business in the capital markets may be less active.

#### Internal Controls

41. An institution's internal controls consist of procedures, approval processes, reconciliations, reviews, and other mechanisms designed to provide assurance that the institution manages liquidity risk consistent with board-approved policy. Appropriate internal controls should address relevant elements of the risk management process, including adherence to policies and procedures, the adequacy of risk identification, risk measurement, reporting, and compliance with applicable rules and regulations.

42. Management should ensure that an independent party regularly reviews

and evaluates the various components of the institution's liquidity risk management process. These reviews should assess the extent to which the institution's liquidity risk management complies with both supervisory guidance and industry sound practices, taking into account the level of sophistication and complexity of the institution's liquidity risk profile.<sup>20</sup> Smaller, less-complex institutions may achieve independence by assigning this responsibility to the audit function or other qualified individuals independent of the risk management process. The independent review process should report key issues requiring attention including instances of noncompliance to the appropriate level of management for prompt corrective action consistent with approved policy.

Dated: March 3, 2010.

**John C. Dugan,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, March 15, 2010.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, the 4th day of March 2010.

By order of the Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

Dated: March 16, 2010.

By the Office of Thrift Supervision.

**John E. Bowman,**

*Acting Director.*

Dated: March 4, 2010.

By the National Credit Union Administration Board.

**Mary F. Rupp,**

*Secretary of the Board.*

[FR Doc. 2010-6137 Filed 3-19-10; 8:45 am]

**BILLING CODE 6720-01-P; 4810-33-P; 6210-01-P; 6714-01-P; 7535-01-P**

<sup>20</sup>This includes the standards established in this interagency guidance as well as the supporting material each agency provides in its examination manuals and handbooks directed at their supervised institutions. Industry standards include those advanced by recognized industry associations and groups.

# Reader Aids

## Federal Register

Vol. 75, No. 54

Monday, March 22, 2010

### CUSTOMER SERVICE AND INFORMATION

<b>Federal Register/Code of Federal Regulations</b>	
General Information, indexes and other finding aids	<b>202-741-6000</b>
<b>Laws</b>	<b>741-6000</b>
<b>Presidential Documents</b>	
Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6064</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>
TTY for the deaf-and-hard-of-hearing	<b>741-6086</b>

### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.gpoaccess.gov/nara/index.html>

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register)

#### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

### FEDERAL REGISTER PAGES AND DATE, MARCH

9085-9326.....	1	13427-13666.....	22
9327-9514.....	2		
9515-9752.....	3		
9753-10158.....	4		
10159-10408.....	5		
10409-10630.....	8		
10631-10990.....	9		
10991-11418.....	10		
11419-11732.....	11		
11733-12118.....	12		
12119-12432.....	15		
12433-12656.....	16		
12657-12960.....	17		
12961-13214.....	18		
13215-13426.....	19		

### CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>3 CFR</b>		145.....	10645
<b>Proclamations:</b>		146.....	10645
		147.....	10645
8478.....	9325		
8479.....	10159		
8480.....	10161		
8481.....	10631		
8482.....	10991		
8483.....	10993		
8484.....	13215		
<b>Executive Orders:</b>			
13394 (revoked by			
13533).....		10163	
13532.....	9749		
13533.....	10163		
13534.....	12433		
<b>Administrative Orders:</b>			
<b>Notices:</b>			
Notice of February 26,			
2010.....		10157	
Notice of March 10,			
2010.....		12117	
<b>Memorandums:</b>			
Memorandums of			
March 10, 2010.....		12119,	
		13427	
<b>5 CFR</b>			
2423.....	13429		
<b>6 CFR</b>			
5.....	9085, 10633, 12437		
<b>7 CFR</b>			
301.....	12961		
354.....	10634		
966.....	10409		
1000.....	10122		
1001.....	10122		
1005.....	10122		
1006.....	10122		
1007.....	10122		
1030.....	10122		
1032.....	10122		
1033.....	10122		
1124.....	10122		
1126.....	10122		
1131.....	10122		
1580.....	9087		
<b>Proposed Rules:</b>			
46.....	11472		
319.....	11071		
923.....	10442		
930.....	12702		
932.....	9536		
985.....	13445		
1208.....	13238		
1218.....	12707		
3550.....	10194		
<b>9 CFR</b>			
53.....	10645		
56.....	10645		
<b>10 CFR</b>			
50.....	10410		
430.....	13217		
431.....	10874, 10950		
440.....	11419		
<b>Proposed Rules:</b>			
73.....	10444		
170.....	11376		
171.....	11376		
430.....	12144		
431.....	9120		
<b>11 CFR</b>			
<b>Notices:</b>			
100.....	13223		
106.....	13223		
<b>12 CFR</b>			
201.....	9093		
360.....	12962		
617.....	10411		
<b>Proposed Rules:</b>			
205.....	9120		
226.....	12334		
230.....	9126		
906.....	10446		
1207.....	10446		
1807.....	12408		
<b>13 CFR</b>			
301.....	11733		
<b>Proposed Rules:</b>			
121.....	9129, 10030		
124.....	9129		
125.....	9129		
126.....	9129		
127.....	10030		
134.....	9129, 10030		
<b>14 CFR</b>			
1.....	9095		
21.....	9095		
25.....	12965		
26.....	11734		
39.....	9515, 9753, 9756, 9760,		
	10658, 10664, 10667, 10669,		
	11422, 11428, 11433, 11435,		
	11439, 12438, 12439, 12441,		
	12657, 12659, 12661, 12663,		
	12665, 12667, 12670, 12968,		
	12971, 13225		
43.....	9095		
45.....	9095		
61.....	9763		
63.....	9763		
65.....	9763		
71.....	12674, 12675, 12676,		
	12677, 12678, 12679, 12680,		
	12972, 12973, 12974, 12975		

