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WHEN: Tuesday, April 14, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 920

**[Docket No. AMS–FV–08–0095; FV09–920–1 FIR]**

## Kiwifruit Grown in California; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2008–09 and subsequent fiscal periods from $0.045 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Assessments upon kiwifruit handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* April 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, *telephone:* (559) 487–5901, *Fax:* (559) 487–5906, or *E-mail: Debbie.Wray@ams.usda.gov*, or *Kurt.Kimmel@ams.usda.gov*.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, 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.''

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, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning on August 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from $0.045 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit.

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

For the 2005–06 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on October 14, 2008, and unanimously recommended 2008–09 expenditures of $76,492 and an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $99,302. The assessment rate of $0.035 per 9-kilo volume-fill container or equivalent is $0.010 per 9-kilo volume-fill container or equivalent less than the rate previously in effect. The decreased assessment rate is primarily due to a decrease in management expenditures for the 2008–09 fiscal year.

The following table compares major budget expenditures recommended by the Committee for the 2007–08 and 2008–09 fiscal periods:

| Budget expense categories | 2007–08 | 2008–09 |
|---|---|---|
| Staff Salaries/Management | $65,150 | $56,700 |
| Financial Management Services | 12,000 | 1,000 |
| Audit Expense | 5,000 | 3,500 |
| Vehicle Maintenance/Insurance | 3,180 | ..... |
| Travel | 3,300 | 3,500 |
| Office Expenses | 2,830 | 4,500 |

The assessment rate recommended by the Committee was derived by using the following formula: Anticipated 2008–09 expenses ($76,492), minus the difference between the 2008 beginning reserve ($62,647) and the desired 2009 ending reserve ($54,311), divided by the total estimated 2008–09 shipments (1,944,444 9-kilo volume-fill containers). This formula results in the assessment rate of $0.035 per 9-kilo volume-fill container or equivalent. As mentioned earlier, kiwifruit shipments for the year are estimated at 1,944,444 9-kilo volume-fill containers which should provide $68,056 in assessment income. An additional $100 in penalty and interest income is also anticipated, bringing the total projected 2008–09 revenue to $68,156. Income generated through this rate, plus interest income and reserve funds, will provide sufficient funds to meet the anticipated expenses of $76,492 and should result in a July 2009 ending reserve of $54,311 which is within the maximum reserve of approximately one fiscal year's expenses permitted by the order (§ 920.42).

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

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

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 31 handlers of California kiwifruit subject to regulation under the marketing order and approximately 220 growers in the 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. None of the 31 handlers subject to regulation have annual kiwifruit sales of $7,000,000. Dividing average crop value for 2007–08 reported by the National Agricultural Statistics Service (NASS) of $22,517,000 by the number of producers (220) yields an average annual producer revenue estimate of about $102,350, which is well below the SBA threshold of $750,000. Based on the foregoing, it may be concluded that all kiwifruit handlers and the majority of producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from $0.045 to $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The Committee unanimously recommended 2008–09 expenditures of $76,492 and an assessment rate of $0.035 per 9-kilo volume-fill container or equivalent of kiwifruit. The assessment rate of $0.035 is $0.010 lower than the 2007–08 rate. The quantity of assessable kiwifruit for the 2008–09 fiscal period is estimated at 1,944,444 9-kilo volume-fill containers or equivalent of kiwifruit. Thus, the rate should provide $68,056 in assessment income. Income derived from handler assessments, along with penalty and interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The following table compares major budget expenditures recommended by the Committee for the 2007–08 and 2008–09 fiscal years:

| Budget expense categories | 2007–08 | 2008–09 |
|---|---|---|
| Staff Salaries/Management | $65,150 | $56,700 |
| Financial Management Services | 12,000 | 1,000 |
| Audit Expense | 5,000 | 3,500 |
| Vehicle Maintenance/Insurance | 3,180 | ..... |
| Travel | 3,300 | 3,500 |
| Office Expenses | 2,830 | 4,500 |

The Committee reviewed and unanimously recommended 2008–09 expenditures of $76,492 which included a reduction in management expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived by using the following formula:

Anticipated 2008–09 expenses ($76,492), minus the difference between the 2008 beginning reserve ($62,647) and the desired 2009 ending reserve ($54,311), divided by the total estimated 2008–09 shipments (1,944,444 9-kilo volume-fill containers). This formula results in the assessment rate of $0.035 per 9-kilo volume-fill container or equivalent. As mentioned earlier, kiwifruit shipments for the year are estimated at 1,944,444 9-kilo volume-fill containers which should provide $68,056 in assessment income. An additional $100 in penalty and interest income is also anticipated, bringing the total projected 2008–09 revenue to $68,156. Income generated through this rate, plus interest income and reserve funds, will provide sufficient funds to meet the anticipated expenses of $76,492 and should result in a July 2009 ending reserve of $54,311 which is within the maximum reserve of approximately one fiscal year's expenses permitted by the order (§ 920.42).

According to NASS, the season average grower price for years 2006 and 2007 were $911 and $950 per ton, respectively. These prices provide a range within which the 2008–09 season average grower price could fall. Dividing these average grower prices by 2,000 pounds per ton provides a price per pound range of $0.46 to $0.48. Multiplying these per-pound prices by 19.8 pounds (the weight of a 9-kilo volume-fill container) yields a 2008–09 price range estimate of $9.11 to $9.50 per 9-kilo volume-fill container of assessable kiwifruit.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.035 per 9-kilo volume-fill container is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 fiscal year as a percentage of total grower revenue would thus likely range between 0.368 and 0.384 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit 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, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit 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. In addition, as noted in the initial regulatory flexibility analysis, 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.

An interim final rule concerning this action was published in the **Federal Register** on December 12, 2008 (73 FR 75537). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on February 10, 2009, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

## PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 920, which was published at 73 FR 75537 on December 12, 2008, is adopted as a final rule without change.

Dated: March 18, 2009.

**Craig Morris,**

*Acting Associate Administrator.*

[FR Doc. E9–6249 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. AMS–FV–08–0066; FV08–930–2 FIR]**

### Tart Cherries Grown in the States of Michigan, et al.; Change to Fiscal Period

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the fiscal period prescribed under the tart cherry marketing order (order). The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin and is administered locally by the Cherry Industry Administrative Board (Board). This rule continues in effect an action that changed the fiscal period from July 1 through June 30 to October 1 through September 30. This will improve the administration and the fiscal operation of the Board.

**DATES:** Effective date April 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737, *telephone:* (301) 734–5243; *Fax:* (301) 734–5275 or e-mail at *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@usda.gov*.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 930 (7 CFR part 930) (order) regulating the handling of tart cherries grown in the States of Michigan, New York,

Pennsylvania, Oregon, Utah, Washington, and Wisconsin. 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.''

USDA is issuing this rule in conformance with Executive Order 12866. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. 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.

This rule continues in effect an action that changed the fiscal period from July 1 through June 30 to October 1 through September 30. This action was unanimously recommended by the Cherry Industry Administrative Board (Board) at its June 19, 2008 meeting.

Section 930.7 of the order currently defines fiscal period as the 12-month period beginning on July 1 of any year and ending on June 30 of the following year or such other period as the Board, with approval of the Secretary, may establish.

According to the Board, the July through June fiscal period is inconsistent with needs of the industry, the Board's changed activities, and its cash flow.

The Board's and industry's activities have changed since the order's inception. Initially, the Board's activities consisted primarily of the administrative duties associated with the marketing order, and relatively moderate expenditures were incurred for that purpose. The Board and industry's focus has recently changed to include promotional activities, and annual expenditures have increased significantly. The majority of the Board's expenditures are now used on promotional activities. Changing the Board's fiscal period allows the Board to better coordinate with its promotion activites and to make its fiscal cycle consistent with its major program expenditures.

In addition, changing the fiscal period brings the Board's collection of assessment revenues into line with program expenses. Handler assessments, which fund program expenses, are collected in October. This changed fiscal period thus enables the Board to receive its funding at the beginning of its fiscal period so the revenue to fund program expenses is available when needed. The Board believes it can increase its operational efficiency by making its fiscal period consistent with its promotional activities. An October through September fiscal period also brings revenue collection in line with funding needs of the program. Therefore, changing the fiscal period from July through June to October through September will improve the administration and fiscal operation of the Board.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated 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.

A majority of the producers and handlers are considered small entities under SBA's standards. There were 37 handlers operating during the 2007–2008 season, the last completed crop year. Eight of these handlers, representing 20.5 percent of all handlers and 69.3 percent of production, processed more than 10 million pounds of cherries. Six handlers, representing 15.4 percent of all handlers and 16.9 percent of production, processed more than 5 million pounds and less than 10 million pounds of cherries. Seven handlers, representing 17.9 percent of all handlers and 9.6 percent of production, processed between 2.1 and 5 million pounds of cherries. The 16 remaining handlers, representing 43.2 percent of all handlers and 4.1 percent of production, processed less than 2 million pounds of cherries. Handlers accounting for 10 million pounds or more cherries would be classified as large businesses. Thus, a majority of tart cherry handlers (79.5 percent by number) could be classified as small entities.

During the 3-year period 2005–2007, production of tart cherries averaged 259 million pounds. Dividing the total production by the average number of growers, the average grower produces about 386,000 pounds of tart cherries annually. With grower returns of about 25 cents per pound, average annual revenues would be $96,497. At 25 cents per pound, a grower would have to produce 3 million pounds of tart cherries to reach the $750,000 receipt threshold to be classified as a large entity using the SBA definition for agricultural producers. According to Cherry Industry Administrative Board data, not more than 9 growers (1 percent of the average number of growers) produced 3 million pounds or more of tart cherries during the 2005–2007 crop years, and those growers would be classified as large. The remaining 99 percent of growers would be classified as small entities.

This rule continues in effect an action that changed the fiscal period from July 1 through June 30 to October 1 through September 30. This action is administrative in nature and will have little impact on producers or handlers. It will allow the Board to increase its operational efficiency by making its fiscal period consistent with its promotional activities. It will also bring revenue collection in line with funding needs of the program. Continuing in effect the change to the fiscal period from July through June to October through September will improve the administration and fiscal operation of the Board.

One alternative to this action would be to change the fiscal period back to July through June. However, this would not improve program administration

inconsistencies in the Board's fiscal operations.

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.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Board's meeting was widely publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 19 members, of which 18 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

An interim final concerning this action was published in the **Federal Register** on December 15, 2008 (73 FR 75927). Copies of the rule were mailed by the Board's staff to all Board members, producers, handlers, and other interested persons. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended February 13, 2009. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

**List of Subjects in 7 CFR Part 930**

Tart cherries, Marketing agreements, Reporting and recordkeeping requirements.

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

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

■ Accordingly, the interim final rule amending 7 CFR 930, which was published at 73 FR 75927 on December 15, 2008, is adopted as a final rule without change.

Dated: March 18, 2009.

**Craig Morris,**

*Acting Associate Administrator.*

[FR Doc. E9–6250 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. APHIS–2008–0124]**

### Tuberculosis in Cattle and Bison; State and Zone Designations; New Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the bovine tuberculosis regulations to establish two separate zones with different tuberculosis risk classifications for the State of New Mexico. The entire State of New Mexico has been classified as modified accredited advanced; however, all its affected herds are located in a small area along the State's eastern border. We have determined that New Mexico meets our requirements for zone classification. Therefore, we are removing New Mexico from the list of modified accredited advanced States, adding an area consisting of Curry and Roosevelt Counties, NM, to the list of modified accredited advanced zones, and adding the remainder of the State to the list of accredited-free zones. This action relieves restrictions on the interstate movement of cattle and bison from these areas of New Mexico outside of the modified accredited advanced zone in two counties.

**DATES:** This interim rule is effective March 23, 2009. We will consider all comments that we receive on or before May 22, 2009.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0124* to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2008–0124, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0124.

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

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

**FOR FURTHER INFORMATION CONTACT:** Dr. C. William Hench, Senior Staff Veterinarian, National Tuberculosis Eradication Program, Veterinary Services, APHIS, 2150 Centre Ave., Bldg. B, MSC 3E20, Ft. Collins, CO 80526; (970) 494–7378.

**SUPPLEMENTARY INFORMATION:**

**Background**

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis.* Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis,* the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal

Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 (referred to below as the regulations) and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999, which is incorporated by reference into the regulations.

**Conditions for Zone Classification**

Under §§ 77.3 and 77.4 of the regulations, in order to qualify for zone classification by APHIS, a State must meet the following requirements:

1. The State must have adopted and must be enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place in part 77 for the interstate movement of those animals.

2. The designation of part of a State as a zone must otherwise be adequate to prevent the interstate spread of tuberculosis.

3. The zones must be delineated by the animal health authorities in the State making the request for zone classification and must be approved by the APHIS Administrator.

4. The request for zone classification must demonstrate that the State has the legal and financial resources to implement and enforce a tuberculosis eradication program and has in place the infrastructure, laws, and regulations to require and ensure that State and Federal animal health authorities are notified of tuberculosis cases in domestic livestock or outbreaks in wildlife.

5. The request for zone classification must demonstrate that the State maintains, in each intended zone, clinical and epidemiological surveillance of animal species at risk of tuberculosis, at a rate that allows detection of tuberculosis in the overall population of livestock at a 2 percent prevalence rate with 95 percent confidence. The designated tuberculosis epidemiologist must review reports of all testing for each zone within the State within 30 days of the testing.

6. The State must enter into a memorandum of understanding with APHIS in which the State agrees to adhere to any conditions for zone recognition particular to that request.

Request for Zone Classification in New Mexico

In an interim rule effective and published in the **Federal Register** on September 11, 2008 (73 FR 52775–52777, Docket No. APHIS–2008–0068), we amended the bovine tuberculosis regulations by adding New Mexico to the list of modified accredited advanced States. Prior to the publication of the September 2008 interim rule, portions of Curry and Roosevelt Counties, NM, had been classified as a modified accredited advanced zone, and the rest of the State of New Mexico was classified as accredited-free. We reclassified the entire State of New Mexico as a modified accredited advanced State because two affected herds had been detected in New Mexico's accredited-free zone since April 2007. Both of the affected herds were located in Curry County, outside the modified accredited advanced zone, along a portion of New Mexico's eastern border with Arizona. No tuberculosis-affected herds were found in the remainder of the State. Therefore, we have received from the State of New Mexico a request for zone classification for bovine tuberculosis.

According to the regulations, if bovine tuberculosis is detected in a portion of a State, the State may request split-State status via partitioning into specific geographic regions or zones with differential status designations. With regard to cattle and bison, State animal health officials in New Mexico have demonstrated to APHIS that New Mexico, excluding Curry and Roosevelt Counties, meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5 of the regulations.

Based on our evaluation of New Mexico's request in light of the criteria set forth in the regulations, we have determined that New Mexico meets the requirements listed above for zone classification and that, except for Curry and Roosevelt Counties, New Mexico meets the criteria for accredited-free status set forth in the definition of *accredited-free State or zone* in § 77.5. Therefore, we are classifying two zones in New Mexico as follows:

- The modified accredited advanced zone, which is the smaller of the two, consists of the New Mexico counties of Curry and Roosevelt.
- The accredited-free zone consists of all of the State of New Mexico except for Curry and Roosevelt Counties.

**Immediate Action**

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from the newly classified accredited-free zone in New Mexico. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

New Mexico has been listed as a modified accredited advanced State for bovine tuberculosis. This interim rule removes New Mexico from the list of modified accredited advanced States, adds an area in the eastern portion of the State to the list of modified accredited advanced zones, and adds the remainder of the State to the list of accredited-free zones. Modified accredited advanced status entails various restrictions on interstate movement of cattle. Reclassification to accredited-free status reduces or removes specific testing requirements. The Regulatory Flexibility Act requires agencies to evaluate the potential effects of proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the Regulatory Flexibility Act allows an agency to certify that a rule will not have a significant economic impact on a substantial number of small entities. Following is the factual basis for such certification in this case.

*Description and Estimate of Small Entities Affected by the Interim Rule*

Entities that will be directly affected by the rule are New Mexico beef and dairy farms that engage in interstate movement of certain types of cattle. Operations in the accredited-free zone will benefit from reduced costs associated with bovine tuberculosis testing.

The cattle industry plays an important role in New Mexico's economy. There were 7,300 cattle and calf operations in New Mexico in 2008 with a total inventory of 1.53 million head. About 77 percent of the State's cattle are located in what will be the accredited-free zone.[1] State-wide cash receipts from cattle and calves and dairy products totaled $951 million and $1.4 billion, respectively, in 2007. Eight-year average (2000–2007) cash receipts for cattle and calves and dairy products were $858 million and $905 million, respectively.[2]

The Small Business Administration (SBA) has established guidelines for determining which businesses are considered small. According to the SBA's size standards for beef cattle ranching and farming (North American Industry Classification System [NAICS] 112111) and for dairy cattle and milk production (NAICS 112120), operations with not more than $750,000 in annual sales are considered small entities. The vast majority of beef operations in New Mexico are considered small, while most dairy operations are not. In 2007, more than 97 percent of cattle and calf farms generated less than $500,000 in cash receipts, and less than 1 percent generated $1 million or more. Only about 27 percent of dairy farms generated less than $500,000 in cash receipts and about 71 percent generated $1 million or more.[3] The composition of New Mexico's cattle inventory is shown in table 1.

TABLE 1—NEW MEXICO CATTLE INVENTORY, JANUARY 1, 2008

| Type | | Number | Percentage of total |
|---|---|---|---|
| Beef cows | | 460,000 | 30.1 |
| Milk cows | | 340,000 | 22.2 |
| Heifers | | | |
| | Beef cow replacements | 90,000 | 5.9 |
| | Milk cow replacements | 130,000 | 8.5 |
| | Other heifers | 100,000 | 6.5 |
| Total heifers | | 320,000 | 20.9 |
| Steers | | 170,000 | 11.1 |
| Bulls | | 40,000 | 2.6 |
| Calves | | 200,000 | 13.1 |
| Total | | 1,530,000 | |

Source: NASS, USDA.

*Expected Effects of the Rule*

New Mexico has been listed as a modified accredited advanced State. This rule reclassifies nearly all of the State as accredited-free. The reclassification of an area to accredited-free status from modified accredited advanced status removes certain interstate movement restrictions for cattle capable of breeding. These restrictions include a negative bovine tuberculosis test within 60 days of the interstate movement of sexually intact cattle and bison from a herd without accredited status. This testing requirement will no longer apply to cattle moving out of the accredited-free zone.

Cattle herd owners in the accredited-free zone will see a reduction in pre-movement bovine tuberculosis testing requirements as a result of this rule and will therefore benefit from reduced costs associated with that bovine tuberculosis testing. The majority of cattle herds in New Mexico are located in areas that are reclassified as accredited-free in this rule and are therefore likely to benefit.

As a result of this rule, breeding cattle moving interstate from non-accredited herds in the accredited-free zone no longer require a negative bovine tuberculosis test within 60 days of movement. According to the State of New Mexico, 84,398 cattle were moved out of New Mexico for breeding purposes in 2008.[4] Just under half (42,081) of these animals were moved interstate from the area that is reclassified to accredited-free status in this rule. Bovine tuberculosis testing, including veterinary fees, costs about $10 to $15 per head. Based on these costs per animal, we expect annual cost savings associated with reduced testing of breeding cattle moving out of the State to total between $420,810 and $631,215. The more a herd owner in the accredited-free zone engages in the interstate movement of breeding cattle, the greater will be savings associated with the reduction in movement restrictions.

A large number of the cattle herds in the State will see a reduction in pre-movement bovine tuberculosis testing requirements as a result of this rule, and will therefore benefit from reduced costs associated with that bovine tuberculosis testing. However, bovine tuberculosis testing costs are small when compared to the value of the cattle tested, and the expected savings therefore are also relatively small. On January 1, 2007, beef cattle in New Mexico had an average per animal value of $1,060.[5] The average value of dairy cattle is considerably higher, given the value of milk produced. The savings in bovine tuberculosis testing costs represent no more than about 1.4 percent of the average per-head value of beef cattle in New Mexico ($15/$1,060) and an even smaller percentage of the average value of dairy cattle in the State. Thus, while herd owners engaged in interstate movement of feeding and breeding

[1] 2007 New Mexico Agricultural Statistics, USDA/National Agricultural Statistics Service (NASS), New Mexico Department of Agriculture.

[2] USDA/Economic Research Service *Cash Receipts, by Commodity Groups and Selected Commodities, United States and States, 2000–2007. http://www.ers.usda.gov/Data/farmincome/FinfidmuXls.htm.*

[3] 2007 Census of Agriculture. NASS, USDA.

[4] New Mexico Livestock Board.

[5] Meat Animals Production, Distribution and Income 2007 Summary. April 2008. Agricultural Statistics Board. NASS, USDA.

cattle will benefit from time savings and reduced costs associated with bovine tuberculosis testing, however, the savings will be relatively small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 77**

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

## PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.7, paragraph (b) is revised to read as follows:

**§ 77.7 Accredited-free States or zones.**

* * * * *

(b) The following are accredited-free zones:

(1) A zone in Michigan known as the Upper Peninsula that comprises Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties.

(2) All of the State of New Mexico except for the zone that comprises Curry and Roosevelt Counties described in § 77.9(b)(3).

* * * * *

■ 3. In § 77.9, paragraphs (a) and (b) are revised to read as follows:

**§ 77.9 Modified accredited advanced States or zones.**

(a) The following are modified accredited States: California.

(b) The following are modified accredited advanced zones:

(1) All of the State of Michigan except for the zones that comprise those counties or portions of counties in Michigan described in § 77.7(b)(1) and § 77.11(b)(1).

(2) All of the State of Minnesota except for the zones that comprise those counties or portions of counties in Minnesota described in § 77.11(b)(2).

(3) The zone in the State of New Mexico that comprises Curry and Roosevelt Counties.

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Done in Washington, DC, this 17th day of March 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–6252 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF ENERGY

### 10 CFR Parts 430 and 431

**RIN 1904–AB74**

### Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Department of Energy (DOE) is publishing this technical amendment to place the energy conservation standards and test procedures, and related definitions, prescribed in the Energy Independence and Security Act of 2007 (EISA 2007) for certain consumer products and commercial and industrial equipment in the Code of Federal Regulations.