73.....12976  
 91.....9327  
 95.....10995  
 97...9095, 9098, 12977, 12979  
 121.....12121  
**Proposed Rules:**  
 29.....11799  
 35.....13238  
 39.....9137, 9140, 9809, 9811,  
 9814, 9816, 10694, 10696,  
 10701, 11072, 12148, 12150,  
 12152, 12154, 12158, 12464,  
 12466, 12468, 12710, 12713,  
 13045, 13046, 13239, 13451  
 71.....9538, 11475, 11476,  
 11477, 11479, 11480, 11481,  
 12161, 12162, 12163, 12165,  
 12166, 13049, 13453  
 234.....11075  
**15 CFR**  
 902.....11441  
**Proposed Rules:**  
 801.....10704  
 904.....13050  
**16 CFR**  
 610.....9726  
**Proposed Rules:**  
 Ch. I.....12715  
 305.....11483  
 306.....12470  
 322.....10707  
 1450.....12167  
**17 CFR**  
 242.....11232  
 249.....9100  
 270.....10060  
 274.....10060  
**18 CFR**  
 1301.....11735  
**Proposed Rules:**  
 410.....11502  
**19 CFR**  
 Ch. I.....12445  
 Ch. IV.....12445  
 12.....10411  
**Proposed Rules:**  
 113.....9359  
 159.....12483  
 191.....9359  
**20 CFR**  
 655.....10396  
**Proposed Rules:**  
 404.....9821  
 416.....9821  
**21 CFR**  
 333.....9767  
 514.....10413  
 520.....10165, 12981  
 522.....9333, 10165, 13225  
 524.....10165  
 526.....10165  
 558.....9334, 11451  
 1140.....13225  
 1301.....10671  
 1303.....10671  
 1304.....10671  
 1307.....10671  
 1308.....10671

1309.....10671  
 1310.....10671  
 1312.....10671  
 1313.....10168, 10671  
 1314.....10671  
 1315.....10671  
 1316.....10671  
 1321.....10671  
**Proposed Rules:**  
 1140.....13241  
**24 CFR**  
**Proposed Rules:**  
 1000.....13243  
**26 CFR**  
 1.....9101, 10172  
**Proposed Rules:**  
 1.....9141, 9142  
 31.....9142  
 301.....9142  
**27 CFR**  
**Proposed Rules:**  
 9.....9827, 9831  
 28.....9359  
 44.....9359  
**28 CFR**  
 2.....9516  
 43.....9102  
**Proposed Rules:**  
 115.....11077  
 545.....9544  
**29 CFR**  
 1910.....12681  
 1915.....12681  
 1926.....12681  
 2520.....9334  
 4022.....12121  
 4044.....12121  
**Proposed Rules:**  
 9.....13382  
 1904.....10738  
 1910.....10739, 12485, 12718  
 1915.....12485, 12718  
 1926.....12485, 12718  
 2550.....9360  
**31 CFR**  
 515.....10996, 10997  
 538.....10997  
 560.....10997  
**32 CFR**  
 706.....10413  
**Proposed Rules:**  
 157.....9548  
 240.....9142  
**33 CFR**  
 117.....9521, 10172, 12686,  
 12688  
 165.....10687, 11000, 12688,  
 13232, 13433  
 401.....10688  
**Proposed Rules:**  
 100.....13454  
 117.....9557  
 165.....9370, 10195, 10446  
 334.....12718  
**34 CFR**  
 Ch. II.....12004