**DATES:** *Effective Date:* March 23, 2009. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of March 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9155, e-mail: *Michael.Mccabe@ee.doe.gov.*

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**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference the following industry standards:

- ANSI C78.20–2003, Revision of ANSI C78.20–1995 (''ANSI C78.20''), American National Standard for electric lamps—A, G, PS, and Similar Shapes with E26 Medium Screw Bases, approved October 30, 2003;
- ANSI C78.21–1989, American National Standard for Electric Lamps—PAR and R Shapes, approved March 3, 1989;
- ANSI C78.21–2003, Revision of ANSI C78.21–1995 with all supplements, American National Standard for Electric Lamps—PAR and R Shapes, approved October 30, 2003;
- ANSI C78.43–2004, Revision and consolidation of ANSI C78.1372–1997, .1374–1997, .1375–1997, .1376–1997, .1377–1997, .1378–1997, .1379–1997, .1382–1997, .1384–1997, and .1650–2003, (''ANSI C78.43''), American National Standard for electric lamps: Single-Ended Metal Halide Lamps, approved May 5, 2004.
- ANSI C79.1–1994, American National Standard for Nomenclature for Glass Bulbs—Intended for Use with Electric Lamps, approved March 24, 1994;
- ANSI C79.1–2002, American National Standard for Electric Lamps-Nomenclature for Glass Bulbs Intended for Use with Electric Lamps, approved September 16, 2002;
- ANSI_ANSLG_C81.61–2006, Revision of ANSI C81.61–2005 (''ANSI C81.61''), American National Standard for electrical lamp bases—Specifications for Bases (Caps) for Electric Lamps, approved August 25, 2006;
- ANSI C82.6–2005, Proposed Revision of ANSI C82.6–1985 (''ANSI C82.6''), American National Standard for lamp ballasts—Ballasts for High-Intensity Discharge Lamps—Methods of Measurement, approved February 14, 2005.

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

- ASTM C518–04, (''ASTM C518''), Standard Test Method for Steady-State

Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, approved May 1, 2004.

Copies of the material are available from: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, (610) 832–9500, or *http://www.astm.org.*

• CIE 13.3–1995 (''CIE 13.3''), Commission Internationale de l'Eclairage International Commission on Illumination Internationale Beleuchtungskommission Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources, 1995, ISBN 3 900 734 57 7.

Copies are available from: Commission Internationale de l'Eclairage (CIE), Central Bureau, Kegelgasse 27, A–1030, Vienna, Austria, 011+43 1 714 31 87 0, or go to *http://www.cie.co.at.*

• Energy Star Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies, Eligibility Criteria (Version 2.0), published by the Environmental Protection Agency, effective date for EPS Manufacturers November 1, 2008.

Copies of the material are available online at *http://www.energystar.gov* or by contacting the Energy Star hotline at 1–888–782–7937.

• The IESNA Lighting Handbook, Reference & Application, (''The IESNA Lighting Handbook''), 9th ed., Chapter 6, ''Light Sources,'' July 2000;

• IESNA LM–16–1993 (''IESNA LM–16''), IESNA Practical Guide to Colorimetry of Light Sources and the 1931 CIE chromaticity diagram, Figure 2 on page 3, December 1993.

Copies of the materials are available from: Illuminating Engineering Society of North America (IESNA), 120 Wall Street, Floor 17, New York, NY 10005–4001, 212–248–5000, or go to *http://www.iesna.org.*

• ''Computation of Correlated Color Temperature and Distribution Temperature,'' A.R. Robertson, Journal of the Optical Society of America, Volume 58, Number 11, November 1968, pages 1528–1535.

Copies are available from: Optical Society of America, 2010 Massachusetts Ave., NW., Washington, DC 20036–1012, 202–223–8130, or go to *http://www.opticsinfobase.org.*

• NFPA 70–2002, (''NFPA 70''), National Electrical Code 2002 Edition.

Copies of the material are available from: The National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322, 1–800–344–3555, or go to *http://www.nfpa.org.*

• NSF/ANSI 51–2007, (''NSF/ANSI 51''), Food equipment materials, revised and adopted April 2007.

Copies of the material are available from: NSF International, P.O. Box 130140, 789 North Dixboro Road, Ann Arbor, MI 48113–0140, 1–800–673–6275, or go to *http://www.nsf.org.*

• UL 1029, (ANSI/UL 1029–2007) (''UL 1029''), Standard for Safety High-Intensity-Discharge Lamp Ballasts, 5th edition, May 25, 1994, which consists of pages dated May 25, 1994, September 28, 1995, August 3, 1998, February 7, 2001 and December 11, 2007.

Copies of the material are available from: Underwriters Laboratories, Inc., COMM 2000, 1414 Brook Drive Downers Grove, IL 60515, 1–888–853–3503, or go to *http://www.ul.com.*

You can also view copies of all of these standards at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.



## I. Background

The Energy Independence and Security Act of 2007 (EISA 2007) (Pub. L. 110–140) was enacted on December 19, 2007. Among the provisions of subtitle A of title III of EISA 2007 are provisions that amend Part A of Title III of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291–6309), which provides for an energy conservation program for consumer products other than automobiles, and Part A–1 of Title III of EPCA (42 U.S.C. 6311–6317), which provides for an energy conservation program for certain commercial and industrial equipment, similar to the one in Part A for consumer products. In addition to establishing energy conservation standards, EISA 2007 directs DOE to undertake rulemakings to promulgate new or amended energy conservation standards for various consumer products and commercial and industrial equipment.

By today's action, DOE is placing in the Code of Federal Regulations (CFR), for the benefit of the public, the energy conservation standards and related definitions prescribed by EISA 2007 for various consumer products and commercial and industrial equipment. In this technical amendment, DOE is not exercising any of the discretionary authority that Congress has provided in EISA 2007 for the Secretary of Energy to revise, by rule, certain product or equipment definitions and energy conservation standards. DOE may exercise this discretionary authority at a later time in rulemakings to establish test procedures or efficiency standards for these products and equipment.

## II. Summary of This Action

DOE is placing the new energy conservation standards and related definitions into 10 CFR Part 430 (''Energy Conservation Program for Consumer Products'') or 10 CFR Part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment''), as appropriate given the nature or type of the product or equipment. EISA 2007 includes provisions dealing with the definitions, test procedures and standards for certain types of commercial equipment in a section that amends section 325 of Part A of Title III of EPCA. Part A contains provisions for the ''Energy Conservation Program for Consumer Products Other Than Automobiles'' where Part A–1 of Title III of EPCA contains provisions for ''Certain Industrial Equipment.'' The location of the provisions within the statute and the CFR does not affect either their substance or applicable procedures, however, DOE is placing them in the appropriate CFR part based on their nature or type. DOE provides a ''crosswalk'' in Table 1 that shows the location of the standards for the products and equipment in the CFR and EISA 2007.[1]

[1] DOE notes that Sec. 303 of EISA 2007 prescribed energy conservation standards for residential boilers. The prescribed standards for residential boilers were codified in the Furnace and Boiler Technical Amendment, which was published in the **Federal Register** on July 28, 2008. 73 FR 43611.

TABLE 1

| Product/Equipment type | CFR location | EISA 2007 section |
|---|---|---|
| Dishwashers | § 430.32(f) | Sec. 311(a). |
| Residential clothes washers | § 430.32(g) | Sec. 311(a). |
| General service fluorescent lamps and incandescent reflector lamps | § 430.32(n) | Sec 322(b). |
| Dehumidifiers | § 430.32(v) | Sec. 311(a). |
| Class A external power supplies | § 430.32(w) | Sec. 301(c). |
| General service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps. | § 430.32(x) | Sec 321(a). |
| Electric motors | Part 431, Subpart B | Sec. 313(b). |
| Commercial package air conditioning and heating equipment | Part 431, Subpart F | Sec. 314(b). |
| Mercury vapor lamp ballasts | Part 431, Subpart P | Sec 316(d). |
| Walk-in coolers and walk-in freezers | Part 431, Subpart R | Sec. 312(b). |
| Metal halide lamp fixtures | Part 431, Subpart S | Sec. 324(e). |

Where the statute establishes a prescriptive standard that either adopts or is based on voluntary standards of another entity, DOE has incorporated the relevant portion of the source document into the CFR text so that the CFR can be a fully self-contained regulation. This applies to the efficiency standards for general purpose electric motors (subtype I), general purpose electric motors (subtype II), fire pump motors and NEMA design B general purpose electric motors that shall be the same as voluntary standards published by the National Electrical Manufacturers Association (NEMA) MG–1–2006.

DOE notes that while EISA 2007 has prescribed energy conservation standards that will apply to products and equipment manufactured on or after the specific dates, manufacturers are not subject to DOE's compliance certification and enforcement programs until DOE promulgates the related test procedures for the new covered products and commercial equipment. While manufacturers are not subject to DOE certification and enforcement programs until DOE promulgates test procedures and related regulations, manufacturers must meet the standards as of the effective date of the standards. Manufacturers must, for example, be able to demonstrate that their products meet the energy conservation standards or energy design standards set by EISA 2007. Furthermore, the EPCA, as amended, defines the term ''manufacture'' as ''to manufacture, produce, assemble, or import'' (42 U.S.C. 6291(10)). Therefore, all consumer products and commercial and industrial equipment covered by this action must, on the date of manufacture, or in the case of imported products, as of the date of import, meet the standards set by EISA 2007 and adopted in the CFR by this action. Furthermore, the requirements in EISA 2007 apply to the manufacture of covered consumer products and commercial and industrial equipment for sale in the 50 states as well as all U.S. territories. In order to clarify that energy conservation standards apply to both products manufactured in the U.S. for sale in the U.S. as well as products imported in the U.S., DOE is adding the terms ''manufacture'' and ''import'' to 10 CFR Parts 430 and 431.

In addition, EISA 2007 added several general provisions to EPCA, including provisions for petitions by interested parties that DOE initiate a rulemaking for manufacturer exemptions from the standards for general service lamps as well as a petition for DOE to initiate a rulemaking for lamp shapes or bases that are excluded from the definition of general service lamps. EISA 2007 also added provisions with respect to prohibited acts regarding regional standards for furnaces, boilers, central air conditioners and central air conditioning heat pumps. These provisions are added to Part 430 by today's final rule.

*A. Definitions and Standards*

The definitions and standards incorporated into the CFR by today's action are briefly discussed as follows:

1. *Dishwashers.* Section 311(a) of EISA 2007 amended section 325(g) of the EPCA to adopt energy conservation standards and water conservation standards for residential dishwashers manufactured on or after January 1, 2010. The current energy conservation standard for dishwashers is in terms of Energy Factor (cycles/kWh) whereas the January 1, 2010, energy conservation standard is in terms of maximum allowable energy use per year (kWh/year). By today's final rule, DOE is adding the maximum allowable energy use requirements to section 430.32(g). DOE defines annual energy use in section 430.23(c)(3) and the methods for measuring dishwasher energy use are found at Appendix C to subpart B of 10 CFR Part 430. Methods for measuring dishwasher water consumption are found at section 5.3 of Appendix C to subpart B of 10 CFR Part 430.

2. *Residential clothes washers.* Section 311(a) of EISA 2007 amended section 325(g) of EPCA to adopt energy conservation and water conservation standards for residential clothes washers manufactured on or after January 1, 2011. The energy conservation standard for top-loading and front-loading standard-size residential clothes washers is in terms of Modified Energy Factor (MEF), the same as the existing residential clothes washer standard. EISA 2007 adds a Water Factor (WF) which has not been regulated by the existing standards. However, DOE defines WF (water consumption factor) and provides a method for measuring WF in Appendix J1 to subpart B of 10 CFR Part 430.

3. *General service fluorescent lamps and incandescent reflector lamps.* Section 322(b) of EISA 2007 amended section 325(i) of EPCA by amending paragraph (1). EISA 2007 removed the existing tables of energy conservation standards for fluorescent lamps and incandescent reflector lamps in EPCA and replaced them with identical tables such that no changes to the energy conservation standards were made. Therefore, DOE is not making any changes to the CFR. In addition, section 322 of EISA 2007 extended coverage of the incandescent reflector lamps to include certain ER, BR and BPAR reflector lamps, added definitions for these lamps and established energy conservation standards that are effective for ER, BR and BPAR reflector lamps manufactured on and after January 1, 2008. DOE is adding the definitions to section 430.2 and the energy conservation standards for these bulbs to section 430.32(n). The existing test procedures for reflector lamps found in Appendix R to subpart B of 10 CFR Part 430 apply to ER, BR and BPAR reflector lamps.

4. *Dehumidifiers.* Section 311(a) of EISA 2007 amended EPCA to add new section 325(cc)(2) setting energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. The energy conservation standards for dehumidifiers are in terms of energy factor levels, as are the current energy conservation standards for dehumidifiers. The EISA 2007 energy conservation standards for dehumidifiers are added to section 430.32(v). No further changes or additions are made with respect to dehumidifiers by today's final rule.

5. *Class A external power supplies.* Section 301 of EISA 2007 amended sections 321 and 325(u) of EPCA by adding definitions and establishing energy conservation standards for Class A external power supplies manufactured on or after July 1, 2008. Today's final rule adds the EISA 2007 definitions for external power supplies to section 430.2 and energy conservation standards for Class A external power supplies to section 430.32(w). No further changes or additions are made with respect to Class A external power supplies by today's final rule. DOE notes, however, that section 310 of EISA 2007 further modifies section 325 of EPCA, requiring DOE to amend existing test procedures, including for Class A external power supplies, to take into account energy consumption and standby and off modes. (42 U.S.C. 6295(gg)(2)). DOE published a final rule on December 8, 2006, in which it adopted test procedures for external power supplies (71 FR 71340, codified in Appendix Z to Subpart B to 10 CFR part 430). The December 8, 2006, final rule, however, did not include test procedures for external power supplies in the standby and off-modes. DOE therefore plans on initiating a separate rulemaking to establish standby- and off-mode test procedures for external power supplies, including Class A external power supplies.

6. *General service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps.* Section 321(a) of EISA 2007 amended sections 321 and 325 of EPCA to add definitions and set energy conservation standards for general service incandescent lamps and modified spectrum general service incandescent lamps for certain rated lumen ranges and effective dates. In addition, EISA 2007 amended section 325 of EPCA to set energy conservation standards for candelabra incandescent lamps and intermediate base incandescent lamps. A candelabra base incandescent lamp shall not exceed 60 rated watts and an intermediate base incandescent lamp shall not exceed 40 rated watts. Today's final rule adds the definitions for general service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps to section 430.2 and energy conservation standards for these lamps to section 430.32(x). No further changes or additions are made with respect to general service lamps, intermediate base incandescent lamps and candelabra base incandescent lamps, other than the general provisions discussed in section II.B of today's final rule.

7. *Electric motors.* Section 313 of EISA 2007 amended sections 340 and 342 of EPCA to add definitions and set energy conservation standards for general purpose electric motors (subtype I), fire pump motors, general purpose electric motors (subtype II) and NEMA design B general purpose electric motors. EISA 2007 requires that general purpose electric motors (subtype I) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, manufactured alone or as a component of another piece of equipment on or after December 19, 2010 shall meet the nominal full load efficiency levels specified in Table 12–12 of National Electrical Manufacturers Association (NEMA) MG–1 2006, ''Motors and Generators.'' In addition, EISA 2007 requires that fire pump motors; general purpose electric motors (subtype II) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower; and NEMA design B general purpose electric motors with a power rating of more than 200 horsepower, but not greater than 500 horsepower manufactured alone or as a component of another piece of equipment on or after December 19, 2010 shall meet the full load efficiency levels specified in Table 12–11 of NEMA MG–1 2006, ''Motors and Generators.'' For the benefit of stakeholders looking for the standards specified in EISA 2007, DOE is codifying the efficiency levels specified in Table 12–11 and Table 12–12 of NEMA MG–1–2006 in the Code of Federal Regulations. NEMA issued an erratum in April 2007 and a full Revision (''Rev 1'') in November 2007 to NEMA MG–1 2006. The revisions are reflected in today's final rule. The EISA 2007 definitions for electric motors are added to section 431.12 and the energy conservation standards are added to section 431.25. The Department notes that EISA 2007 added energy conservation standards for fire pump motors and NEMA design B general purpose motors, but did not define either class of motors. Today's final rule adds the energy conservation standards for these two classes and adds the terms ''fire pump motors'' and ''NEMA design B general purpose motors'' without defining the terms. DOE has initiated a rulemaking to adopt definitions for these terms. (73 FR 78220, December 22, 2008) No further changes or additions are made with respect to electric motors by today's final rule.

8. *Commercial package air conditioning and heating equipment.* Section 314 of EISA 2007 amended sections 340 and 342(a) of EPCA to add definitions of new classes of commercial package air conditioning and heating equipment and to establish energy conservation standards for commercial package air-conditioning and heating equipment. Small commercial package air-conditioning and heating equipment (other than single package vertical air conditioners) manufactured on or after June 16, 2008 shall meet specific minimum energy efficiency levels, depending on category and product capacity (Btu per hour) specified in EISA 2007. In addition, single package vertical units manufactured on or after January 1, 2010, shall meet specific minimum energy efficiency levels, depending on category, product capacity (Btu per hour) and the type of heating, if any are specified in EISA 2007. DOE is amending section 431.92 to add the new definitions and section 431.97 to add the new energy conservation standards. No further changes or additions are made with respect to commercial package air conditioning and heating equipment by today's final rule.

9. *Mercury vapor lamp ballasts.* The Energy Policy Act of 2005 (EPACT 2005) amended EPCA to establish energy conservation standards for mercury vapor lamp ballasts. EPACT 2005 prohibited the manufacture or importation of mercury vapor lamp ballasts after January 1, 2008. Section 316(d) of EISA 2007 amended section 325 of EPCA to provide an exception for specialty application mercury vapor lamp ballasts. Today's final rule adds the definitions in EISA 2007 to section 431.282 and the exception to the standard for specialty application mercury vapor lamp ballasts in section 431.286. No further changes or additions are made with respect to mercury vapor lamp ballasts by today's final rule.

10. *Walk-in coolers and walk-in freezers.* Section 312(b) of EISA 2007 amended sections 340, 342 and 343 of EPCA to add definitions, energy

conservation standards, and test procedures for measuring the thermal resistance (R value) of the panels of walk-in coolers and walk-in freezers. The energy conservation standards require a minimum R value of the walk-in cooler and walk-in freezer panels as well as requirements for doors, door closures, motors and lighting used in walk-in coolers and walk-in freezers manufactured on or after January 1, 2009. In addition, EISA 2007 directs DOE to develop test procedures to measure the energy use of walk-in coolers and walk-in freezers and to establish energy conservation standards for walk-in coolers and walk-in freezers that limit the maximum amount of energy use of this equipment. DOE is adding the definitions in a new section 431.302 and the energy conservation standards in a new section 431.306. Today's final rule also adopts, by reference, the test procedures adopted by ASTM International for measuring thermal resistance of insulation, ASTM C518, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.'' Test procedures to measure the energy use of walk-in coolers and walk-in freezers will be developed through a separate rulemaking.

11. *Metal halide lamp fixtures.* Section 324(e) of EISA 2007 amended sections 321 and 325 of EPCA to add definitions and set energy conservation standards for metal halide lamp fixtures effective January 1, 2009. The EISA 2007 definitions for metal halide lamp fixtures are added to section 431.322 and the energy conservation standards are added to section 431.326. No further changes or additions are made with respect to metal halide lamp fixtures by today's final rule.

*B. General Provisions and Technical Amendments*

In addition to amending and adding definition and standards, section 316 of EISA 2007 included several technical corrections. Section 316(a) of EISA 2007 amended section 135(a)(1)(A)(ii) of the Energy Policy Act of 2005 by striking ''C78.1–1978(R1984)'' and inserting ''C78.3–1978(R1984).'' Section 316(b) of EISA 2007 amended section 321(30)(B)(viii) of EPCA by striking ''82'' and inserting ''87.'' Section 316(c) of EISA 2007 amended section 301(a)(2) of EPCA by amending definitions for ''high intensity discharge lamp,'' ''mercury vapor lamp,'' and ''mercury vapor lamp ballast'' and adding a definition for ''specialty application mercury vapor lamp ballast.'' Section 316(d) amended section 325(ff)(1)(A)(ii)(II) of EPCA to substitute ''fans sold for outdoor applications'' for ''outdoor application.'' In addition, section 316(d) amends section 325(ff)(4)(C) striking subparagraph (B) and inserting subparagraph (A) and adding paragraph (ii) to section 325(ff)(4)(C).

EISA 2007 added several general provisions to EPCA, including provisions for petitions by any person requesting that DOE grant manufacturer exemptions from the standards for general service lamps as well as a petition for DOE to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps. In addition, EISA 2007 added provisions with respect to prohibited acts regarding regional standards for furnaces, boilers, central air conditioners and central air conditioning heat pumps. These provisions are codified verbatim by today's final rule. The petition provisions regarding general service lamps are added to a new section 430.35 while the new prohibited acts regarding regional standards and adapters for general service lamps are added to section 430.61.

## III. Final Action

DOE has determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and an opportunity for public comment on this final rule are unnecessary. DOE is merely placing in the Code of Federal Regulations for the benefit of the public energy conservation standards, test procedures, and related definitions prescribed by Congress in EISA 2007 for certain consumer products and commercial and industrial equipment. DOE is not exercising any of the discretionary authority that Congress has provided in EISA 2007 for the Secretary of Energy to revise, by rule, product or equipment definitions, test procedures and energy conservation standards. DOE, therefore, finds that good cause exists to waive prior notice and an opportunity to comment for this rulemaking. For the same reasons, DOE, pursuant to 5 U.S.C. 553(d)(3), finds that good cause exists for making this final rule effective upon publication in the **Federal Register**.

## IV. Procedural Requirements

*A. Review Under Executive Order 12866, ''Regulatory Planning and Review''*

Today's final rule is not a ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). However, DOE estimated the energy, economic and environmental benefits of the standards established by EISA 2007 and adopted by today's final rule.

Where possible, DOE used available data to provide estimates of the impacts of the prescribed standards in EISA 2007. Before EISA 2007, DOE completed or began the rulemaking process and conducted preliminary energy and cost benefit analyses for a number of the above prescribed standards. In addition, for some products prior analyses not part of the rulemaking process were conducted by DOE or an outside source, and those analyses were used to provide estimates. There are several products for which DOE did not have analyses that could be readily used for this final rule. Instead, DOE developed a methodology for producing preliminary estimates of energy, economic and environmental savings to assess the impact of these standards. DOE gathered annual shipment data, baseline efficiency levels, and typical product usage to determine energy savings benefits. To determine cost benefits for products where data is not already available, DOE analyzed the approximate changes in retail price that consumers might experience moving from the baseline efficiency to the EISA 2007 compliant product.

DOE analyzed energy savings, installed cost, value of energy savings, emission reductions for the standards prescribed by Congress in EISA 2007. To determine the consumer energy saving benefits, DOE must determine the annual energy use, shipment data, equipment stock, national energy consumption, and site-to-source conversion factors. The value of the energy savings is estimated as the value in the present of a time series of costs and savings. Lastly, the emissions reductions were calculated for the decreased energy consumption.

DOE estimates the prescribed standards in EISA 2007 will save approximately 31 quads (quadrillion ($10^{15}$) British thermal units (Btu)) of energy over 30 years (2008–2038). These energy savings are projected to result in cumulative greenhouse gas emission reductions of approximately 487 million metric ton carbon equivalent (MMTCE) of carbon dioxide ($CO_2$). In addition, the net present value to the nation is approximately $48–$105 billion dollars. The complete results of the analyses are in a Technical Support Document (TSD) that is available on the Internet at

*http://www1.eere.energy.gov/buildings/appliance_standards.*

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's web site: *http://www.gc.doe.gov.* DOE today is revising the Code of Federal Regulations to incorporate, without substantive change, energy conservation standards and related provisions prescribed by the Energy Independence and Security Act of 2007 as amendments to the Energy Policy and Conservation Act. Because this is a technical amendment for which a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply to this rulemaking.

*C. Review Under the Paperwork Reduction Act of 1995*

This rulemaking imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

*D. Review Under the National Environmental Policy Act of 1969*

DOE has determined that this rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*E. Review Under Executive Order 13132, ''Federalism''*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that while it preempts State law, it does 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. No further action is required by Executive Order 13132.

*F. Review Under Executive Order 12988, ''Civil Justice Reform''*

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

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''*

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference

with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*L. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## V. Approval of the Office of the Secretary

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

**List of Subjects**

*10 CFR Part 430*

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

*10 CFR Part 431*

Administrative practice and procedure, Commercial products, Energy conservation, Incorporation by reference.

Issued in Washington, DC, on March 11, 2009.

**Rita L. Wells,**

*Acting Deputy Assistant Secretary for Business Administration, Energy Efficiency and Renewable Energy.*

■ For the reasons stated in the preamble, DOE hereby amends Chapter II, Subchapter D, of Title 10 of the Code of Regulations as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:
■ a. Adding in alphabetical order definitions of ''3-way incandescent lamp,'' ''active mode,'' ''appliance lamp,'' ''ballast,'' ''BPAR incandescent reflector lamp,'' ''BR30,'' ''BR40,'' ''candelabra base incandescent lamp,'' ''class A external power supply,'' ''detachable battery,'' ''electronic ballast,'' ''ER30,'' ''ER40,'' ''general lighting application,'' ''general service lamp,'' ''import,'' ''intermediate base incandescent lamp,'' ''light-emitting diode or LED'', ''manufacture,'' ''modified spectrum,'' ''off mode,'' ''organic light-emitting diode or OLED,'' ''R20 incandescent reflector lamp,'' ''rough service lamp,'' ''shatter-resistant lamp, shatter-proof lamp, or shatter-protected lamp,'' ''specialty application mercury vapor lamp ballast,'' ''standby mode,'' and ''vibration service lamp.''
■ b. Revising the definition of ''BR incandescent reflector lamp,'' ''colored incandescent lamp,'' ''ER incandescent reflector lamp,'' ''general service fluorescent lamp,'' ''general service incandescent lamp,'' and ''incandescent reflector lamp.''

The revisions and additions read as follows:

**§ 430.2 Definitions.**

* * * * *

*3-Way incandescent lamp* means an incandescent lamp that—

(1) Employs two filaments, operated separately and in combination, to provide three light levels; and

(2) Is designated on the lamp packaging and marketing materials as being a 3-way incandescent lamp.

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*Active mode* means the condition in which an energy-using product—

(1) Is connected to a main power source;

(2) Has been activated; and

(3) Provides one or more main functions.

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*Appliance lamp* means any lamp that—

(1) Is specifically designed to operate in a household appliance, has a maximum wattage of 40 watts, is sold at retail (including an oven lamp, refrigerator lamp, and vacuum cleaner lamp); and

(2) Is designated and marketed for the intended application, with

(i) The designation on the lamp packaging; and

(ii) Marketing materials that identify the lamp as being for appliance use.

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*Ballast* means a device used with an electric discharge lamp to obtain necessary circuit conditions (voltage, current, and waveform) for starting and operating.

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*BPAR incandescent reflector lamp* means a reflector lamp as shown in figure C78.21–278 on page 32 of ANSI C78.21–2003 (incorporated by reference; *see* § 430.3).

*BR30* means a BR incandescent reflector lamp with a diameter of 30/8ths of an inch.

*BR40* means a BR incandescent reflector lamp with a diameter of 40/8ths of an inch.

*BR incandescent reflector lamp* means a reflector lamp that has—

(1) A bulged section below the major diameter of the bulb and above the approximate baseline of the bulb, as shown in figure 1 (RB) on page 7 of ANSI C79.1–1994, (incorporated by reference, see § 430.3); and

(2) A finished size and shape shown in ANSI C78.21–1989 (incorporated by

reference; see § 430.3), including the referenced reflective characteristics in part 7 of ANSI C78.21–1989.

* * * * *

*Candelabra base incandescent lamp* means a lamp that uses a candelabra screw base as described in ANSI C81.61, Specifications for Electric Bases, common designations E11 and E12 (incorporated by reference; see § 430.3).

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*Class A external power supply*—

(1) Means a device that—

(i) Is designed to convert line voltage AC input into lower voltage AC or DC output;

(ii) Is able to convert to only one AC or DC output voltage at a time;

(iii) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary load;

(iv) Is contained in a separate physical enclosure from the end-use product;

(v) Is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and

(vi) Has nameplate output power that is less than or equal to 250 watts;

(2) But, does not include any device that—

(i) Requires Federal Food and Drug Administration listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)); or

(ii) Powers the charger of a detachable battery pack or charges the battery of a product that is fully or primarily motor operated.

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*Colored incandescent lamp* means an incandescent lamp designated and marketed as a colored lamp that has—

(1) A color rendering index of less than 50, as determined according to the test method given in CIE 13.3 (incorporated by reference; see § 430.3); or

(2) A correlated color temperature of less than 2,500K, or greater than 4,600K, where correlated temperature is computed according to the ''Computation of Correlated Color Temperature and Distribution Temperature,'' Journal of the Optical Society of America, (incorporated by reference; see § 430.3).

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*Detachable battery* means a battery that is—

(1) Contained in a separate enclosure from the product; and

(2) Intended to be removed or disconnected from the product for recharging.

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*Electronic ballast* means a device that uses semiconductors as the primary means to control lamp starting and operation.

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*ER incandescent reflector lamp* means a reflector lamp that has—

(1) An elliptical section below the major diameter of the bulb and above the approximate baseline of the bulb, as shown in figure 1 (RE) on page 7 of ANSI C79.1–1994, (incorporated by reference; see § 430.3); and

(2) A finished size and shape shown in ANSI C78.21–1989, (incorporated by reference; see § 430.3).

*ER30* means an ER incandescent reflector lamp with a diameter of 30/8ths of an inch.

*ER40* means an ER incandescent reflector lamp with a diameter of 40/8ths of an inch.

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*General lighting application* means lighting that provides an interior or exterior area with overall illumination.

*General service fluorescent lamp* means any fluorescent lamp which can be used to satisfy the majority of fluorescent lighting applications, but does not include any lamp designed and marketed for the following nongeneral application:

(1) Fluorescent lamps designed to promote plant growth;

(2) Fluorescent lamps specifically designed for cold temperature applications;

(3) Colored fluorescent lamps;

(4) Impact-resistant fluorescent lamps;

(5) Reflectorized or aperture lamps;

(6) Fluorescent lamps designed for use in reprographic equipment;

(7) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and

(8) Lamps with a Color Rendering Index of 87 or greater.

*General service incandescent lamp* means a standard incandescent or halogen type lamp that is intended for general service applications; has a medium screw base; has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and is capable of being operated at a voltage range at least partially within 110 and 130 volts; however this definition does not apply to the following incandescent lamps—

(1) An appliance lamp;

(2) A black light lamp;

(3) A bug lamp;

(4) A colored lamp;

(5) An infrared lamp;

(6) A left-hand thread lamp;

(7) A marine lamp;

(8) A marine signal service lamp;

(9) A mine service lamp;

(10) A plant light lamp;

(11) A reflector lamp;

(12) A rough service lamp;

(13) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);

(14) A sign service lamp;

(15) A silver bowl lamp;

(16) A showcase lamp;

(17) A 3-way incandescent lamp;

(18) A traffic signal lamp;

(19) A vibration service lamp;

(20) A G shape lamp (as defined in ANSI C78.20) (incorporated by reference; *see* § 430.3) and ANSI C79.1–2002 (incorporated by reference; *see* § 430.3) with a diameter of 5 inches or more;

(21) A T shape lamp (as defined in ANSI C78.20) (incorporated by reference; *see* § 430.3) and ANSI C79.1–2002 (incorporated by reference; *see* § 430.3) and that uses not more than 40 watts or has a length of more than 10 inches; and

(22) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002) (incorporated by reference; *see* § 430.3) and ANSI C78.20 (incorporated by reference; *see* § 430.3) of 40 watts or less.

*General service lamp* includes general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, organic light-emitting diode lamps, and any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps; however, this definition does not apply to any lighting application or bulb shape excluded from the ''general service incandescent lamp'' definition, or any general service fluorescent lamp or incandescent reflector lamp.

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*Import* means to import into the customs territory of the United States.

* * * * *

*Incandescent reflector lamp* (commonly referred to as a reflector lamp) means any lamp in which light is produced by a filament heated to incandescence by an electric current, which: is not colored or designed for rough or vibration service applications that contains an inner reflective coating on the outer bulb to direct the light; has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of 115 and 130 volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is 40 watts or higher.

*Intermediate base incandescent lamp* means a lamp that uses an intermediate screw base as described in ANSI C81.61, Specifications for Electric Bases,

common designation E17 (incorporated by reference; see § 430.3).

* * * * *

*Light-emitting diode* or *LED* means a p-n junction solid state device of which the radiated output, either in the infrared region, the visible region, or the ultraviolet region, is a function of the physical construction, material used, and exciting current of the device.

* * * * *

*Manufacture* means to manufacture, produce, assemble, or import.

* * * * *

*Modified spectrum* means, with respect to an incandescent lamp, an incandescent lamp that—

(1) Is not a colored incandescent lamp; and

(2) When operated at the rated voltage and wattage of the incandescent lamp—

(A) Has a color point with (x,y) chromaticity coordinates on the C.I.E. 1931 chromaticity diagram, figure 2, page 3 of IESNA LM–16 (incorporated by reference; *see* § 430.3) that lies below the black-body locus; and

(B) Has a color point with (x,y) chromaticity coordinates on the C.I.E. 1931 chromaticity diagram, figure 2, page 3 of IESNA LM–16 (incorporated by reference; *see* § 430.3) that lies at least 4 MacAdam steps, as referenced in IESNA LM–16, distant from the color point of a clear lamp with the same filament and bulb shape, operated at the same rated voltage and wattage.

* * * * *

*Off mode* means the condition in which an energy using product—

(1) Is connected to a main power source; and

(2) Is not providing any stand-by or active mode function.

* * * * *

*Organic light-emitting diode* or O*LED* means a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

* * * * *

*R20 incandescent reflector lamp* means a reflector lamp that has a face diameter of approximately 2.5 inches, as shown in figure 1(R) on page 7 of ANSI C79.1–1994 (incorporated by reference; *see* § 430.3).

* * * * *

*Rough service lamp* means a lamp that—

(1) Has a minimum of 5 supports with filament configurations that are C–7A, C–11, C–17, and C–22 as listed in Figure 6–12 of the IESNA Lighting Handbook (incorporated by reference; *see* § 430.3), or similar configurations where lead wires are not counted as supports; and

(2) Is designated and marketed specifically for 'rough service' applications, with

(i) The designation appearing on the lamp packaging; and

(ii) Marketing materials that identify the lamp as being for rough service.

* * * * *

*Shatter-resistant lamp, shatter-proof lamp,* or *shatter-protected lamp* means a lamp that—

(1) Has a coating or equivalent technology that is compliant with NSF/ANSI 51 (incorporated by reference; *see* § 430.3) and is designed to contain the glass if the glass envelope of the lamp is broken; and

(2) Is designated and marketed for the intended application, with

(i) The designation on the lamp packaging; and

(ii) Marketing materials that identify the lamp as being shatter-resistant, shatter-proof, or shatter-protected.

* * * * *

*Specialty application mercury vapor lamp ballast* means a mercury vapor lamp ballast that—

(1) Is designed and marketed for operation of mercury vapor lamps used in quality inspection, industrial processing, or scientific use, including fluorescent microscopy and ultraviolet curing; and

(2) In the case of a specialty application mercury vapor lamp ballast, the label of which—

(i) Provides that the specialty application mercury vapor lamp ballast is 'For specialty applications only, not for general illumination'; and

(ii) Specifies the specific applications for which the ballast is designed.

*Standby mode* means the condition in which an energy-using product—

(1) Is connected to a main power source; and

(2) Offers one or more of the following user-oriented or protective functions:

(i) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer; or

(ii) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

* * * * *

*Vibration service lamp* means a lamp that—

(1) Has filament configurations that are C–5, C–7A, or C–9, as listed in Figure 6–12 of the IESNA Lighting Handbook (incorporated by reference; *see* § 430.3) or similar configurations;

(2) Has a maximum wattage of 60 watts;

(3) Is sold at retail in packages of 2 lamps or less; and

(4) Is designated and marketed specifically for vibration service or vibration-resistant applications, with—

(i) The designation appearing on the lamp packaging; and

(ii) Marketing materials that identify the lamp as being vibration service only.

* * * * *

■ 3. A new § 430.3 is added to read as follows:

**§ 430.3 Materials incorporated by reference.**

(a) *General.* We incorporate by reference the following standards into Part 430. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* Standards can be obtained from the sources below.

(b) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd, Suite 500, Arlington, VA 22201, 703–524–8800, or go to *http://www.ahrinet.org.*

(1) ARI 210/240–2006, Unitary Air-Conditioning and Air-Source Heat Pump Equipment, approved March 26, 1998, IBR approved for Appendix M to Subpart B.

(2) [Reserved]

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

(1) ANSI C78.1–1991, for Fluorescent Lamps—Rapid-Start Types—Dimensional and Electrical Characteristics, approved July 15, 1991,

IBR approved for § 430.2 and Appendix R to Subpart B.

(2) ANSI C78.2–1991, for Fluorescent Lamps—Preheat-Start Types—Dimensional and Electrical Characteristics of Fluorescent Lamps, approved July 15, 1991, IBR approved for § 430.2 and Appendix R to Subpart B.

(3) ANSI C78.3–1991, for Fluorescent Lamps—Instant-Start and Cold-Cathode Types—Dimensional and Electrical Characteristics, approved July 15, 1991, IBR approved for § 430.2 and Appendix R to Subpart B.

(4) ANSI C78.20–2003, Revision of ANSI C78.20–1995 (''ANSI C78.20''), American National Standard for electric lamps—A, G, PS, and Similar Shapes with E26 Medium Screw Bases, approved October 30, 2003; IBR approved for § 430.2.

(5) ANSI C78.21–1989, American National Standard for Electric Lamps—PAR and R Shapes, approved March 3, 1989, IBR approved for § 430.2.

(6) ANSI C78.21–2003, Revision of ANSI C78.21–1995 with all supplements, American National Standard for Electric Lamps—PAR and R Shapes, approved October 30, 2003, IBR approved for § 430.2.

(7) ANSI C78.375–1991, for Fluorescent Lamps—Guide for Electrical Measurements, approved July 15, 1991, IBR approved for § 430.2 and Appendix R to Subpart B.

(8) ANSI C79.1–1994, American National Standard for Nomenclature for Glass Bulbs—Intended for Use with Electric Lamps, approved March 24, 1994, IBR approved for § 430.2.

(9) ANSI C79.1–2002, American National Standard for Electric Lamps—Nomenclature for Glass Bulbs Intended for Use with Electric Lamps, approved September 16, 2002, IBR approved for § 430.2.

(10) ANSI_ANSLG_ C81.61–2006, Revision of ANSI C81.61–2005, (''ANSI C81.61''), American National Standard for electrical lamp bases—Specifications for Bases (Caps) for Electric Lamps, approved August 25, 2006, IBR approved for § 430.2.

(11) ANSI C82.3–1983, for Reference Ballasts for Fluorescent Lamps, approved May 16, 1983, IBR approved for Appendix R to Subpart B.

(12) ANSI Z21.56–1994, Gas-Fired Pool Heaters, section 2.9, approved December 5, 1994, IBR approved for Appendix P to Subpart B.

(d) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., Publication Sales, 1791 Tullie Circle, NE., Atlanta, GA 30329, 800–527–4723 or 404–636–8400, or go to *http://www.ashrae.org.*

(1) ASHRAE 23–2005, Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units, approved February 10, 2005, IBR approved for Appendix M to Subpart B.

(2) ASHRAE 37–2005, Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment, approved March 11, 2005, IBR approved for Appendix M to Subpart B.

(3) ASHRAE 41.1–1986 (Reaffirmed 2001), Standard Method for Temperature Measurement, approved February 18, 1987, IBR approved for Appendix E and Appendix M to Subpart B.

(4) ASHRAE 41.2–1987 (Reaffirmed 1992), Standard Methods for Laboratory Airflow Measurement, approved October 1, 1987, IBR approved for Appendix M to Subpart B.

(5) ASHRAE 41.6–1994 (Reaffirmed 2001), Standard Method for Measurement of Moist Air Properties, approved August 30, 1994, IBR approved for Appendix M to Subpart B.

(6) ASHRAE 41.9–2000, Calorimeter Test Methods for Mass Flow Measurements of Volatile Refrigerants, approved October 6, 2000, IBR approved for Appendix M to Subpart B.

(7) ASHRAE/AMCA 51–1999/210–1999, Laboratory Methods of Testing Fans for Aerodynamic Performance Rating, approved December 2, 1999, IBR approved for Appendix M to Subpart B.

(8) ASHRAE 103–1993, Methods of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers, (with Errata of October 24, 1996) except for sections 3.0, 7.2.2.5, 8.6.1.1, 9.1.2.2, 9.5.1.1, 9.5.1.2.1, 9.5.1.2.2, 9.5.2.1, 9.7.1, 10.0, 11.2.12, 11.3.12, 11.4.12, 11.5.12 and appendices B and C, approved October 4, 1993, IBR approved for § 430.23 and Appendix N to Subpart B.

(9) ASHRAE 116–1995 (RA 2005), Methods of Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps, approved July 24, 1995, IBR approved for Appendix M to Subpart B.

(e) *ASME.* American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007, 973–882–1170, or go to *http://www.asme.org.*

(1) ASME/ANSI A112.18.1M–1996, Plumbing Fixture Fittings, approved April 4, 1996, IBR approved for Appendix S to Subpart B.

(2) ASME/ANSI A112.19.6–1995, Hydraulic Requirements for Water Closets and Urinals, approved April 6, 1995, IBR approved for § 430.2 and Appendix T to Subpart B.

(f) *AHAM.* Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, 202–872–5955, or go to *http://www.aham.org.*

(1) ANSI/AHAM DW–1–1992, American National Standard, Household Electric Dishwashers, approved February 6, 1992, IBR approved for Appendix C to Subpart B and § 430.32.

(2) [Reserved]

(g) *CEC.* California Energy Commission, 1516 Ninth Street, MS–25, Sacramento, CA 95814, 916–654–4091, or go to *http://www.energy.ca.gov.*

(1) CEC Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies, August 11, 2004, IBR approved for Appendix Z to Subpart B.

(2) [Reserved]

(h) *CIE.* Commission Internationale de l'Eclairage (CIE), Central Bureau, Kegelgasse 27, A–1030, Vienna, Austria, 011+43 1 714 31 87 0, or go to *http://www.cie.co.at.*

(1) CIE Publication No. 13.2–1974, corrected reprint 1993, Method of Measuring and Specifying Color Rendering Properties of Light Sources, approved March 27, 1975, ISBN 3 900 734 39 9, IBR approved for § 430.2 and Appendix R to Subpart B.

(2) CIE 13.3–1995 (''CIE 13.3''), Commission Internationale de l'Eclairage International Commission on Illumination Internationale Beleuchtungskommission Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources, 1995, ISBN 3 900 734 57 7, IBR approved for § 430.2.

(2) [Reserved].

(i) *Environmental Protection Agency (EPA),* ENERGY STAR documents published by the Environmental Protection Agency are available online at *http://www.energystar.gov* or by contacting the Energy Star hotline at 1–888–782–7937.

(1) ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1, approved December 9, 2002, IBR approved for Appendix U to Subpart B.

(2) ENERGY STAR Program Requirements for Residential Light Fixtures, Version 4.0, approved January 10, 2005, IBR approved for Appendix V to Subpart B.

(3) ENERGY STAR Program Requirements for Dehumidifiers, approved January 1, 2001, IBR approved for Appendix X to Subpart B.

(4) Energy Star Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies, Eligibility Criteria (Version 2.0), effective date for EPS Manufacturers November 1, 2008, IBR approved for Subpart C, § 430.32.

(5) Test Methodology for Determining the Energy Performance of Battery Charging Systems, approved December 2005, IBR approved for Appendix Y to Subpart B.

(j) *IESNA.* Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, 212–248–5000, or go to *http://www.iesna.org.*

(1) *The IESNA Lighting Handbook, Reference & Application,* (''The IESNA Lighting Handbook''), 9th ed., Chapter 6, ''Light Sources,'' July 2000, IBR approved for § 430.2.

(2) IES LM–9–88, IES Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps, approved December 7, 1988, IBR approved for Appendix R to Subpart B.