280.....9777  
**36 CFR**  
 1254.....10414  
**Proposed Rules:**  
 1191.....13457  
 1193.....13457  
 1194.....13457  
**38 CFR**  
**Proposed Rules:**  
 3.....13051  
**39 CFR**  
 111.....9343, 12981  
 121.....9343  
 310.....12123  
 320.....12123  
 3020.....9523, 11452, 12445  
**40 CFR**  
 49.....10174  
 52.....9103, 10182, 10415,  
 10416, 10420, 10690, 11461,  
 11464, 11738, 12088, 12449,  
 13436  
 55.....9780  
 63.....9648, 10184, 12988  
 70.....9106  
 80.....9107  
 81.....9781, 13436  
 98.....12451  
 180.....9527, 10186, 11740,  
 12691, 12695  
 260.....12989  
 261.....11002, 12989  
 262.....12989  
 263.....12989  
 264.....12989  
 265.....12989  
 266.....12989  
 268.....12989  
 270.....12989  
 271.....9345  
 300.....9782, 9790  
 450.....10438  
**Proposed Rules:**  
 52.....9146, 9373, 9834, 10198,  
 10449, 11503, 12090, 12168,  
 13058, 13468  
 70.....9147  
 81.....12090  
 98.....12489  
 131.....11079  
 260.....13066  
 261.....13066  
 262.....13066  
 263.....13066  
 264.....13066  
 265.....13066  
 266.....13066  
 268.....13066  
 270.....13066  
 300.....9843  
**43 CFR**  
 10.....12378  
**44 CFR**  
 64.....9111  
 65.....11744  
 67.....11468  
**Proposed Rules:**  
 67.....9561

**45 CFR**  
**Proposed Rules:**  
 170.....11328  
**47 CFR**  
 1.....9797  
 2.....10439  
 15.....9113  
 63.....13235  
 73.....9114, 9530, 9797, 10692,  
 13235, 13236  
 74.....9113  
 76.....9692, 12458  
 80.....10692  
**Proposed Rules:**  
 15.....9850  
 54.....10199  
 64.....13471  
 68.....13471  
 73.....9856, 9859  
**48 CFR**  
 1.....13412, 13425  
 13.....13413  
 14.....13425  
 15.....13414, 13415  
 16.....13416  
 25.....13421  
 52.....13421, 13422  
 53.....13415  
 217.....9114, 10190  
 237.....10191  
 252.....10191  
 Ch. 13.....10568  
**Proposed Rules:**  
 204.....9563  
 252.....9563  
 1809.....9860  
 1827.....9860  
 1837.....9860  
 1852.....9860  
**49 CFR**  
 40.....13009  
 172.....10974  
 395.....13441  
 541.....11005  
 571.....12123  
**Proposed Rules:**  
 71.....9568  
 172.....9147  
 173.....9147  
 175.....9147  
 389.....12720  
 395.....9376  
 575.....10740, 11806  
**50 CFR**  
 10.....9282  
 17.....11010, 12816  
 21.....9314, 9316  
 223.....13012  
 229.....12698  
 300.....13024  
 600.....9531  
 622.....9116, 10693, 11068  
 635.....12700  
 648.....11441, 12141, 12462  
 660.....11068  
 679.....9358, 9534, 10441,  
 11471, 11749, 11778, 12463,  
 13237, 13444  
**Proposed Rules:**  
 16.....11808  
 17.....9377, 11081, 12598,



---

223.....	13068	224.....	12598	648.....	10450
	12598	622.....	9864, 12169	660.....	11829

---

**LIST OF PUBLIC LAWS**

---

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal**

**Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

**S. 2968/P.L. 111-146**

Trademark Technical and Conforming Amendment Act of

2010 (Mar. 17, 2010; 124 Stat. 66)

**H.R. 2847/P.L. 111-147**

Hiring Incentives to Restore Employment Act (Mar. 18, 2010; 124 Stat. 71)

**Last List March 8, 2010**

---

**Public Laws Electronic Notification Service (PENS)**

---

**PENS** is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.