(3) IESNA LM–16–1993 (''IESNA LM–16''), IESNA Practical Guide to Colorimetry of Light Sources, December 1993, IBR approved for § 430.2 and Appendix R to Subpart B.

(4) IES LM–20–1994, IESNA Approved Method for Photometric Testing of Reflector-Type Lamps, approved December 3, 1994, IBR approved for Appendix R to Subpart B.

(5) IES LM–45–91, IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps, approved December 8, 1990, IBR approved for Appendix R to Subpart B.

(6) IES LM–58–1994, IESNA Guide to Spectroradiometric Measurements, approved December 3, 1994, IBR approved for Appendix R to Subpart B.

(7) IES LM–66–1991, IES Approved Method for the Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps, approved June 1991, IBR approved for Appendix R to Subpart B.

(k) *IEC.* International Electrotechnical Commission, available from the American National Standards Institute, 11 W. 42nd Street, New York, NY 10036, 212–642–4936 or go to *http://www.iec.ch.*

(1) IEC 705, Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes, Section 4, Methods of Measurement, Paragraph 13, Electrical Power Input Measurement, and Paragraph 14, Efficiency, approved December 14, 1988, IBR approved for Appendix I to Subpart B.

(2) IEC 705, Amendment 2, Methods for Measuring the Performance of Microwave Ovens for Household and Similar Purposes, Section 4, Methods of Measurement, Paragraph 12, Microwave Power Output Measurement, approved September 21, 1993, IBR approved for Appendix I to Subpart B to Subpart B.

(l) *NSF International.* NSF International, P.O. Box 130140, 789 North Dixboro Road, Ann Arbor, MI 48113–0140, 1–800–673–6275, or go to *http://www.nsf.org.*

(1) NSF/ANSI 51–2007 (''NSF/ANSI 51''), Food equipment materials, revised and adopted April 2007, IBR approved for § 430.2.

(2) [Reserved].

(m) *Optical Society of America. Optical Society of America,* 2010 Massachusetts Ave., NW., Washington, DC 20036–1012, 202–223–8130, or go to *http://www.opticsinfobase.org;*

(1) ''Computation of Correlated Color Temperature and Distribution Temperature,'' A.R. Robertson, Journal of the Optical Society of America, Volume 58, Number 11, November 1968, pages 1528–1535, IBR approved for § 430.2.

(2) [Reserved].

(n) *U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy,* Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, 202–586–2945, or go to *http://www.energystar.gov.*

(1) ENERGY STAR Program Requirements for [Compact Fluorescent Lamps] CFLs, Version 3.0, approved October 30, 2003, IBR approved for Appendix V to Subpart B.

(2) ENERGY STAR Program Requirements for [Compact Fluorescent Lamps] CFLs, approved August 9, 2001, IBR approved for Appendix W to Subpart B.

■ 4. A new § 430.4 is added to read as follows:

**§ 430.4 Sources for information and guidance.**

(a) *General.* The standards listed in this paragraph are referred to in the DOE test procedures and elsewhere in this part but are not incorporated by reference. These sources are given here for information and guidance.

(b) *IESNA.* Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, 212–248–5000, or go to *http://www.iesna.org.*

(1) *Illuminating Engineering Society of North America Lighting Handbook,* 8th Edition, 1993.

(2) [Reserved].

(c) *IEEE.* Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, 17th Floor, New York, NY, 10016–5997, 212–419–7900, or go to *http://www.ieee.org.*

(1) IEEE 1515–2000, IEEE Recommended Practice for Electronic Power Subsystems: Parameter Definitions, Test Conditions, and Test Methods, March 30, 2000.

(2) IEEE 100, Authoritative Dictionary of IEEE Standards Terms, 7th Edition, January 1, 2006.

(d) *IEC.* International Electrotechnical Commission, available from the American National Standards Institute, 11 W. 42nd Street, New York, NY 10036, 212–642–4936, or go to *http://www.iec.ch.*

(1) IEC 62301, Household electrical appliances—Measurement of standby power, First Edition, June 13, 2005.

(2) IEC 60050, International Electrotechnical Vocabulary.

(e) National Voluntary Laboratory Accreditation Program, Standards Services Division, NIST, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140, 301–975–4016, or go to *http://ts.nist.gov/standards/accreditation.*

(1) National Voluntary Laboratory Accreditation Program Handbook 150–01, Energy Efficient Lighting Products, Lamps and Luminaires, August 1993.

(2) [Reserved].

**§ 430.22 [Removed]**

■ 5. Section 430.22 is removed.

■ 6. Appendix Z to subpart B of part 430 is amended by revising paragraphs 2(a) and 2(c) to read as follows:

**Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies**

* * * * *

2. * * *

a. *Active mode* means the mode of operation when an external power supply is connected to the main electricity supply and the output is connected to a load.

* * *

c. *No-load mode* means the mode of operation when an external power supply is connected to the main electricity supply and the output is not connected to a load.

* * * * *

■ 4. Section 430.32 of subpart C is amended by:

■ a. Adding after the paragraph (f) heading the designation ''(1)'' before the existing (f) introductory text;

■ b. Removing the designations ''(1)'' and ''(2)'' in the table in paragraph (f) and adding in their place ''(i)'' and ''(ii)'', respectively;

■ c. Adding a new paragraph (f)(2);

■ d. Adding a new paragraph (g)(4);

■ e. Revising the heading to paragraph (m)(1) introductory text;

■ f. Adding a new paragraph (n)(3);
■ g. Revising paragraph (s)(1)(iii)(B);
■ h. Revising paragraph (s)(3)(ii);
■ i. Adding after the paragraph (v) heading the designation ''(1)'' before the existing (v) introductory text;
■ j. Adding a new paragraph (v)(2); and
■ k. Adding new paragraphs (w) and (x).

The revisions and additions read as follows:

**§ 430.32 Energy and water conservation standards and their effective dates.**

* * * * *

(f) * * *

(1) * * *

(2) All dishwashers manufactured on or after January 1, 2010, shall meet the following standard—

(i) Standard size dishwashers shall not exceed 355 kwh/year and 6.5 gallons per cycle.

(ii) Compact size dishwashers shall not exceed 260 kwh/year and 4.5 gallons per cycle.

(g) * * *

(4) All top-loading or front-loading standard-size residential clothes washers manufactured on or after January 1, 2011, shall meet the following standard—

(i) A Modified Energy Factor of at least 1.26; and

(ii) A water factor of not more than 9.5.

* * * * *

(m)(1) *Fluorescent lamp ballasts (other than specialty application mercury vapor lamp ballasts).* * * *

* * * * *

(n) * * *

(3)(i) The standards specified in this section shall not apply to the following types of incandescent reflector lamps:

(A) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps;

(B) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps; and

(C) R20 incandescent reflector lamps rated 45 watts or less.

(ii)(A) The standards specified in this section shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

(B) The standards specified in this section shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after June 15, 2008.

* * * * *

(s) * * *

(1) * * *

(iii) * * *

(B) Fans sold for outdoor applications; and

* * * * *

(3) * * *

(ii) Shall be packaged to include the lamps described in paragraph (s)(3)(i) of this section with the ceiling fan light kits to fill all sockets.

* * * * *

(v) * * *

(1) * * *

(2) Dehumidifiers manufactured on or after October 1, 2012, shall have an energy factor that meets or exceeds the following values:

| Product capacity (pints/day) | Minimum energy factor (liters/kWh) |
|---|---|
| Up to 35.00 ..... | 1.35 |
| 35.01–45.00 ..... | 1.50 |
| 45.01–54.00 ..... | 1.60 |
| 54.01–75.00 ..... | 1.70 |
| 75.00 or more ..... | 2.5 |

(w) *Class A external power supplies.*

(1)(i) Except as provided in paragraph (w)(1)(ii) of this section, all class A external power supplies manufactured on or after July 1, 2008, shall meet the following standards:

**Active Mode**

| Nameplate Output | Required efficiency (decimal equivalent of a percentage) |
|---|---|
| Less than 1 watt ..... | 0.5 times the Nameplate output. |
| From 1 watt to not more than 51 watts ..... | The sum of 0.09 times the Natural Logarithm of the Nameplate Output and 0.5. |
| Greater than 51 watts ..... | 0.85. |

**No-Load Mode**

| Nameplate output | Maximum consumption |
|---|---|
| Not more than 250 watts ..... | 0.5 watts. |

(ii) A class A external power supply shall not be subject to the standards in paragraph w(1)(i) if the class A external power supply is—

(A) Manufactured during the period beginning on July 1, 2008, and ending on June 30, 2015, and

(B) Made available by the manufacturer as a service part or a spare part for an end-use product—

(1) That constitutes the primary load; and

(2) Was manufactured before July 1, 2008.

(3) The standards described in paragraph (w)(1)(i) shall not constitute an energy conservation standard for the separate end-use product to which the external power supply is connected.

(4) Any class A external power supply manufactured on or after July 1, 2008 shall be clearly and permanently marked in accordance with the External Power Supply International Efficiency Marking Protocol, as referenced in the 'Energy Star Program Requirements for Single Voltage External Ac–Dc and Ac–Ac Power Supplies,' (incorporated by reference; see § 430.3), published by the Environmental Protection Agency.

(x) *General service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps.* (1) The energy conservation standards in this paragraph apply to general service incandescent lamps:

(i) Intended for a general service or general illumination application (whether incandescent or not);

(ii) Has a medium screw base or any other screw base not defined in ANSI C81.61 (incorporated by reference; see § 430.3); and

(iii) Is capable of being operated at a voltage at least partially within the range of 110 to 130 volts.

(A) General service incandescent lamps manufactured after the effective dates specified in the tables below, except as described in paragraph (x)(1)(B) of this section, shall have a color rendering index greater than or equal to 80 and shall have rated wattage no greater than and rated lifetime no less than the values shown in the table below:

GENERAL SERVICE INCANDESCENT LAMPS

| Rated lumen ranges | Maximum rate wattage | Minimum rate life-time | Effective date |
|---|---|---|---|
| 1490–2600 | 72 | 1,000 hrs | 1/1/2012 |
| 1050–1489 | 53 | 1,000 hrs | 1/1/2013 |
| 750–1049 | 43 | 1,000 hrs | 1/1/2014 |
| 310–749 | 29 | 1,000 hrs | 1/1/2014 |

(B) Modified spectrum general service incandescent lamps manufactured after the effective dates specified shall have a color rendering index greater than or equal to 75 and shall have a rated wattage no greater than and rated lifetime no less than the values shown in the table below:

MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

| Rated lumen ranges | Maximum rate wattage | Minimum rate life-time | Effective date |
|---|---|---|---|
| 1118–1950 | 72 | 1,000 hrs | 1/1/2012 |
| 788–1117 | 53 | 1,000 hrs | 1/1/2013 |
| 563–787 | 43 | 1,000 hrs | 1/1/2014 |
| 232–562 | 29 | 1,000 hrs | 1/1/2014 |

(2) Each candelabra base incandescent lamp shall not exceed 60 rated watts.

(3) Each intermediate base incandescent lamp shall not exceed 40 rated watts.

■ 7. Section 430.33 of subpart C is amended by:

■ a. Removing the text ''sections 327(b) and (c) of the Act'' and adding in its place ''sections 325(i)(6)(A)(vi), 327(b) and (c) of the Act'';

■ b. Adding the paragraph designation ''(a)'' before the existing text; and

■ c. Adding a new paragraph (b) to read as follows:

**§ 430.33 Preemption of State regulations.**

* * * * *

(b) No State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision in the case of any portion of any regulation that establishes requirements for general service incandescent lamps, intermediate base incandescent lamps, or candelabra base lamps, was enacted or adopted by the State of California or Nevada before December 4, 2007, except that—

(1) The regulation adopted by the California Energy Commission with an effective date of January 1, 2008, shall only be effective until the effective date of the Federal standard for the applicable lamp category under paragraphs (A), (B), and (C) of section 325(i)(1) of EPCA;

(2) The States of California and Nevada may, at any time, modify or adopt a State standard for general service lamps to conform with Federal standards with effective dates no earlier than 12 months prior to the Federal effective dates prescribed under paragraphs (A), (B), and (C) of section 325(i)(1) of EPCA, at which time any prior regulations adopted by the State of California or Nevada shall no longer be effective; and

(3) All other States may, at any time, modify or adopt a State standard for general service lamps to conform with Federal standards and effective dates.

■ 8. Add a new § 430.35 to subpart C to read as follows:

**§ 430.35 Petitions with respect to general service lamps.**

(a) Any person may petition the Secretary for an exemption for a type of general service lamp from the requirements of this subpart. The Secretary may grant an exemption only to the extent that the Secretary finds, after a hearing and opportunity for public comment, that it is not technically feasible to serve a specialized lighting application (such as a military, medical, public safety or certified historic lighting application) using a lamp that meets the requirements of this subpart. To grant an exemption for a product under this paragraph, the Secretary shall include, as an additional criterion, that the exempted product is unlikely to be used in a general service lighting application.

(b) Any person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps. The petition shall include evidence that the availability or sales of exempted lamps have increased significantly since December 19, 2007. The Secretary shall grant a petition if the Secretary finds that:

(1) The petition presents evidence that demonstrates that commercial availability or sales of exempted incandescent lamp types have increased significantly since December 19, 2007 and are being widely used in general lighting applications; and

(2) Significant energy savings could be achieved by covering exempted products, as determined by the Secretary based on sales data provided to the Secretary from manufacturers and importers.

■ 9. Amend § 430.61 by revising paragraphs (a)(3) and (4) and by adding new paragraphs (a)(5) and (6) to read as follows:

**§ 430.61 Prohibited acts.**

(a) * * *

(3) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this rule and inspect the results of such testing;

(4) Distribution in commerce by a manufacturer or private labeler of any new covered product which is not in compliance with an applicable energy efficiency standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) prescribed under the Act and this rule; or

(5) For any manufacturer, distributor, retailer, or private labeler to distribute in commerce an adapter that—

(i) Is designed to allow an incandescent lamp that does not have a medium screw base to be installed into a fixture or lamp holder with a medium screw base socket; and

(ii) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(6) For any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.

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

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

**Authority:** 42 U.S.C. 6291–6317.

■ 11. Section 431.2 is amended by adding in alphabetical order a definition of ''import'' and revising the definition of ''covered equipment'' to read as follows:

### § 431.2 Definitions.

* * * * *

*Covered equipment* means any electric motor, as defined in § 431.12; commercial heating, ventilating, and air conditioning, and water heating product (HVAC & WH product), as defined in § 431.172; commercial refrigerator, freezer, or refrigerator-freezer, as defined in § 431.62; automatic commercial ice maker, as defined in § 431.132; commercial clothes washer, as defined in § 431.152; distribution transformer, as defined in § 431.192; illuminated exit sign, as defined in § 431.202; traffic signal module or pedestrian module, as defined in § 431.222; unit heater, as defined in § 431.242; commercial prerinse spray valve, as defined in § 431.262; mercury vapor lamp ballast, as defined in § 431.282; refrigerated bottled or canned beverage vending machine, as defined in § 431.292; walk-in cooler and walk-in freezer, as defined in § 431.302; metal halide ballast and metal halide lamp fixture, as defined in § 431.322.

* * * * *

*Import* means to import into the customs territory of the United States.

* * * * *

■ 12. Section 431.12 of subpart B is amended by removing the definition of ''electric motor,'' and adding, in alphabetical order definitions of ''fire pump motors,'' ''general purpose electric motor (subtype I),'' ''general purpose electric motor (subtype II),'' and ''NEMA design B general purpose electric motor'' to read as follows:

### § 431.12 Definitions.

* * * * *

*Fire pump motors* [Reserved].

*General purpose electric motor (subtype I)* means any motor which is designed in standard ratings with either:

(1) Standard operating characteristics and standard mechanical construction for use under usual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.02, ''Usual Service Conditions,'' (incorporated by reference; see § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA Standards Publication MG1–1993, paragraph 14.03, ''Unusual Service Conditions,'' (incorporated by reference; see § 431.15) or for a particular type of application, and which can be used in most general purpose applications.

*General purpose electric motor (subtype II)* means any motor incorporating the design elements of a general purpose electric motor (subtype I) that are configured as one of the following:

(i) A U-frame motor;

(ii) A design C motor;

(iii) A close-coupled pump motor;

(iv) A footless motor;

(v) A vertical solid shaft normal thrust motor (as tested in a horizontal configuration);

(vi) An 8-pole motor (900 rpm); or

(vii) A poly-phase motor with voltage of not more than 600 volts (other than 230 or 460 volts).

* * * * *

*NEMA design B general purpose electric motor* [Reserved].

* * * * *

■ 13. Section 431.25 is amended by:

■ a. Redesignating paragraph (c) as (g).

■ b. Adding new paragraphs (c), (d), (e), (f), to read as follows:

### § 431.25 Energy conservation standards and effective dates.

* * * * *

(c) Each general purpose electric motor (subtype I), except as provided in paragraph (d) of this section, with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency that is not less than the following:

FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS

[Subtype I]

| Motor horsepower | Nominal full load efficiency | | | | | |
|---|---|---|---|---|---|---|
| | Open motors (number of poles) | | | Enclosed motors (number of poles) | | |
| | 6 | 4 | 2 | 6 | 4 | 2 |
| 1 | 82.5 | 85.5 | 77.0 | 82.5 | 85.5 | 77.0 |
| 1.5 | 86.5 | 86.5 | 84.0 | 87.5 | 86.5 | 84.0 |
| 2 | 87.5 | 86.5 | 85.5 | 88.5 | 86.5 | 85.5 |
| 3 | 88.5 | 89.5 | 85.5 | 89.5 | 89.5 | 86.5 |
| 5 | 89.5 | 89.5 | 86.5 | 89.5 | 89.5 | 88.5 |
| 7.5 | 90.2 | 91.0 | 88.5 | 91.0 | 91.7 | 89.5 |
| 10 | 91.7 | 91.7 | 89.5 | 91.0 | 91.7 | 90.2 |
| 15 | 91.7 | 93.0 | 90.2 | 91.7 | 92.4 | 91.0 |
| 20 | 92.4 | 93.0 | 91.0 | 91.7 | 93.0 | 91.0 |
| 25 | 93.0 | 93.6 | 91.7 | 93.0 | 93.6 | 91.7 |
| 30 | 93.6 | 94.1 | 91.7 | 93.0 | 93.6 | 91.7 |
| 40 | 94.1 | 94.1 | 92.4 | 94.1 | 94.1 | 92.4 |
| 50 | 94.1 | 94.5 | 93.0 | 94.1 | 94.5 | 93.0 |
| 60 | 94.5 | 95.0 | 93.6 | 94.5 | 95.0 | 93.6 |
| 75 | 94.5 | 95.0 | 93.6 | 94.5 | 95.4 | 93.6 |
| 100 | 95.0 | 95.4 | 93.6 | 95.0 | 95.4 | 94.1 |

FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS—Continued

[Subtype I]

| Motor horsepower | Nominal full load efficiency | | | | | |
|---|---|---|---|---|---|---|
| | Open motors (number of poles) | | | Enclosed motors (number of poles) | | |
| | 6 | 4 | 2 | 6 | 4 | 2 |
| 125 | 95.0 | 95.4 | 94.1 | 95.0 | 95.4 | 95.0 |
| 150 | 95.4 | 95.8 | 94.1 | 95.8 | 95.8 | 95.0 |
| 200 | 95.4 | 95.8 | 95.0 | 95.8 | 96.2 | 95.4 |

(d) Each fire pump motor manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency that is not less than the following:

FULL-LOAD EFFICIENCIES OF FIRE PUMP MOTORS

| Motor horsepower | Nominal full load efficiency | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Open motors (number of poles) | | | | Enclosed motors (number of poles) | | | |
| | 8 | 6 | 4 | 2 | 8 | 6 | 4 | 2 |
| 1 | 74.0 | 80.0 | 82.5 | ..... | 74.0 | 80.0 | 82.5 | 75.5 |
| 1.5 | 75.5 | 84.0 | 84.0 | 82.5 | 77.0 | 85.5 | 84.0 | 82.5 |
| 2 | 85.5 | 85.5 | 84.0 | 84.0 | 82.5 | 86.5 | 84.0 | 84.0 |
| 3 | 86.5 | 86.5 | 86.5 | 84.0 | 84.0 | 87.5 | 87.5 | 85.5 |
| 5 | 87.5 | 87.5 | 87.5 | 85.5 | 85.5 | 87.5 | 87.5 | 87.5 |
| 7.5 | 88.5 | 88.5 | 88.5 | 87.5 | 85.5 | 89.5 | 89.5 | 88.5 |
| 10 | 89.5 | 90.2 | 89.5 | 88.5 | 88.5 | 89.5 | 89.5 | 89.5 |
| 15 | 89.5 | 90.2 | 91.0 | 89.5 | 88.5 | 90.2 | 91.0 | 90.2 |
| 20 | 90.2 | 91.0 | 91.0 | 90.2 | 89.5 | 90.2 | 91.0 | 90.2 |
| 25 | 90.2 | 91.7 | 91.7 | 91.0 | 89.5 | 91.7 | 92.4 | 91.0 |
| 30 | 91.0 | 92.4 | 92.4 | 91.0 | 91.0 | 91.7 | 92.4 | 91.0 |
| 40 | 91.0 | 93.0 | 93.0 | 91.7 | 91.0 | 93.0 | 93.0 | 91.7 |
| 50 | 91.7 | 93.0 | 93.0 | 92.4 | 91.7 | 93.0 | 93.0 | 92.4 |
| 60 | 92.4 | 93.6 | 93.6 | 93.0 | 91.7 | 93.6 | 93.6 | 93.0 |
| 75 | 93.6 | 93.6 | 94.1 | 93.0 | 93.0 | 93.6 | 94.1 | 93.0 |
| 100 | 93.6 | 94.1 | 94.1 | 93.0 | 93.0 | 94.1 | 94.5 | 93.6 |
| 125 | 93.6 | 94.1 | 94.5 | 93.6 | 93.6 | 94.1 | 94.5 | 94.5 |
| 150 | 93.6 | 94.5 | 95.0 | 93.6 | 93.6 | 95.0 | 95.0 | 94.5 |
| 200 | 93.6 | 94.5 | 95.0 | 94.5 | 94.1 | 95.0 | 95.0 | 95.0 |
| 250 | 94.5 | 95.4 | 95.4 | 94.5 | 94.5 | 95.0 | 95.0 | 95.4 |
| 300 | ..... | 95.4 | 95.4 | 95.0 | ..... | 95.0 | 95.4 | 95.4 |
| 350 | ..... | 95.4 | 95.4 | 95.0 | ..... | 95.0 | 95.4 | 95.4 |
| 400 | ..... | ..... | 95.4 | 95.4 | ..... | ..... | 95.4 | 95.4 |
| 450 | ..... | ..... | 95.8 | 95.8 | ..... | ..... | 95.4 | 95.4 |
| 500 | ..... | ..... | 95.8 | 95.8 | ..... | ..... | 95.8 | 95.4 |

(e) Each general purpose electric motor (subtype II) with a power rating of 1 horsepower or greater, but not greater than 200 horsepower, manufactured (alone or as a component of another piece of equipment) on or after December 19, 2010, shall have a nominal full load efficiency that is not less than the following:

FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS

[Subtype II]

| Motor horsepower | Nominal full load efficiency | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Open motors (number of poles) | | | | Enclosed motors (number of poles) | | | |
| | 8 | 6 | 4 | 2 | 8 | 6 | 4 | 2 |
| 1 | 74.0 | 80.0 | 82.5 | ..... | 74.0 | 80.0 | 82.5 | 75.5 |
| 1.5 | 75.5 | 84.0 | 84.0 | 82.5 | 77.0 | 85.5 | 84.0 | 82.5 |
| 2 | 85.5 | 85.5 | 84.0 | 84.0 | 82.5 | 86.5 | 84.0 | 84.0 |
| 3 | 86.5 | 86.5 | 86.5 | 84.0 | 84.0 | 87.5 | 87.5 | 85.5 |
| 5 | 87.5 | 87.5 | 87.5 | 85.5 | 85.5 | 87.5 | 87.5 | 87.5 |
| 7.5 | 88.5 | 88.5 | 88.5 | 87.5 | 85.5 | 89.5 | 89.5 | 88.5 |

FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS—Continued

[Subtype II]

| Motor horsepower | Nominal full load efficiency | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Open motors (number of poles) | | | | Enclosed motors (number of poles) | | | |
| | 8 | 6 | 4 | 2 | 8 | 6 | 4 | 2 |
| 10 | 89.5 | 90.2 | 89.5 | 88.5 | 88.5 | 89.5 | 89.5 | 89.5 |
| 15 | 89.5 | 90.2 | 91.0 | 89.5 | 88.5 | 90.2 | 91.0 | 90.2 |
| 20 | 90.2 | 91.0 | 91.0 | 90.2 | 89.5 | 90.2 | 91.0 | 90.2 |
| 25 | 90.2 | 91.7 | 91.7 | 91.0 | 89.5 | 91.7 | 92.4 | 91.0 |
| 30 | 91.0 | 92.4 | 92.4 | 91.0 | 91.0 | 91.7 | 92.4 | 91.0 |
| 40 | 91.0 | 93.0 | 93.0 | 91.7 | 91.0 | 93.0 | 93.0 | 91.7 |
| 50 | 91.7 | 93.0 | 93.0 | 92.4 | 91.7 | 93.0 | 93.0 | 92.4 |
| 60 | 92.4 | 93.6 | 93.6 | 93.0 | 91.7 | 93.6 | 93.6 | 93.0 |
| 75 | 93.6 | 93.6 | 94.1 | 93.0 | 93.0 | 93.6 | 94.1 | 93.0 |
| 100 | 93.6 | 94.1 | 94.1 | 93.0 | 93.0 | 94.1 | 94.5 | 93.6 |
| 125 | 93.6 | 94.1 | 94.5 | 93.6 | 93.6 | 94.1 | 94.5 | 94.5 |
| 150 | 93.6 | 94.5 | 95.0 | 93.6 | 93.6 | 95.0 | 95.0 | 94.5 |
| 200 | 93.6 | 94.5 | 95.0 | 94.5 | 94.1 | 95.0 | 95.0 | 95.0 |

(f) Each NEMA design B general purpose electric motor with a power rating of more than 200 horsepower, but not greater than 500 horsepower, manufactured (alone or as a component of another piece of equipment), on or after December 19, 2010, shall have nominal full load efficiency that is not less than the following:

FULL-LOAD EFFICIENCIES OF NEMA DESIGN B GENERAL PURPOSE ELECTRIC MOTORS FULL-LOAD EFFICIENCIES OF GENERAL PURPOSE ELECTRIC MOTORS

| Motor horsepower | Nominal full load efficiency | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Open motors (number of poles) | | | | Enclosed motors (number of poles) | | | |
| | 8 | 6 | 4 | 2 | 8 | 6 | 4 | 2 |
| 250 | 94.5 | 94.5 | 95.4 | 94.5 | 94.5 | 95.0 | 95.0 | 95.4 |
| 300 | ..... | 94.5 | 95.4 | 95.0 | ..... | 95.0 | 95.4 | 95.4 |
| 350 | ..... | 94.5 | 95.4 | 95.0 | ..... | 95.0 | 95.4 | 95.4 |
| 400 | ..... | ..... | 95.4 | 95.4 | ..... | ..... | 95.4 | 95.4 |
| 450 | ..... | ..... | 95.8 | 95.8 | ..... | ..... | 95.4 | 95.4 |
| 500 | ..... | ..... | 95.8 | 95.8 | ..... | ..... | 95.8 | 95.4 |

* * * * *

■ 14. In § 431.92, add the definitions ''single package vertical air conditioner,'' and ''single package vertical heat pump,'' in alphabetical order to read as follows:

**§ 431.92 Definitions concerning commercial air conditioners and heat pumps.**

* * * * *

*Single package vertical air conditioner* means air-cooled commercial package air conditioning and heating equipment that—

(1) Is factory-assembled as a single package that—

(i) Has major components that are arranged vertically;

(ii) Is an encased combination of cooling and optional heating components; and

(iii) Is intended for exterior mounting on, adjacent interior to, or through an outside wall;

(2) Is powered by a single-or 3-phase current;

(3) May contain 1 or more separate indoor grilles, outdoor louvers, various ventilation options, indoor free air discharges, ductwork, well plenum, or sleeves; and

(4) Has heating components that may include electrical resistance, steam, hot water, or gas, but may not include reverse cycle refrigeration as a heating means.

*Single package vertical heat pump* means a single package vertical air conditioner that—

(1) Uses reverse cycle refrigeration as its primary heat source; and

(2) May include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas.

* * * * *

■ 15. Section 431.97 is amended by revising paragraph (a) (Tables 1 and 2 to § 431.97 remained unchanged), revising paragraph (b) introductory text, and adding four new entries to the top of the table in paragraph (b) to read as follows:

**§ 431.97 Energy efficiency standards and their effective dates.**

(a) Each commercial air conditioner or heat pump (including single package vertical air conditioners and single package vertical heat pumps) manufactured on or after January 1, 1994 (except for large commercial package air-conditioning and heating equipment, for which the effective date is January 1, 1995) must meet the applicable minimum energy efficiency standard level(s) set forth in Tables 1 and 2 of this section.

* * * * *

(b) Commercial package air conditioning and heating equipment manufactured on or after January 1, 2010 (except for air-cooled, three-phase small commercial package air-conditioning and heating equipment

<65,000 Btu/h for which the effective date is June 16, 2008) must meet the applicable energy efficiency standards set forth in this section.

| Product | Cooling capacity (Btu/h) | Category | Efficiency level † |
|---|---|---|---|
| Small commercial package air conditioning and heating equipment, (air-cooled, three-phase). | <65,000 | AC | SEER=13.0. |
| | | HP | SEER=13.0.<br>HSPF=7.7. |
| Single package vertical air conditioners and single package vertical heat pumps, single-phase and three phase. | <65,000 | AC | EER=9.0. |
| | | HP | EER=9.0.<br>COP=3.0. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥ 65,000 and <135,000. | AC | EER=8.9. |
| | | HP | EER=8.9.<br>COP=3.0. |
| Single package vertical air conditioners and single package vertical heat pumps. | ≥135,000 and <240,000. | AC | EER=8.6. |
| | | HP | EER=8.6.<br>COP=2.9. |
| * * * | * * * | * * * | * * * |

† EER at a standard temperature rating of 95 °F dry-bulb and COP at a high temperature rating of 47 °F dry-bulb.

* * * * *

■ 16. Section 431.282 is revised to read as follows:

**§ 431.282 Definitions concerning mercury vapor lamp ballasts.**

*Ballast* means a device used with an electric discharge lamp to obtain necessary circuit conditions (voltage, current, and waveform) for starting and operating.

*High intensity discharge lamp* means an electric-discharge lamp in which—

(1) The light-producing arc is stabilized by the arc tube wall temperature; and

(2) The arc tube wall loading is in excess of 3 Watts/cm$^2$, including such lamps that are mercury vapor, metal halide, and high-pressure sodium lamps.

*Mercury vapor lamp* means a high intensity discharge lamp, including clear, phosphor-coated, and self-ballasted screw base lamps, in which the major portion of the light is produced by radiation from mercury typically operating at a partial vapor pressure in excess of 100,000 Pa (approximately 1 atm).

*Mercury vapor lamp ballast* means a device that is designed and marketed to start and operate mercury vapor lamps intended for general illumination by providing the necessary voltage and current.

*Specialty application mercury vapor lamp ballast* means a mercury vapor lamp ballast that—

(1) Is designed and marketed for operation of mercury vapor lamps used in quality inspection, industrial processing, or scientific use, including fluorescent microscopy and ultraviolet curing; and

(2) In the case of a specialty application mercury vapor lamp ballast, the label of which—

(i) Provides that the specialty application mercury vapor lamp ballast is 'For specialty applications only, not for general illumination'; and

(ii) Specifies the specific applications for which the ballast is designed.

■ 17. Section 431.286 is revised to read as follows:

**§ 431.286 Energy conservation standards and their effective dates.**

Mercury vapor lamp ballasts, other than specialty application mercury vapor lamp ballasts, shall not be manufactured or imported after January 1, 2008.

■ 18. Add a new subpart R to read as follows:

## Subpart R—Walk-in Coolers and Walk-in Freezers

Sec.



**§ 431.301 Purpose and scope.**

This subpart contains energy conservation requirements for walk-in coolers and walk-in freezers, pursuant to Part C of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

**§ 431.302 Definitions concerning walk-in coolers and walk-in freezers.**

*Walk-in cooler and walk-in freezer* mean an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet; however the terms do not include products designed and marketed exclusively for medical, scientific, or research purposes.

**Test Procedures**

**§ 431.303 Materials incorporated by reference.**

(a) *General.* We incorporate by reference the following standards into Subpart R of part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also,

this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202–586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* Standards can be obtained from the sources listed below.

(b) *ASTM.* American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, (610) 832–9500, or *http://www.astm.org.*

(1) ASTM C518–04 (''ASTM C518''), Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, approved May 1, 2004, IBR approved for § 431.304.

(2) [Reserved].

#### § 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.

(a) *Scope.* This section provides test procedures for measuring, pursuant to EPCA, the energy consumption of refrigerated bottled or canned beverage vending machines.

(b) *Testing and Calculations.* (1) [Reserved]

(2) The R value shall be the 1/K factor multiplied by the thickness of the panel.

(3) The K factor shall be based on ASTM C518 (incorporated by reference; see § 431.303).

(4) For calculating the R value for freezers, the K factor of the foam at 20 degrees Fahrenheit (average foam temperature) shall be used.

(5) For calculating the R value for coolers, the K factor of the foam at 55 degrees Fahrenheit (average foam temperature) shall be used.

#### § 431.305 [Reserved]

### Energy Conservation Standards

#### § 431.306 Energy conservation standards and their effective dates.

(a) Each walk-in cooler or walk-in freezer manufactured on or after January 1, 2009, shall—

(1) Have automatic door closers that firmly close all walk-in doors that have been closed to within 1 inch of full closure, except that this paragraph shall not apply to doors wider than 3 feet 9 inches or taller than 7 feet;

(2) Have strip doors, spring hinged doors, or other method of minimizing infiltration when doors are open;

(3) Contain wall, ceiling, and door insulation of at least R–25 for coolers and R–32 for freezers, except that this paragraph shall not apply to glazed portions of doors nor to structural members;

(4) Contain floor insulation of at least R–28 for freezers;

(5) For evaporator fan motors of under 1 horsepower and less than 460 volts, use—

(i) Electronically commutated motors (brushless direct current motors); or

(ii) 3-phase motors;

(6) For condenser fan motors of under 1 horsepower, use—

(i) Electronically commutated motors (brushless direct current motors);

(ii) Permanent split capacitor-type motors; or

(iii) 3-phase motors; and

(7) For all interior lights, use light sources with an efficacy of 40 lumens per watt or more, including ballast losses (if any), except that light sources with an efficacy of 40 lumens per watt or less, including ballast losses (if any), may be used in conjunction with a timer or device that turns off the lights within 15 minutes of when the walk-in cooler or walk-in freezer is not occupied by people.

(b) Each walk-in cooler or walk-in freezer with transparent reach-in doors manufactured on or after January 1, 2009, shall also meet the following specifications:

(1) Transparent reach-in doors for walk-in freezers and windows in walk-in freezer doors shall be of triple-pane glass with either heat-reflective treated glass or gas fill.

(2) Transparent reach-in doors for walk-in coolers and windows in walk-in cooler doors shall be—

(i) Double-pane glass with heat-reflective treated glass and gas fill; or

(ii) Triple-pane glass with either heat-reflective treated glass or gas fill.

(3) If the walk-in cooler or walk-in freezer has an antisweat heater without antisweat heat controls, the walk-in cooler and walk-in freezer shall have a total door rail, glass, and frame heater power draw of not more than 7.1 watts per square foot of door opening (for freezers) and 3.0 watts per square foot of door opening (for coolers).

(4) If the walk-in cooler or walk-in freezer has an antisweat heater with antisweat heat controls, and the total door rail, glass, and frame heater power draw is more than 7.1 watts per square foot of door opening (for freezers) and 3.0 watts per square foot of door opening (for coolers), the antisweat heat controls shall reduce the energy use of the antisweat heater in a quantity corresponding to the relative humidity in the air outside the door or to the condensation on the inner glass pane.

■ 19. Add a new subpart S to read as follows:

## Subpart S—Metal Halide Lamp Ballasts and Fixtures

Sec.



#### § 431.321 Purpose and scope.

This subpart contains energy conservation requirements for metal halide lamp ballasts and fixtures, pursuant to Part A–1 of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6311–6317.

#### § 431.322 Definitions concerning metal halide lamp ballasts and fixtures.

*Ballast efficiency* means, in the case of a high intensity discharge fixture, the efficiency of a lamp and ballast combination, expressed as a percentage, and calculated in accordance with the following formula: Efficiency = $P_{out}/P_{in}$ where:

(1) $P_{out}$ equals the measured operating lamp wattage;

(2) $P_{in}$ equals the measured operating input wattage;

(3) The lamp, and the capacitor when the capacitor is provided, shall constitute a nominal system in accordance with the ANSI C78.43, (incorporated by reference; see § 431.323);

(4) For ballasts with a frequency of 60 Hz, $P_{in}$ and $P_{out}$ shall be measured after lamps have been stabilized according to section 4.4 of ANSI C82.6 (incorporated by reference; see § 431.323) using a wattmeter with accuracy specified in section 4.5 of ANSI C82.6; and

(5) For ballasts with a frequency greater than 60 Hz, $P_{in}$ and $P_{out}$ shall have a basic accuracy of ±0.5 percent at the higher of either 3 times the output operating frequency of the ballast or 2 kHz.

*Metal halide ballast* means a ballast used to start and operate metal halide lamps.

*Metal halide lamp* means a high intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

*Metal halide lamp fixture* means a light fixture for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

*Probe-start metal halide ballast* means a ballast that starts a probe-start metal halide lamp that contains a third starting electrode (probe) in the arc tube, and does not generally contain an igniter but instead starts lamps with high ballast open circuit voltage.

*Pulse-start metal halide ballast* means an electronic or electromagnetic ballast that starts a pulse-start metal halide lamp with high voltage pulses, where lamps shall be started by the ballast first providing a high voltage pulse for ionization of the gas to produce a glow discharge and then power to sustain the discharge through the glow-to-arc transition.

**Test Procedures**

**§ 431.323 Materials incorporated by reference.**

(a) *General.* We incorporate by reference the following standards into Subpart S of Part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, 202–586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* Standards can be obtained from the sources listed below.

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

(1) ANSI C78.43–2004, Revision and consolidation of ANSI C78.1372–1997, .1374–1997, .1375–1997, .1376–1997, .1377–1997, .1378–1997, .1379–1997, .1382–1997, .1384–1997, and .1650–2003 (''ANSI C78.43''), American National Standard for electric lamps: Single-Ended Metal Halide Lamps, approved May 5, 2004, IBR approved for § 431.322;

(2) ANSI C82.6–2005, Proposed Revision of ANSI C82.6–1985 (''ANSI C82.6''), American National Standard for Lamp Ballasts—Ballasts for High-Intensity Discharge Lamps—Methods of Measurement, approved February 14, 2005, IBR approved for § 431.322;

(c) *NFPA.* National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322, 1–800–344–3555, or go to *http://www.nfpa.org;*

(1) NFPA 70–2002 (''NFPA 70''), National Electrical Code 2002 Edition, IBR approved for § 431.326;

(2) [Reserved].

(e) UL. Underwriters Laboratories, Inc., COMM 2000, 1414 Brook Drive, Downers Grove, IL 60515, 1–888–853–3503, or go to *http://www.ul.com.*

(1) UL 1029 (ANSI/UL 1029–2007) (''UL 1029''), Standard for Safety High-Intensity-Discharge Lamp Ballasts, 5th edition, May 25, 1994, which consists of pages dated May 25, 1994, September 28, 1995, August 3, 1998, February 7, 2001 and December 11, 2007, IBR approved for § 431.326.

(2) [Reserved].

**§ 431.324 Uniform test method for the measurement of energy efficiency of metal halide ballasts.**

(a) *Scope.* This section provides test procedures for measuring, pursuant to EPCA, the energy efficiency of metal halide ballasts.

(b) *Testing and Calculations.* [Reserved]

**Energy Conservation Standards**

**§ 431.326 Energy conservation standards and their effective dates.**

(a) Except as provided in paragraph (b) of this section, each metal halide lamp fixture manufactured on or after January 1, 2009, and designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall contain—

(1) A pulse-start metal halide ballast with a minimum ballast efficiency of 88 percent;

(2) A magnetic probe-start ballast with a minimum ballast efficiency of 94 percent; or

(3) A nonpulse-start electronic ballast with either a minimum ballast efficiency of 92 percent for wattages greater than 250 watts; or a minimum ballast efficiency of 90 percent for wattages less than or equal to 250 watts.

(b) The standards described in paragraph (a) of this section do not apply to—

(1) Metal halide lamp fixtures with regulated lag ballasts;

(2) Metal halide lamp fixtures that use electronic ballasts that operate at 480 volts; or

(3) Metal halide lamp fixtures that;

(i) Are rated only for 150 watt lamps;

(ii) Are rated for use in wet locations; as specified by the National Fire Protection Association in NFPA 70 (incorporated by reference; *see* § 431.323); and

(iii) Contain a ballast that is rated to operate at ambient air temperatures above 50°C, as specified in UL 1029, (incorporated by reference; *see* § 431.323).

[FR Doc. E9–5935 Filed 3–20–09; 8:45 am]

**BILLING CODE 6450–01–P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 225

**[Regulation Y; Docket No. R–1193]**

### Capital Adequacy Guidelines: Trust Preferred Securities and the Definition of Capital; Delay of Implementation Date

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Final rule.

**SUMMARY:** This final rule delays the March 31, 2009, implementation date for certain amendments to the Board's capital adequacy guidelines for bank holding companies on trust preferred securities and the definition of capital published by the Board in the **Federal Register** on March 10, 2005. Due to the continuing stressed conditions in the financial markets and in order to promote stability in the financial markets and the banking industry as a whole, the Board has decided to delay until March 31, 2011, the implementation date of new requirements that: limit the aggregate amount of cumulative perpetual preferred stock, trust preferred securities, and minority interests in the equity accounts of most consolidated subsidiaries (collectively, restricted core capital elements) included in the tier 1 capital of all bank holding companies; require bank holding companies to deduct goodwill, less any associated deferred tax liability, from the sum of core capital elements in calculating the amount of restricted core capital elements that may be included in tier 1 capital; and impose further limits on the

amount of restricted core capital elements that internationally active bank holding companies may include in tier 1 capital.

**DATES:** This amendment is effective March 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Norah M. Barger, Deputy Director, (202) 452–2402, or John Connolly, Senior Project Manager, (202) 452–3621, Division of Banking Supervision and Regulation; or April C. Snyder, Counsel, (202) 452–3099, Benjamin W. McDonough, Senior Attorney, (202) 452–2036, or Kathleen M. O'Day, Deputy General Counsel, (202) 452–3786, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On March 10, 2005, the Board published in the **Federal Register** (70 FR 11827) a final rule (final rule) amending its risk-based capital standards for bank holding companies (BHCs) (1) to allow the continued inclusion of outstanding and prospective issuances of trust preferred securities in the tier 1 capital of BHCs, subject to stricter requirements,[1] and (2) to revise the requirements generally applied to the aggregate amount of restricted core capital elements (including trust preferred securities) included in the tier 1 capital of BHCs.[2] These new limits on trust preferred securities and other restricted core capital elements (new limits) were scheduled to become effective on March 31, 2009. As noted in the preamble to the final rule, the Board adopted the final rule to address supervisory concerns, competitive equity considerations, and changes in generally accepted accounting principles and to strengthen the definition of regulatory capital for BHCs.[3]

Under limits on restricted core capital elements that are currently in effect, a BHC generally may include in tier 1 capital cumulative perpetual preferred stock and trust preferred securities up to 25 percent of the sum of core capital elements (including cumulative perpetual preferred stock and trust preferred securities).[4] The new limits would limit restricted core capital elements includable in the tier 1 capital of a BHC to 25 percent of the sum of core capital elements (including restricted core capital elements), net of goodwill less any associated deferred tax liability. In addition, internationally active BHCs would be subject to a further limitation.[5] In particular, the amount of restricted core capital elements (other than qualifying mandatory convertible preferred securities) that an internationally active BHC could include in tier 1 capital could not exceed 15 percent of the sum of core capital elements (including restricted core capital elements), net of goodwill less any associated deferred tax liability.[6]

## II. Postponement of the Implementation Date

On May 19, 2004, the Board issued a notice of proposed rulemaking (proposed rule) under which the new limits would have come into force on March 31, 2007.[7] Several commenters to the proposed rule asked the Board to extend the transition period for compliance with the new limits.[8] These commenters noted that an extended transition period would allow affected BHCs substantially more flexibility in managing their compliance with the new limits through a combination of redeeming outstanding trust preferred securities with expired no-call periods and generating capital internally through the retention of earnings.[9] For these reasons, and consistent with comments received, in the final rule the Board established an implementation date for the new limits of March 31, 2009, to allow BHCs to transition to the new limits.

In light of conditions in the capital markets, the Board has considered whether an additional extension of the implementation date of the new limits is appropriate. The economic conditions for the past 18 months, and currently, have created a situation in which requiring adherence to the new limits by the March 31, 2009, implementation date creates a substantial burden for many BHCs in a way that was not anticipated when the final rule was adopted in 2005. In the prevailing market conditions, it is especially important for BHCs to expend efforts to increase their overall capital levels, although it is challenging to do so now through retention of earnings, the most typical means. Therefore, to promote stability in the financial markets and the banking industry as a whole, the Board has decided to further delay the implementation date of the new limits until March 31, 2011. The Board believes that this extended transition period would allow affected BHCs sufficient flexibility to satisfy the Board's risk-based and leverage capital guidelines during the current stressed market conditions.[10]

The Board notes that the new limits apply only to regulatory capital calculations and do not affect the ability of restricted core capital instruments to absorb losses. However, as a general matter and in light of the Board's continuing interest in assuring the appropriate regulatory capital treatment of trust preferred securities (and other restricted core capital elements), institutions that intend to issue new restricted core capital instruments should consult with appropriate Reserve Bank and Board staff prior to issuance.

## Administrative Procedure Act

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b) and (d)), the Board finds that there is good cause for delaying the implementation date of the final rule, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking and provide an opportunity to comment before the implementation date. The Board has adopted the rule in light of, and to help address, the potential adverse effects of imposing new regulatory capital restrictions, the continuing stressed market conditions, and BHCs' efforts to increase their overall capital levels. Because the implementation date of the final rule (March 31, 2009) is imminent, it is impracticable to seek further public comment before issuing this amendment to the final rule delaying the implementation date of the new limits. In addition, the delay will further the Board's efforts, as well as the efforts of

[1] 70 FR 11827 (March 10, 2005).

[2] *See* 12 CFR part 225, Appendix A, sections II.A.1.b.i and II.A.2.d.iv.

[3] 70 FR 11827 (March 10, 2005).

[4] In addition, on October 22, 2008, the Board issued an interim final rule that allows BHCs to include new senior perpetual preferred securities issued to the U.S. Department of the Treasury (Treasury) under the capital purchase program announced by the Secretary of the Treasury on October 14, 2008, in tier 1 capital without limit. 73 FR 62851 (October 22, 2008).

[5] An internationally active BHC is defined as a BHC that (1) as of its most recent year-end FR Y–9C reports total consolidated assets equal to $250 billion or more or (2) on a consolidated basis, reports total on-balance-sheet foreign exposure of $10 billion or more on its filings of the most recent year-end FFIEC 009 Country Exposure Report. *See* 12 CFR part 225, appendix A, section II.A.1.b.i.(2) at n. 6.

[6] *See* 70 FR 11830.

[7] *See* 69 FR 28851 (May 19, 2004).

[8] 70 FR 11832.

[9] Id.

[10] With respect to the Board's first quarter 2009 regulatory reports, the Board will provide supplemental instructions to BHCs on how to report overages in their restricted core capital elements.

the other Federal banking agencies and Treasury, to respond to the current financial situation.

**Regulatory Flexibility Act**

Under section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), a final regulatory flexibility analysis is required only for notice-and-comment rulemakings conducted under section 553 of the APA. Since the Board finds that there is ''good cause'' under the APA for not proceeding with notice-and-comment rulemaking for this amendment to the implementation date for the final rule, the RFA does not require that a final regulatory flexibility analysis be provided for this amendment.

The Board provided regulatory flexibility analysis in the preamble to the final rule published on March 10, 2005 (70 FR 11827–11838). In that regulatory flexibility analysis, the Board considered the likely impact of the final rule on small entities and determined that the final rule will not have a significant impact on a substantial number of small entities.

**Paperwork Reduction Act**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed this rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in this rule.

**Solicitation of Comments on Use of Plain Language**

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invited comment on how to make the final rule easier to understand.[11] No commenter indicated that the proposed rule should be revised to make it easier to understand. In the preamble to the final rule the Board indicated that it believes the final rule is written plainly and clearly.[12]

**List of Subjects in 12 CFR Part 225**

Administrative Practice and Procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

[11] 69 FR 28856 (May 19, 2004).

[12] 70 FR 11834 (March 10, 2005).

**Board of Governors of the Federal Reserve System**

*12 CFR Chapter II*

**Authority and Issuance**

■ For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

**Appendix A to Part 225 [Amended]**

■ 2. In Appendix A to part 225, paragraphs II.A.1.b.ii. and II.A.2.d.iv. are amended by removing ''2009'' and adding ''2011'' in its place wherever it appears.

By order of the Board of Governors of the Federal Reserve System, March 16, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9–6096 Filed 3–20–09; 8:45 am]

**BILLING CODE 6210–02–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 370

**RIN 3064–AD37**

## Amendment of the Temporary Liquidity Guarantee Program To Extend the Debt Guarantee Program and To Impose Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Interim Rule with request for comments.

**SUMMARY:** The FDIC is issuing this Interim Rule to amend the Temporary Liquidity Guarantee Program (TLGP) by providing a limited extension of the Debt Guarantee Program (DGP) for insured depository institutions (IDIs) participating in the DGP. The extended DGP also would apply to other participating entities; however, other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009 are required to submit an application to and obtain approval from the FDIC to participate in the extended DGP. The Interim Rule imposes surcharges on certain debt issued on or after April 1, 2009. Any surcharge collected will be deposited into the Deposit Insurance Fund (DIF or Fund). The Interim Rule also establishes an application process whereby entities participating in the extended DGP may apply to issue non-FDIC-guaranteed debt during the extension period.

**DATES:** The Interim Rule becomes effective on March 23, 2009. Comments on the Interim Rule must be received by April 7, 2009.

**ADDRESSES:** You may submit comments on the Interim Rule by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN # 3064–AD37 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 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.

*Instructions:* All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mark L. Handzlik, Senior Attorney, Legal Division, (202) 898–3990 or *mhandzlik@fdic.gov;* Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov;* A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov;* (for questions or comments related to applications) *Lisa D Arquette, Associate Director, Division of Supervision and Consumer Protection, (202) 898–8633 or larquette@fdic.gov;* Serena L. Owens, Associate Director, Supervision and Applications Branch, Division of Supervision and Consumer Protection, (202) 898–8996 or *sowens@fdic.gov;* Gail Patelunas, Deputy Director, Division of Resolutions and Receiverships, (202) 898–6779 or g*patelunas@fdic.gov;* Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or *dsaulnier@fdic.gov;* or Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or *mstclair@fdic.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The FDIC adopted the TLGP in October 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve). The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

More broadly, Congress, the Treasury, and the federal banking agencies, have taken coordinated steps to preserve confidence in the American economy. Congress enacted sweeping laws to deal with the economic crisis, including the Emergency Economic Stabilization Act [1] (which temporarily raised deposit insurance limits) and the American Recovery and Reinvestment Act of 2009; [2] the Federal Reserve made commercial paper facilities available; and the Treasury provided banks with capital injections.

The disruption in credit markets that emerged in the second half of 2008 impaired the ability of financial institutions to obtain funding, make loans to creditworthy borrowers, and intermediate credit transactions. Although the financial system and credit markets remain stressed, credit market conditions have improved in response to government stabilization efforts such as the TLGP. Interbank short-term funding rates have fallen notably since mid-October 2008. The three-month Libor rate has fallen about 350 basis points from the 4.75 percent peak in mid-October 2008. The three-month Libor spread over Treasuries has also declined to under one percent, down from 4.57 percent in mid-October 2008, but remains above a historical spread of approximately 40 basis points.

While liquidity in the financial markets has not returned to pre-crisis levels, the TLGP debt guarantee program has been effective to date in improving short-term and intermediate-term funding for banking organizations. More than two-thirds of new public debt issuances by banking organizations between October 14, 2008, and March 4, 2009, that matures on or before June 30, 2012, are FDIC-guaranteed. Thus far, non-FDIC-guaranteed debt issued by banking organizations has mostly been for relatively small amounts with some exceptions. During the first two months of the year, one banking organization issued $2 billion in 10-year senior notes, and another banking organization issued $4 billion in 30-year bonds, both without government guarantees.

At its inception, the Federal Reserve and the Treasury recommended extending the DGP to bank holding companies, given the difficulties that these institutions were having with gaining access to funding. Concerns were raised that under the circumstances at that time, there would be risk to IDIs and to the banking system as a whole if the FDIC did not guarantee debt issued by bank holding companies under the TLGP.[3] The FDIC believes that certain aspects of the credit markets have improved, and with this Interim Rule, the FDIC is acting to ensure the orderly phase-out of the TLGP, a program that has provided benefit to IDIs, bank and certain savings and loan holding companies, and certain of their affiliates.

The FDIC expects the Interim Rule to provide an orderly transition period for participating entities returning to non-FDIC-guaranteed funding, and reduce the potential for market disruption when the DGP ends. Also, the extension should enhance bank liquidity while the elements of the Treasury's proposed Financial Stability Plan are fully implemented.[4]

## II. Authority To Provide Limited Extension of the TLGP

The amendment to the DGP provided under the Interim Rule is consistent with the rationale for establishing the existing TLGP and the determination of systemic risk made on October 14, 2008, pursuant to section 13(c)(4)(G),[5] by the Secretary of the Treasury (after consultation with the President) following receipt of the written recommendation dated October 13, 2008, by the Board of Directors of the FDIC (Board) and the similar written recommendation of the Federal Reserve. The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability by providing a guarantee of senior unsecured debt, and the FDIC initiated the TLGP in response. The limited extension of the TLGP provided for in the Interim Rule represents continued action by the FDIC to avoid or mitigate further deterioration in the economic condition and stability of the U.S. financial system and is consistent with the systemic risk determination made by the Secretary of the Treasury based on recommendations of the FDIC and the FRB in October 2008.

In addition to the authority granted to the FDIC by the systemic risk determination made under Section 13(c)(4) of the FDI Act, as described above, the FDIC is authorized under Section 9(a) Tenth of the FDI Act,[6] to prescribe, by its Board, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act. The FDIC has determined that this Interim Rule is necessary to further enhance the TLGP.

## III. The Interim Rule

### *A. Extension of the Debt Guarantee Program for IDIs Participating in the TLGP*

Under the existing DGP, participating entities are permitted to issue senior unsecured debt until June 30, 2009. The FDIC will guarantee this debt until the earlier of the maturity of the debt or June 30, 2012.

The Interim Rule provides a limited four-month extension for the issuance of debt under the DGP and is consistent with extensions to other liquidity programs recently announced by the Federal Reserve.[7] The Interim Rule permits all IDIs participating in the DGP to issue FDIC-guaranteed senior unsecured debt until October 31, 2009. For debt issued on or after April 1, 2009, the Interim Rule extends the FDIC's guarantee (previously set to expire under the existing program on the earliest of the opt-out date, if any, the maturity of the debt, the mandatory conversion date for mandatory convertible debt, or June 30, 2012) until the earliest of the opt-out date, the maturity of the debt, the mandatory conversion date for mandatory convertible debt, or December 31, 2012.[8]

[1] Public Law 110–343 (October 3, 2008).

[2] Public Law 111–5 (February 17, 2009).

[3] Memorandum dated November 19, 2008, to FDIC Chairman Sheila C. Bair from Federal Reserve Board Staff at page 1.

[4] Secretary Geithner Introduces Financial Stability Plan, *http://www.treas.gov/press/releases/tg18.htm* (last visited Feb. 19, 2009).

[5] 12 U.S.C. 1823(c)(4)(G).

[6] 12 U.S.C. 1819(a)Tenth.

[7] 2009 Monetary Press Release, Release Date: February 3, 2009, *http://www.federalreserve.gov/newsevents/press/monetary/20090203a.htm* (last visited February 20, 2009) (announcing four month extensions until October 2009 of six liquidity programs originally scheduled to expire in April 2009).

[8] Unless those other participating entities that have not issued debt before April 1, 2009, apply and receive the approval of the FDIC to participate in the extended DGP, the FDIC's guarantee will expire for such entities no later than June 30, 2012. (See Section III.B.)

*B. Extension of the Debt Guarantee Program for Other Entities Participating in the TLGP*

The Interim Rule permits other participating entities that have issued FDIC-guaranteed debt before April 1, 2009 to participate in the extended DGP. However, other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009 must apply to and receive approval from the FDIC to participate in the extended DGP.[9] The deadline for submitting an application to participate in the extended DGP is June 30, 2009. The FDIC will review such applications on a case-by-case basis.

As with other applications submitted to the FDIC for purposes of the DGP, the application must include a summary of the applicant's strategic operating plan; the proposed use of the debt proceeds; the entity's plans for retiring any FDIC-guaranteed debt; a description of the entity's financial history, current condition and future prospects; the risk presented by the proposal to the FDIC; and any other relevant information that the FDIC deems appropriate. The FDIC also may condition its approval on any requirement deemed appropriate, including without limitation, the pledge of collateral by the applicant to secure the applicant's obligation to reimburse the FDIC for any payments made pursuant to the FDIC's guarantee.

This Interim Rule will not change a participating entity's existing debt guarantee limit or affect any conditions that the FDIC may have placed on the issuance of debt by an IDI or other participating entity. In addition, consistent with prudent liquidity management practices, issuance levels under the TLGP should be consistent with existing funding plans and estimated liquidity needs. The chart that follows provides a summary of the relevant dates for entities that participate (and those that do not participate) in the extended DGP.

| | Application date | Issue date | Guarantee expiration date |
|---|---|---|---|
| IDIs currently participating in the DGP, and other participating entities that have issued FDIC-guaranteed debt before April 1, 2009. | Not required to submit an application to participate in the extension of the DGP. | Senior unsecured debt may be issued no later than Oct. 31, 2009. | For debt issued on or after April 1, 2009, FDIC-guarantee of senior unsecured debt expires on the earliest of the opt-out date, if any, the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or Dec. 31, 2012. |
| Other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009, which have received approval to participate in the extension of the DGP. | Application due on or before June 30, 2009. | With FDIC approval, senior unsecured debt may be issued no later than Oct. 31, 2009. | For debt issued on or after April 1, 2009, with FDIC approval, FDIC-guarantee of senior unsecured debt expires on the earliest of the opt-out date, if any, the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or Dec. 31, 2012. |
| Other participating entities currently participating in the DGP, but not participating in the extension of the DGP. | N/A | Senior unsecured debt may be issued no later than June 30, 2009. | FDIC-guarantee of senior unsecured debt expires on the earliest of the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or June 30, 2012. |

*C. Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009*

Surcharges provided for in the Interim Rule will be imposed on an annualized basis and apply only to FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year; the assessment rates for shorter term FDIC-guaranteed debt remain unchanged, as do the rates for guaranteed debt issued before April 1, 2009.

For FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year issued on or after April 1, 2009, until and including June 30, 2009, and maturing on or before June 30, 2012, the annualized surcharge on the assessments is 10 basis points for IDIs and 20 basis points for other participating entities.

The Interim Rule also imposes an additional surcharge on assessments for FDIC-guaranteed debt issued under the extended DGP—that is, FDIC-guaranteed debt issued after June 30, 2009 and on or before October 31, 2009, or FDIC-guaranteed debt issued on or after April 1, 2009 with a maturity date after June 30, 2012. The applicable annualized surcharge on the assessments for IDIs is 25 basis points. For other participating entities that have issued FDIC-guaranteed debt under the DGP before April 1, 2009 (and for such entities that have not issued FDIC-guaranteed debt under the DGP before April 1, 2009, but that have been approved by the FDIC to participate in the extended DGP), the annualized applicable surcharge on the assessments is 50 basis points.

Unlike TLGP fees, which are reserved for possible TLGP losses and not generally available for DIF purposes, the amount of any surcharge collected in connection with the extended DGP will be deposited into the DIF and used by the FDIC when calculating the reserve ratio of the Fund. The FDIC has every expectation that the TLGP will pay for itself and has set TLGP fees accordingly.

The surcharge provisions recognize that a relatively small portion of the

[9] Unlike IDIs (for whom the FDIC has either primary or backup supervision authority) and other participating entities that have issued debt before April 1, 2009 (for whom the FDIC is aware of current debt issuances and the evolving financial condition of those entities), for other participating entities that have not issued debt before April 1, 2009, the FDIC has chosen to mitigate its risk during the extension period by establishing an application process that will enable the FDIC to become more familiar with the current financial situation for these entities and with their plans for issuing debt during the extension period.

industry is actively using the DGP, but all IDIs ultimately bear the risk that a systemic risk assessment might be necessary to recover any excess losses attributable to the program. The surcharge is intended to compensate the DIF members, by increasing funds deposited directly into the DIF, for bearing the risk that TLGP fees will be insufficient and that a systemic risk will be levied.

The surcharges also are intended to reduce the subsidy provided by the DGP and to encourage institutions to seek funding in ways that do not involve government guarantees, so that the DGP can be wound down in an orderly fashion. The DGP extension will also partially address potential competitive disparities with similar programs in other countries. The FDIC anticipates that the amount of revenue that the surcharge produces will enable the FDIC to reduce the amount of the special assessment provided for in the Interim Rule adopted on February 27, 2009.[10]

*D. Opportunity To Apply To Issue Non-Guaranteed Debt*

Any entities participating in the extended DGP may apply to the FDIC to issue non-FDIC-guaranteed debt. If approved, such entities may issue non-guaranteed debt after June 30, 2009, without cost to the entity.[11]

## IV. Request for Comments

The FDIC invites comments on all aspects of the Interim Rule and solicits suggestions regarding its implementation. In particular, the FDIC seeks comment as to the appropriateness of the surcharges imposed on participating entities beginning April 1, 2009, for their participation in the DGP.

## V. Regulatory Analysis and Procedure

*A. Administrative Procedure Act*

The process of amending Part 370 by means of this Interim Rule is governed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and opportunity for public comment are not required with respect to a rule making when an agency for good cause finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Similarly, section 553(d)(3) of the APA provides that the publication of a rule shall be made not less than 30 days before its effective date, except ''* * * (3) as otherwise provided by the agency for good cause found and published with the rule.''

Consistent with section 553(b)(B) of the APA, the FDIC finds that good cause exists for a finding that general notice and opportunity for public comment are impracticable and contrary to the public interest. The TLGP was announced by the FDIC on October 14, 2008, as an initiative to counter the system-wide crisis in the nation's financial sector, and involved a determination of systemic risk by the Secretary of the Treasury after consultation with the President. The systemic risk determination allowed the FDIC to take certain actions to avoid or mitigate serious adverse effects on economic conditions and financial stability. The purpose of the TLGP is to promote financial stability by preserving confidence in the banking system and facilitating the flow of liquidity to creditworthy businesses and consumers, favorably impacting both the availability and cost of credit. Immediate issuance of this Interim Rule furthers the public interest by addressing the unprecedented disruption in credit markets, which remain largely closed to financial institutions unless their bonds and notes carry an FDIC guarantee. For these same reasons, the FDIC finds good cause to publish this Interim Rule with an immediate effective date. See 5 U.S.C. 553(d)(3).

Although general notice and opportunity for public comment are not required prior to the effective date, the FDIC invites comments on all aspects of the Interim Rule, which the FDIC may revise if necessary or appropriate in light of the comments received.

*B. Riegle Community Development and Regulatory Improvement Act*

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) provides that any new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on IDIs shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.[12] For the same reasons discussed above, the FDIC finds that good cause exists for an immediate effective date for the Interim Rule.

*C. Small Business Regulatory Enforcement Fairness Act Not Finalized With OMB*

The Office of Management and Budget has previously determined that the Interim Rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the Interim Rule may be reviewed.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rule making pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment would be impracticable and contrary to the public interest. Therefore, the RFA, pursuant to 5 U.S.C. 601(2), does not apply.

*E. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This Interim Rule contains new reporting requirements that modify an existing collection of information, entitled ''Temporary Liquidity Guarantee Program'' (OMB Control No. 3064–0166), and that have been submitted to OMB under emergency clearance procedures, with a request for clearance by March 17, 2009. The use of emergency clearance procedures is necessary to facilitate an orderly transition period for participating institutions to return to non-guaranteed funding and to reduce the potential for market disruption and sudden, unanticipated systemic risks to the nation's financial system when the TLGP ends. A limited four-month extension of the DGP should also help to enhance bank liquidity while the elements of the Treasury's proposed Financial Stability Plan are fully implemented. These new collections of information are necessary to give effect to the extension. Specifically, section 370.3(h)(1)(vi) requires other

[10] *See* 74 FR 9525 (March 4, 2009).

[11] Some participating entities elected to pay a fee to issue long-term non-guaranteed debt that could mature beyond June 30, 2012, pursuant to 12 CFR 370.6(f). If those entities are eligible to participate in the extension of the TLGP, the Interim Rule requires such entities to apply to issue other than long-term non-guaranteed debt, without cost for such issuances if approved by the FDIC.

[12] 12 U.S.C. 4802.

participating entities that have not issued FDIC-guaranteed debt before April 1, 2009 and that wish to participate in the extended DGP to submit a written application to the FDIC. Any such application must be submitted on or before June 30, 2009. In addition, section 370.3(h)(1)(vii) requires any participating entity that wishes to issue non-FDIC-guaranteed debt after June 30, 2009, to submit a written application to the FDIC. The estimated burden for the new applications is as follows:

*Title:* Temporary Liquidity Guarantee Program.

*OMB Number:* 3064–0166.

*Estimated Number of Respondents:* Application to issue non-guaranteed debt—1,000. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—25.

*Frequency of Response:* Application to issue non-guaranteed debt—once. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—once.

*Affected Public:* Thrift holding companies, bank and financial holding companies, and affiliates of insured depository institutions.

*Average Time per Response:* Application to issue non-guaranteed debt—2 hours. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—2 hours.

*Estimated Annual Burden:* Application to issue non-guaranteed debt—2,000 hours. Application by other participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—50 hours.

*Previous Annual Burden*—2,201,625 hours.

*Total New Burden*—2,050.

*Total Annual Burden*—2,203,675 hours.

If the FDIC obtains OMB approval of its emergency clearance request, it will be followed by a request for clearance under normal procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. In accordance with normal clearance procedures, public comment will be invited for an initial 60-day comment period and a subsequent 30-day comment period on: (1) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collections, including the validity of the methodologies 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments should refer to the name and number of the collection. Interested parties are invited to submit written comments by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 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.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

*F. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could the FDIC do to make the regulation easier to understand?

*G. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the interim rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

**List of Subjects in 12 CFR Part 370**

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

■ For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 370 of chapter III of Title 12 of the Code of Federal Regulations to read as follows:

## PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM

■ 1. The authority citation for part 370 continues to read as follows:

**Authority:** 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818, 1819(a)(Tenth), 1820(f), 1821(a), 1821(c), 1821(d), 1823(c)(4).

■ 2. Amend § 370.2 as follows:
■ a. Revise paragraph (f);
■ b. Revise paragraph (m) introductory text; and
■ c. Add a new paragraph (n) as follows:

**§ 370.2 Definitions.**

* * * * *

(f) *Newly issued senior unsecured debt.* (1) The term ''newly issued senior unsecured debt'' means :

(i) With respect to a participating entity that opted out of the debt guarantee program, senior unsecured debt that is issued on or after October 14, 2008, and on or before the date the entity opted out; and

(ii) With respect to a participating entity that has not opted out of the debt guarantee program, senior unsecured debt that is issued during the issuance period.

(2) The term ''newly issued senior unsecured debt'' includes, without limitation, senior unsecured debt

(i) That matures and is renewed during the issuance period; or

(ii) That is issued during such period pursuant to a shelf registration, regardless of the date of creation of the shelf registration.

* * * * *

(m) *Mandatory convertible debt.* The term ''mandatory convertible debt''

means senior unsecured debt that is required by the terms of the debt instrument to convert into common shares of the issuing entity on a fixed and specified date, on or before the expiration of the guarantee, unless the issuing entity:

* * * * *

(n) *Issuance period.* The term ''issuance period'' means

(1) With respect to the issuance, by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, of:

(i) Mandatory convertible debt, the period from February 27, 2009 to and including October 31, 2009, and

(ii) All other senior unsecured debt, the period from October 14, 2008 to and including October 31, 2009; and

(2) With respect to the issuance, by any other participating entity, of

(i) Mandatory convertible debt, the period from February 27, 2009 to and including June 30, 2009, and

(ii) All other senior unsecured debt, the period from October 14, 2008 to and including June 30, 2009.

■ 3. Amend § 370.3 as follows:

■ a. Revise the introductory text of paragraph (c);

■ b. Revise paragraph (d);

■ c. Revise paragraph (e)(3);

■ d. Revise paragraphs (h)(1)(i) and (h)(1)(v) and add new paragraphs (h)(1)(vi) and (h)(1)(vii);

■ e. Revise paragraph (h)(2);

■ f. Revise paragraph (h)(3);

■ g. Revise paragraph (h)(4);

■ h. Revise paragraph (h)(5);

■ i. Add a new paragraph (h)(6);

■ j. Revise paragraph (i); and

■ k. Add a new paragraph (j) as follows:

**§ 370.3 Debt Guarantee Program.**

* * * * *

(c) *Calculation and reporting responsibility.* Participating entities are responsible for calculating and reporting to the FDIC the amount of senior unsecured debt as defined in § 370.2(e)(1)(i) as of September 30, 2008.

* * * * *

(d) *Expiration of Guarantee.*

(1) With respect to debt that is issued before April 1, 2009 by any participating entity, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or June 30, 2012.

(2) With respect to debt that is issued on or after April 1, 2009 by a participating entity that is either an insured depository institution, a participating entity that has issued guaranteed debt before April 1, 2009, or a participating entity that has been approved pursuant to paragraph (h) of this section to issue guaranteed debt after June 30, 2009 and on or before October 31, 2009, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or December 31, 2012.

(3) With respect to guaranteed debt that is issued on or after April 1, 2009 by a participating entity other than an entity described in paragraph (d)(2) of this section, the guarantee expires on the earliest of the mandatory conversion date for mandatory convertible debt, the maturity date of the debt, or on June 30, 2012.

(e) * * *

* * * * * *

(3) The issuing entity has had its participation in the debt guarantee program terminated by the FDIC or is not a participating entity;

* * * * *

(h) * * *

(1) * * *

(i) A request by a participating entity to establish, increase, or decrease its debt guarantee limit,

* * * * *

(v) A request by a participating entity to issue FDIC-guaranteed mandatory convertible debt,

(vi) A request by a participating entity that is neither an insured depository institution nor an entity that has issued FDIC-guaranteed debt before April 1, 2009, to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, and

(vii) A request by a participating entity to issue senior unsecured non-guaranteed debt after June 30, 2009.

(2) Each letter application must describe the details of the request, provide a summary of the applicant's strategic operating plan, describe the proposed use of the debt proceeds, and

(i) With respect to an application for approval of the issuance of mandatory convertible debt, must also include:

(A) The proposed date of issuance,

(B) The total amount of the mandatory convertible debt to be issued,

(C) The mandatory conversion date,

(D) The conversion rate (i.e., the total number of shares of common stock that will result from the conversion divided by the total dollar amount of the mandatory convertible debt to be issued),

(E) Confirmation that all applications and all notices required under the Bank Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended, have been submitted to the applicant's appropriate Federal banking agency in connection with the proposed issuance, and

(F) Any other relevant information that the FDIC deems appropriate;

(ii) With respect to an application pursuant to paragraph (h)(1)(vi) of this section to extend the period for issuance of FDIC-guaranteed debt to and including October 31, 2009, the entity's plans for the retirement of the guaranteed debt, a description of the entity's financial history, current condition, and future prospects, and any other relevant information that the FDIC deems appropriate; and

(iii) With respect to an application pursuant to paragraph (h)(1)(vii) of this section to issue senior unsecured non-guaranteed debt, a summary of the applicant's strategic operating plan and the entity's plans for the retirement of any guaranteed debt.

(3) In addition to any other relevant factors that the FDIC deems appropriate, the FDIC will consider the following factors in evaluating applications filed pursuant to paragraph (h) of this section:

(i) For applications pursuant to paragraphs (h)(1)(i), (h)(1)(ii), (h)(1)(iii), and (h)(1)(v) of this section: The proposed use of the proceeds; the financial condition and supervisory history of the eligible/surviving entity;

(ii) For applications pursuant to paragraph (h)(1)(iv) of this section: The proposed use of the proceeds; the extent of the financial activity of the entities within the holding company structure; the strength, from a ratings perspective of the issuer of the obligations that will be guaranteed; the size and extent of the activities of the organization;

(iii) For applications pursuant to paragraph (h)(1)(vi) of this section: The proposed use of the proceeds; the entity's plans for the retirement of the guaranteed debt, the entity's financial history, current condition, future prospects, capital, management, and the risk presented to the FDIC, and

(iv) For applications pursuant to paragraph (h)(1)(vii) of this section: The entity's plans for the retirement of the guaranteed debt.

(4) Applications required under this part must be in letter form and addressed to the Director, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

(5) The filing deadlines for certain applications are:

(i) At the same time the merger application is filed with the appropriate Federal banking agency, for an application pursuant to paragraph (h)(1)(iii) of this section (which must include a copy of the merger application);

(ii) October 31, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009;

(iii) June 30, 2009, for an application pursuant to paragraph (h)(1)(v) of this section that is filed by a participating entity other than an entity described in paragraph (h)(5)(ii) of this section; and

(iv) June 30, 2009, for an application pursuant to paragraph (h)(1)(vi).

(6) In granting its approval of an application filed pursuant to paragraph (h) of this section the FDIC may impose any conditions it deems appropriate, including without limitation, a requirement that the issuer

(i) Hedge any foreign currency risk, or

(ii) Pledge collateral to secure the issuer's obligation to reimburse the FDIC for any payments made pursuant to the guarantee.

(i) *Time limits on issuance of guaranteed debt.*

(1) A participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, may issue FDIC-guaranteed debt under the debt guarantee program through and including October 31, 2009.

(2) A participating entity other than an entity described in paragraph (i)(1) of this section may issue FDIC-guaranteed debt under the debt guarantee program through and including June 30, 2009.

(j) *Issuance of non-guaranteed debt after June 30, 2009.*

(1) After obtaining the FDIC's prior written approval to issue non-guaranteed debt pursuant to paragraph (h)(1) of this section, any participating entity that has elected pursuant to paragraph (g) of this section to issue senior unsecured non-guaranteed debt with maturities after June 30, 2012 and that has paid the fee provided in § 370.6(f), may issue after June 30, 2009 senior unsecured non-guaranteed debt in any amount with maturities on or before June 30, 2012. A participating entity that has both made the election provided by paragraph (g) of this section and paid the fee provided by § 370.6(f) does not need the FDIC's approval to issue senior unsecured non guaranteed debt that matures after June 30, 2012.

(2) After obtaining the FDIC's prior written approval to issue non-guaranteed debt pursuant to paragraph (h)(1) of this section, any participating entity, other than an entity described in paragraph (j)(1) of this section, may issue after June 30, 2009 senior unsecured non-guaranteed debt in any amount with any maturity.

■ 4. Amend § 370.5 as follows:

■ a. Revise paragraph (b)(1);

■ b. Revise paragraph (f); and

■ c. Revise paragraphs (h)(2), (h)(3), (h)(4) and (h)(5) as follows:

**§ 370.5 Participation.**

* * * * *

(b) * * *

(1) Bound by the terms and conditions of the program, including without limitation, assessments and the terms of the Master Agreement as set forth on the FDIC's Web site;

* * * * *

(f) Except as provided in paragraphs (g) and (j) of § 370.3, participating entities are not permitted to select which newly issued senior unsecured debt is guaranteed debt; all senior unsecured debt issued by a participating entity up to its debt guarantee limit must be issued and identified as FDIC-guaranteed debt as and when issued.

* * * * *

(h) * * *

(2) Each participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009 must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

*This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's Web site, http://www.fdic.gov/tlgp.* [If the debt being issued is mandatory convertible debt, add: *The expiration date of the FDIC's guarantee is the earlier of the mandatory conversion date or December 31, 2012.*] [If the debt being issued is any other senior unsecured debt, add: *The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or December 31, 2012.*]

(3) Each participating entity other than an entity described in paragraph (h)(2) of this section must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

*This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's Web site, http://www.fdic.gov/tlgp.* [If the debt being issued is mandatory convertible debt, add: *The expiration date of the FDIC's guarantee is the earlier of the mandatory conversion date or June 30, 2012.* [If the debt being issued is any other senior unsecured debt, add: *The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or June 30, 2012.*]

(4) Each participating entity must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt issued by it during the applicable issuance period that is not guaranteed under the debt guarantee program:

*This debt is not guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program.*

(5) Each insured depository institution that offers noninterest-bearing transaction accounts must post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its Web site clearly indicating whether the institution is participating in the transaction account guarantee program. If the institution is participating in the transaction account guarantee program, the notice must state that funds held in noninterest-bearing transactions accounts at the entity are guaranteed in full by the FDIC.

(i) These disclosures must be provided in simple, readily understandable text. Sample disclosures are as follows:

For Participating Institutions

*[Institution Name] is participating in the FDIC's Transaction Account Guarantee Program. Under that program, through December 31, 2009, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount in the account. Coverage under the Transaction Account Guarantee Program is in addition to and separate from the coverage available*

*under the FDIC's general deposit insurance rules.*

For Non-Participating Institutions

*[Institution Name] has chosen not to participate in the FDIC's Transaction Account Guarantee Program. Customers of [Institution Name] with noninterest-bearing transaction accounts will continue to be insured through December 31, 2009 for up to $250,000 under the FDIC's general deposit insurance rules.*

(ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, for example, an interest-bearing account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee with respect to the swept, transferred, or reclassified funds.

* * * * *

■ 5. Amend § 370.6 as follows:

■ a. Revise paragraph (c)(2);

■ b. Revise paragraphs (d)(1) introductory text, (d)(2), and the first sentence of paragraph (d)(3);

■ c. Revise paragraph (d)(4); and

■ d. Add new paragraphs (g)(4) and (h) as follows:

**§ 370.6 Assessments under the Debt Guarantee Program.**

* * * * *

(c) * * *

(2) Beginning on December 6, 2008, on all senior unsecured debt, as defined in paragraphs (e)(1)(ii) or (e)(1)(iii) of § 370.2, issued by it on or after December 6, 2008.

(d) * * *

(1) *Calculation of assessment.* Subject to paragraphs (d)(3) and (h) of this section, the amount of assessment will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the following table.

* * * * *

(2) If the debt being issued has a maturity date that occurs after the expiration date of the guarantee, the expiration date of the guarantee instead of the maturity date will be used to calculate the assessment.

(3) The amount of assessment for a participating entity, other than an insured depository institution, that controls, directly or indirectly, or is otherwise affiliated with, at least one insured depository institution will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the rates set forth in the table in paragraph (d)(1) of this section, except that each such rate shall be increased by 10 basis points, if the combined assets of all insured depository institutions affiliated with such entity constitute less than 50 percent of consolidated holding company assets. * * *

(4) *Assessment Invoicing.* As soon as the participating entity provides notice as required in paragraph (b) of this section, the invoice for the appropriate fee will be automatically generated and posted on *FDICconnect* for the account associated with the participating entity, and the time limits for providing payment in paragraph (g) of this section will apply.

* * * * *

(g) * * *

(4) For purposes of this paragraph (g) of this section, assessments shall include all applicable surcharges imposed pursuant to paragraph (h) of this section.

(h) *Surcharges on assessments.*

(1) For FDIC-guaranteed debt that has a time period to conversion (in the case of mandatory convertible debt) or a maturity of one year or more, that is issued on or after April 1, 2009 and on or before June 30, 2009, and that matures or converts on or before June 30, 2012, the assessment rate provided in the table in paragraph (d)(1) of this section shall be increased by:

(i) 10 basis points for such debt that is issued by a participating entity that is an insured depository institution, and

(ii) 20 basis points for such debt that is issued by any other participating entity.

(2) For FDIC-guaranteed debt that has a time period to conversion (in the case of mandatory convertible debt) or a maturity of one year or more, and that is either issued on or after April 1, 2009 with a maturity or conversion date after June 30, 2012, or issued after June 30, 2009, the assessment rate provided in the table in paragraph (d)(1) of this section shall be increased by

(i) 25 basis points for such debt that is issued by a participating entity that is an insured depository institution, and

(ii) 50 basis points for such debt that is issued by any other participating entity.

■ 6. Revise § 370.8 to read as follows:

**§ 370.8 Systemic risk emergency special assessment to recover loss.**

To the extent that the assessments provided under § 370.6 or § 370.7, other than the surcharges provided in § 370.6(h), are insufficient to cover any loss or expenses arising from the temporary liquidity guarantee program, the Corporation shall impose an emergency special assessment on insured depository institutions as provided under 12 U.S.C. 1823(c)(4)(G)(ii) of the FDI Act.

■ 7. Revise § 370.9 to read as follows:

**§ 370.9 Recordkeeping requirements.**

The FDIC will establish procedures, require reports, and require participating entities to provide and preserve any information needed for the operation and supervision of this program.

■ 8. Revise § 370.12(b)(2) to read as follows:

**§ 370.12 Payment on the guarantee.**

* * * * *

(b) * * *.

(2) *Method of payment.* Upon the occurrence of a payment default, the FDIC shall satisfy its guarantee obligation by making scheduled payments of principal and interest pursuant to the terms of the debt instrument through maturity (without regard to default or penalty provisions). For purposes of mandatory convertible debt, principal payment shall be limited to amounts paid by holders under the issuance. The FDIC may in its discretion, at any time after the expiration of the guarantee period, elect to make a final payment of all outstanding principal and interest due under a guaranteed debt instrument whose maturity extends beyond that date. In such case, the FDIC shall not be liable for any prepayment penalty.

* * * * *

Dated at Washington, DC, this 17th day of March, 2009.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E9–6115 Filed 3–20–09; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0224; Directorate Identifier 2007–NE–44–AD; Amendment 39–15860; AD 2009–07–01]**

**RIN 2120–AA64**

# Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

It is necessary to change the limits of the High Pressure (HP) Turbine Stage 1 and Stage 2 Rotor Discs. The maximum approved life of these discs is decreased for all flight missions.

This Emergency Airworthiness Directive (EAD) has been raised to instruct mandatory decreased maximum approved lives in the BR715 Time Limits Manual (TLM) T–715–3BR for the HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and of the High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 for all flight missions. The life limits are decreased by the same proportion for all flight missions, thus back to birth pro-rata calculations due to the life limit changes are not necessary.

We are issuing this AD to prevent rotating parts that may have exceeded their low-cycle fatigue life limits from failing, which could result in uncontained engine failure and subsequent damage to the airplane.

**DATES:** This AD becomes effective April 27, 2009.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 3, 2008 (73 FR 18220). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

It is necessary to change the limits of the High Pressure (HP) Turbine Stage 1 and Stage 2 Rotor Discs. The maximum approved life of these discs is decreased for all flight missions.

This Emergency Airworthiness Directive (EAD) has been raised to instruct mandatory decreased maximum approved lives in the BR715 Time Limits Manual (TLM) T–715–3BR for the HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and of the High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 for all flight missions. The life limits are decreased by the same proportion for all flight missions, thus back to birth pro-rata calculations due to the life limit changes are not necessary.

### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

### Correction to Table

One commenter, Rolls-Royce Deutschland Ltd & Co KG, states that in the 2nd table following paragraph (e)(1), in the lower half, fifth column, ''1165'' should be corrected to read ''21165''.

We agree and made the correction in the AD.

### Change to Table Headings

Since we issued the proposed AD, we determined that the headings in the tables following paragraph (e)(1), of ''Mandatory Decreased Maximum Approved Life'' are not sufficiently clear. We changed those headings to ''Declared Safe Cyclic Life, in Flight Cycles'', in the AD.

### Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Cost of Compliance

We estimate that this AD will affect 260 engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the actions and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $20,800. Our cost estimate is exclusive of possible warranty coverage.

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

### 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 provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 adding the following new AD:

**2009–07–01 Rolls-Royce Deutschland Ltd & Co KG (formerly BMW Rolls-Royce GmbH, formerly BMW Rolls-Royce Aero Engines):** Amendment 39–15860. Docket No. FAA–2008–0224; Directorate Identifier 2007-NE–44-AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective April 27, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. These engines are installed on, but not limited to, McDonnell Douglas Model 717–200 airplanes.

**Reason**

(d) It is necessary to change the limits of the High Pressure (HP) Turbine Stage 1 and Stage 2 Rotor Discs. The maximum approved life of these discs is decreased for all flight missions.

This Emergency Airworthiness Directive (EAD) has been raised to instruct mandatory decreased maximum approved lives in the BR715 Time Limits Manual (TLM) T–715–3BR for the HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and of the High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 for all flight missions. The life limits are decreased by the same proportion for all flight missions, thus back to birth pro-rata calculations due to the life limit changes are not necessary.

We are issuing this AD to prevent rotating parts that may have exceeded their low-cycle fatigue life limits from failing, which could result in uncontained engine failure and subsequent damage to the airplane.

**Actions and Compliance**

(e) No later than 30 days after the effective date of this AD the following mandatory actions need to be completed for each individual BR700–715 HP Turbine Stage 1 Rotor Disc for both Part No. BRH20130 and Part No. BRH20131 and High Pressure (HP) Turbine Stage 2 Rotor Disc for both Part No. BRH19423 and Part No. BRH19427 installed in a BR700–715A1–30, B1–30 or C1–30 engine:

(1) Identify the mandatory decreased maximum approved life for the HP Turbine Stage 1 and Stage 2 Rotor Discs listed in the tables below:

| High Pressure (HP) Turbine Stage 1 Rotor Disc | Declared Safe Cyclic Life, in Flight Cycles | | | | | |
|---|---|---|---|---|---|---|
| Part No. | Engine Thrust Rating | | | Engine Flight Mission | | |
| | A1–30 Design | B1–30 Design | C1–30 Design | A1–30 Hawaiian | C1–30 Tropical | C1–30 derated Tropical |
| BRH20130 | 15971 | 13324 | 10500 | 17647 | 3794 | 7941 |
| BRH20131 | 15971 | 13324 | 10500 | 17647 | 3794 | 7941 |

| High Pressure (HP) Turbine Stage 2 Rotor Disc | Declared Safe Cyclic Life, in Flight Cycles | | | | | |
|---|---|---|---|---|---|---|
| Part No. | Engine Thrust Rating | | | Engine Flight Mission | | |
| | A1–30 Design | B1–30 Design | C1–30 Design | A1–30 Hawaiian | C1–30 Tropical | C1–30 derated Tropical |
| BRH19423 | 21165 | 17800 | 13372 | 21165 | 10893 | 13461 |
| BRH19427 | 21165 | 17800 | 13372 | 21165 | 10893 | 13461 |

(2) Record the mandatory maximum approved life in the applicable lifing documentation. It is mandatory to use the values given in the two tables in step (e)(1) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(f) 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**

(g) Refer to EASA Emergency Airworthiness Directive 2007–0152-E (corrected), dated June 1, 2007, for related information.

(h) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

**Material Incorporated by Reference**

(i) None.

Issued in Burlington, Massachusetts, on March 17, 2009.

**Francis A. Favara,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E9–6226 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 922

**[Docket No. 080311420–9008–02]**

**RIN 0648–AT17**

## Channel Islands National Marine Sanctuary Regulations; Notice of Effective Date

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of effective date.

**SUMMARY:** NOAA published a final revised management plan and revised regulations for the Channel Islands National Marine Sanctuary (CINMS) January 16, 2009 (74 FR 3216). Under the National Marine Sanctuaries Act, the final regulations automatically take effect after 45 days of continuous session of Congress beginning on January 16, 2009. The 45-day period ends on March 19, 2009. This document provides notice of the effective date, March 19, 2009.

**DATES:** The regulations published on January 16, 2009 (74 FR 3216) are effective on March 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael Murray, Channel Islands National Marine Sanctuary, 805–884–1464.

Dated: March 18, 2009.

**William Corso,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. E9–6266 Filed 3–19–09; 4:15 pm]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

**[Docket No. 080302355–81415–02]**

**RINs 0648–AT14, 0648–AT15, 0648–AT16**

## Gulf of the Farallones National Marine Sanctuary Regulations; Monterey Bay National Marine Sanctuary Regulations; and Cordell Bank National Marine Sanctuary Regulations; Notice of Effective Date

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of effective date.

**SUMMARY:** NOAA published final revised management plans and revised regulations for the Gulf of the Farallones, Cordell Bank, and Monterey Bay national marine sanctuaries (GFNMS, CBNMS, and MBNMS respectively) on November 20, 2008 (73 FR 70488). Under the National Marine Sanctuaries Act, the final regulations would automatically take effect after 45 days of continuous session of Congress beginning from November 20, 2008. (Given the break in the 110th Congress, the period was reset and began again with the 111th Congress. For purposes of this action, the 45 days of continuous session of Congress ended on March 9, 2009.) The period allows a governor for a state affected by modified term(s) of designation to certify to the Secretary of Commerce (Secretary) whether any of the modified terms of designation are unacceptable, and if such a term is certified as unacceptable, it does not take effect in the area of the national marine sanctuary lying within the seaward boundary of the State. During the 45-day period, the Governor of California sent a letter to the Secretary conditionally objecting to certain provisions of the regulations within state waters of California. The Governor conditionally objected to the portions of the regulations that would have prohibited the introduction of introduced species in state waters of the GFNMS and MBNMS. Through this notice, NOAA is announcing the regulations for the CBNMS and GFNMS became effective on March 9, 2009 in their entirety; and the regulations for the MBNMS also became effective on March 9, 2009, except the one prohibiting the introduction of introduced species in the state waters of MBNMS; and it will initiate a process to consider making the Governor's requested changes to the introduced species regulation in GFNMS.

**DATES:** The regulations published on November 20, 2008 (73 FR 70488) are effective March 19, 2009 and applicable on March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Armor, NOAA Office of National Marine Sanctuaries, 301–713–7234.

**SUPPLEMENTARY INFORMATION:**

### Background

NOAA published final revised management plans and revised regulations for the GFNMS, CBNMS, and MBNMS on November 20, 2008 (73 FR 70488). Section 304(b) of the NMSA provides the Governor with 45 days of continuous session of Congress (beginning on the day on which the final regulations were published) to review the terms of designation (or changes thereto). After this period the regulations would become final and take effect, except that any new or modified term of designation the Governor certified as unacceptable would not take effect in state waters of the sanctuary.

### Governor's Objection to the Regulations of Introduced Species

NOAA's regulations would have, among other things, prohibited the introduction of introduced species into the sanctuaries with exceptions for striped bass caught and released during fishing and current state-permitted mariculture activities in Tomales Bay (part of GFNMS). The prohibition against introducing species is intended to prevent injury to sanctuary resources and qualities, to protect the biodiversity of sanctuary ecosystems, and to preserve the native functional aspects of sanctuary ecosystems, which are put at risk by introduced species. Introduced species may become a new form of predator, competitor, disturber, parasite, or disease that can have devastating effects upon ecosystems. For example, introduced species impacts on native coastal marine species of the GFNMS, MBNMS, and CBNMS could include: replacement of a functionally similar native species through competition; reduction in abundance or elimination of an entire population of a native species, which can affect native species richness; inhibition of normal growth or increased mortality of the host and associated species; increased intra- or interspecies competition with native species; creation or alteration of original substrate and habitat; hybridization with native species; and direct or indirect toxicity (e.g., toxic diatoms). Changes in species interactions can lead to disrupted nutrient cycles and altered energy flows that ripple with unpredictable results through an entire ecosystem. Introduced species may also pose threats to endangered species and native species diversity.

On December 23, 2008, the Governor of California sent a letter to the Secretary of Commerce conditionally objecting to the revised terms of designation that would have allowed NOAA to issue regulations prohibiting the introduction of introduced species in the state waters of the GFNMS and MBNMS.[1] The Governor conditioned his objection to the revised terms of designation on NOAA's willingness and ability to modify these regulations to exempt all state-permitted aquaculture activities in MBNMS and GFNMS and research involving the introduction of introduced species into MBNMS.

After receiving the letter from the Governor, NOAA worked with the California Resources Agency and the California Department of Fish and Game to find a mutually agreeable solution to the Governor's concerns. In a letter dated March 2, 2009, the Acting Secretary of Commerce, Otto J. Wolff, replied to the Governor by: (1) Offering to immediately propose exemptions for introduced species cultivated in state-

[1] The final regulations for CBNMS also included a prohibition on the introduction of introduced species. That prohibition, however, is not subject to gubernatorial objection since CBNMS does not include state waters.

permitted aquaculture activities within MBNMS and GFNMS; and (2) asking the Governor to withdraw his objection to prohibiting the release of introduced species during research activities in the MBNMS. The state's existing review process for aquaculture projects provides NOAA with some level of assurance that NOAA has an opportunity to provide input and can minimize the potential for harm to sanctuary resources from an introduced species aquaculture project. The MBNMS permit process would allow NOAA to issue a permit for an introduced species research project if environmental and legal review found the project to be acceptable. The state would also retain its authority to issue permits for introduced species research projects, or reject such a proposal. By offering to propose regulatory exemptions for introduced species that are cultivated in MBNMS or GFNMS as part of state-permitted aquaculture activities, NOAA satisfied a condition of the governor's objection. As such, the objection does not apply to these terms of designations or the corresponding regulations in GFNMS. However, by the close of the review period that ended on March 9, 2009, the state had not accepted the compromise solution for the MBNMS with regard to introduced species that are released during research activities. Therefore, the Governor's December 23, 2008 letter serves, in effect, to object to the MBNMS terms of designation for introduction of introduced species in the state waters of the MBNMS.

**Effective Date for GFNMS Regulations**

The revised regulations for the GFNMS associated with the November 20, 2008 final rule became effective on March 9, 2009. NOAA will not enforce 15 CFR 922.82(a)(10), the prohibition on introducing introduced species, in state waters of the GFNMS until it has been amended in accordance with the Governor's requirement that it exempt state-permitted aquaculture. NOAA has agreed and committed to immediately initiate a process to modify the introduced species regulation to exempt state-permitted introduced species aquaculture in the GFNMS. As part of this agreement, NOAA has agreed that it will not enforce the prohibition on introducing introduced species in the state waters of GFNMS until a new rulemaking process for these regulations can take place. NOAA will promptly commence a separate regulatory action for public comment to determine the appropriateness of further regulation of introduced species in the state waters of the GFNMS. After consideration of all comments received for that proposed action, NOAA will publish a new final rule to address the concerns raised in the Governor's December 23, 2008 letter. That regulation will become effective soon thereafter, in accordance with applicable federal law.

**Effective Date for MBNMS Regulations**

The revised regulations for the MBNMS associated with the November 20, 2008 final rule became effective on March 9, 2009 except for 15 CFR 922.132(a)(12), the prohibition on introducing introduced species, which will not take effect in state waters of the MBNMS. Because the Governor objected to the revised term of designation that would have provided specific authority to prohibit the introduction of introduced species in MBNMS, it cannot take effect in the state waters of the MBNMS. The regulation still applies and took effect in the federal waters of the MBNMS on March 9, 2009.

The terms of designation for the MBNMS will also reflect the Governor's objection to limit the application of that specific term of designation to federal waters. As such, paragraph l of section 1 of Article IV will read: ''l. Introducing or otherwise releasing from within or into the Sanctuary an introduced species. [This provision does not apply in the area of the Sanctuary lying within the seaward boundary of California, because, pursuant to section 304(b) of the Act, the Governor of California filed an objection to this provision pursuant to a December 23, 2008 letter.]

**Effective Date for CBNMS Regulations**

The revised regulations for the CBNMS associated with the November 20, 2008 final rule became effective on March 9, 2009. There are no state waters in the CBNMS, and thus the terms of designation for the sanctuary were not subject to gubernatorial objection.

Dated: March 18, 2009.

**William Corso,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. E9–6267 Filed 3–19–09; 4:15 pm]

**BILLING CODE 3510–NK–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2008–1026]**

**RIN 1625–AA00**

## Safety Zone; Saugus River, Lynn, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is adopting the interim safety zone published on December 29, 2008, as a temporary final rule. This rule creates a safety zone for a portion of the Saugus River in Lynn, Massachusetts as requested by the Massachusetts Highway Department (MHD), to allow for vital repair work to commence on the Route 107/Fox Hill Bridge during the winter and spring months. This zone is necessary to protect mariners from the potential hazards associated with the work being conducted by the Commonwealth of Massachusetts in making critical repairs to the bridge while it is closed to transiting vessels and vehicular traffic.

**DATES:** Effective March 23, 2009, the interim rule amending 33 CFR Part 165 which was published at 73 FR 79363 on 29 December, 2008 is adopted without change as a temporary final rule.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1026 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1026 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and United States Coast Guard Sector Boston, 427 Commercial St, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Chief Petty Officer Eldridge McFadden, Waterways Management at 617–223–3000. If you have questions on viewing the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On December 29, 2008, we published an interim rule with request for comments entitled ''Safety Zone, Saugus River, Lynn, MA'' in the **Federal Register** (73 FR 79363). We did not receive any letters commenting on the interim rule. No public meeting was requested, and none was held.

**Background and Purpose**

A meeting between the Coast Guard, local lobstermen, local marina operators, lobster purchasing agents, and the bridge owner, MHD, was held on September 10, 2008. The owner of the bridge presented engineering evidence of the poor condition of the bridge and the need to perform major bridge repairs during the winter months. It was concluded that in order to keep the bridge operating safely and reliably until the major repairs can commence, the number of bridge openings must be reduced to save wear and tear on the mechanical components. A temporary deviation from standard bridge operation was deemed necessary in order to insure that the bridge continues to operate in a safe and reliable manner until the major repairs can be made. No objection to the proposed temporary deviation schedule was voiced by interested parties. In a rulemaking supporting that decision, the Coast Guard published a temporary change to the Saugus Drawbridge Operation regulations (USCG–2008–0969) in the **Federal Register** on October 15, 2008 (73 FR 60954) allowing a deviation of the drawbridge operating guidelines. That regulation, effective from October 15, 2008 through December 15, 2008, allowed the bridge to remain closed, opening on signal only on the half hour and hour.

In addition, the long term repairs may only take place by closing the bridge to both vehicular and vessel traffic, and removing portions of the bridge for work. Massachusetts Highway Department must bring in a large crane barge in order to conduct work on the bridge. This barge will be crossing the river, effectively restricting the use of the river. Frequently moving the barge to allow vessel traffic to pass is contrary to the public interest as it would further delay the bridge repairs well into the summer months, which are the primary boating and fishing seasons in Massachusetts. In order the assist the local lobstermen, MHD proposed to install a temporary dock system on the downstream of the existing bridge to mitigate the impacts of closing the bridge and blocking the channel with a large work barge. During the meeting the lobstermen indicated that the proposed dates for the bridge closure and waterway restriction along with the installation of a temporary dock system would be a good compromise that would satisfy their needs and still allow the rehabilitation bridge repairs to be completed late May 2009.

An additional meeting between the Coast Guard, town officials, harbormaster and MHD took place on December 4, 2008 at which time the MHD agreed to work with affected waterway users to remove the crane barge restricting the waterway on no more than six occasions during the repair process to allow vessels, that are able, to pass beneath the bridge while in a closed position.

On December 10, 2008, Captain of the Port Boston signed an Interim Rule creating a safety zone upriver of the Route 107/Fox Hill Bridge on the Saugus River in Lynn, MA. That rule was subsequently published in the **Federal Register** on 29 December 2008 as (73 FR 79363). We did not receive comments on the interim rule.

**Discussion of Rule**

The COTP Boston is adopting the currently effective interim rule, reflected in 33 CFR 165.T01–1026, as a temporary final rule. This rule establishes a safety zone that prohibits vessels from coming within 50 yards of the upriver side of 107/Fox Hill Bridge in the Saugus River in Lynn, Massachusetts. While this safety zone has the practical effect of closing a portion of the waterway, the Captain of the Port anticipates minimal negative impact on vessel traffic because (1) Recreational boating traffic is limited this particular time of year, (2) the MHD has made alternate mooring and docking arrangements for the fishermen which typically dock on the up river side of the bridge, and (3) MHD will remove the crane barge restricting waterway access under the bridge on at least six occasions allowing vessel traffic, which may do so, to pass beneath the closed bridge. Public notifications will be made prior to and during the effective period via Local and Broadcast Notice to Mariners.

**Regulatory Analyses**

We are adopting the interim rule as a temporary final 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.

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule may prevent traffic from transiting a portion of the Saugus River during the bridge repairs, the effect of this rule will not be significant for several reasons: Alternate arrangements for the offload and mooring of fishing vessels have been made, recreational boaters typically have their boats out of the water at this time of year in order to protect them from winter icing, MHD will remove the crane barge restricting waterway access on at least six occasions as requested by a waterway users (during which times vessel operators may request permission to transit through the safety zone promulgated by this rule), and continued notifications will be made to the local maritime community by broadcast and local notice to mariners.

**Small Entities**

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of fishing and recreational vessels intending to transit or anchor in a portion of the Saugus River from midnight December 14, 2008 through midnight on May 15, 2009. This closure will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Planning and Review section.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1 paragraph (34)(g) of the Instruction.

No comments relating to environmental issues were received in response to the Interim Rulemaking/Request for Comment, and no additional environmental concerns have been discovered in connection with this action. The final 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

■ For the reasons discussed in the preamble, under authority of 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1., the interim rule amending 33 CFR 165.T01–1026 that was published at 73 FR 79363 on 29 December, 2008 is adopted without change as a temporary final rule.

Dated: February 17, 2009.

**Gail P. Kulisch,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. E9–6186 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–15–P**

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 258**

**[Docket No. RM 2009–2]**

## Section 119 and Changes in the Consumer Price Index

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office makes royalty rate adjustments for satellite carriers based upon changes in the Consumer Price Index. This year, the change in the Consumer Price Index for the relevant time period was 0.03%, a change so small that the rates remain unaffected for the 2009 licensing period.

**EFFECTIVE DATES:** This regulation is effective March 23, 2009 and the rates are applicable for the period of January 1, 2009, through December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Assistant General Counsel, and Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 119(c) and our implementing rules, we are hereby giving notice to the public of royalty rate adjustments for the accounting period commencing January 1, 2009, based on changes in the Consumer Price Index. This action is consistent with voluntary agreements reached between satellite carriers and copyright owners under the Copyright Act.

**Section 119 and royalty payments for analog television signals.** In 2004, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act (''SHVERA''). SHVERA extended for an additional five years the statutory license for satellite carriers retransmitting over–the–air television broadcast stations to their subscribers and made a number of amendments to the Section 119 license. One of the amendments sets forth a process for adjusting the royalty fees paid by satellite carriers for retransmitting analog television network stations and superstations. 17 U.S.C. 119(c)(1). The law directed the Librarian of Congress to publish a notice in the **Federal Register** announcing the initiation of a voluntary negotiation period, the result of which may be a rate settlement between the parties. The Library published such a notice on December 30, 2004, and, pursuant to the statute, requested that any agreements be submitted no later than January 10, 2005. 69 FR 78482 (December 30, 2004).

The Office received one agreement, submitted jointly by the satellite carriers DirecTV, Inc. and EchoStar Satellite L.L.C., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. Section 119(c)(1)(D)(ii)(II) requires the Library to ''provide public notice of the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.'' 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on January 26, 2005, to fulfill this requirement. 70 FR 3656 (January 26, 2005). The Library subsequently adopted the rates in the voluntary agreement as final. 70 FR 17320 (Apr. 6, 2005).

The terms and conditions of the agreement were codified at Section 258.3 of the Copyright Office's rules. Subpart (h) of this rule specifically states, with regard to private home viewing, that the 2008 rate per subscriber per month for distant superstations and network stations shall be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all urban consumers from January 2008 to January 2009. Similarly, for viewing in commercial establishments, the 2008 rate per subscriber per month for viewing distant superstations in commercial establishments shall also be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all urban consumers from January 2008 to January 2009.

**Section 119 and royalty payments for digital television signals.** Another SHVERA amendment to Section 119 set forth a process, for the first time, for adjusting the royalty fees paid by satellite carriers for the retransmission of digital broadcast signals. 17 U.S.C. 119(c)(2). The initial rates were the rates set by the Librarian in 1997 for the retransmission of analog broadcast signals, 37 CFR 258.3(b)(1)&(2), reduced by 22.5 percent. 17 U.S.C. 119(c)(2)(A). These rates are to be adjusted in accordance with the procedures set forth in Section 119(c)(1) as directed by Section 119(c)(2) of the Copyright Act.

On March 8, 2005, the Copyright Office received a letter from EchoStar Satellite, L.L.C., DirecTV, Inc., Program Suppliers, and the Joint Sports Claimants requesting that the Office begin the process of setting the rates for the retransmission of digital broadcast signals by initiating a voluntary negotiation period so that rates for both digital and analog signals would be in place before the July 31, 2005, deadline for satellite carriers to pay royalties for the first accounting period of 2005. The Office granted the request and, pursuant to Section 119(c)(1), published a Notice in the **Federal Register** initiating a voluntary negotiation period and requesting that any agreements reached during this period be submitted no later than April 25, 2005. *See* 70 FR 15368 (March 25, 2005).

In accordance with the March 25 Notice, the Office received one agreement, submitted jointly by EchoStar Satellite L.L.C. and DirecTV, Inc., the copyright owners of motion pictures and syndicated television series represented by the Motion Picture Association of America, and the copyright owners of sports programming represented by the Office of the Commissioner of Baseball. The agreement proposed rates for the private home viewing of distant superstations and distant network stations for the 2005–2009 period, as well as the viewing of those signals for commercial establishments.

As required by statute, the Library provided public notice of the royalty fees from the voluntary agreement and afforded parties an opportunity to state that they object to those fees. 17 U.S.C. 119(c)(1)(D)(ii)(II). The Library published a Notice of Proposed Rulemaking on May 17, 2005, to fulfill this requirement. 70 FR 28231 (May 17, 2005). Consequently, the Library adopted the rates as set forth in the voluntary agreement as final. 70 FR 39178 (July. 7, 2005).

The terms and conditions of the agreement were codified at Section 258.4 of the Copyright Office's rules. Subpart (d) of the rule states the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers for the first three years of the licensing period and the process for readjusting the rates for the last two years of the five year licensing period (2008 and 2009).

The Copyright Office's regulations prescribe that the 2009 rates should be adjusted according to the following schedule. For private home viewing, the 2008 rate per subscriber per month for distant superstations and network stations is to be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009. For viewing in commercial establishments, the 2008

rate per subscriber per month for viewing distant superstations in commercial establishments is to be adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

**2009 rates**. The purpose of this Notice is to announce the royalty rates for the secondary transmission of the analog and digital transmissions of network and superstations to reflect changes in the Consumer Price Index for all Urban Consumers from January 2008 to January 2009.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) for the relevant period is .03% (January 2008 figure was 211.080; the figure for January 2009 is 211.143, based on 1982–1984=100 as a reference base). Rounding off to the nearest cent, the rates are as follows. For private home viewing of analog stations: 24 cents per subscriber per month for distant superstations and 24 cents per subscriber per month for distant network stations. For viewing in commercial establishments: 48 cents per subscriber per month for distant superstations. For private home viewing of digital stations: 24 cents per subscriber per month for distant superstations and 24 cents per subscriber per month for distant network stations. For viewing in commercial establishments: 48 cents per subscriber per month for distant superstations.

**List of Subjects in 37 CFR Part 258**

Copyright, Satellite, Television.

**Final Regulations**

■ For the reasons set forth above, the Copyright Office amends 37 CFR chapter II as follows:

## PART 258–ADJUSTMENT OF ROYALTY FEE FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 258 continues to read as follows:

**Authority:** 17 U.S.C. 119, 702, 802.

■ 2. Section 258.3 is amended by revising paragraph (h) to read as follows:

**§ 258.3 Royalty fee for secondary transmission of analog signals of broadcast stations by satellite carriers.**

* * * * *

(h) Commencing January 1, 2009, the royalty rate for secondary transmission of analog signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 24 cents per subscriber per month for distant superstations.

(ii) 24 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.

■ 3. Section 258.4 is amended by revising paragraph (e) to read as follows:

**§ 258.4 Royalty fee for secondary transmission of digital signals of broadcast stations by satellite carriers.**

* * * * *

■ (e) Commencing January 1, 2009, the royalty rate for secondary transmission of digital signals of broadcast stations by satellite carriers shall be as follows:

(1) For private home viewing–

(i) 24 cents per subscriber per month for distant superstations.

(ii) 24 cents per subscriber per month for distant network stations.

(2) For viewing in commercial establishments, 48 cents per subscriber per month for distant superstations.

* * * * *

Dated: March 16, 2009

**Marybeth Peters,**

*Register of Copyrights*

[FR Doc. E9–6175 Filed 3–20–09; 8:45 am]

BILLING CODE 1410–30–S

# Proposed Rules

Federal Register
Vol. 74, No. 54
Monday, March 23, 2009

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28348; Directorate Identifier 2007–NM–060–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. The original NPRM would have required sealing the fasteners on the front and rear spars inside the main fuel tank and on the lower panel of the center fuel tank, inspecting the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed and determine whether the Teflon sleeve is installed, and doing related corrective actions if necessary. We subsequently issued a supplemental NPRM to revise the compliance time for the corrective actions specified in the original NPRM. This action resulted from a design review of fuel tank systems. This second supplemental revises the original NPRM by clarifying the applicability of certain actions for certain airplanes. We are proposing this second supplemental NPRM to prevent arcing at certain fuel tank fasteners in the event of a lightning strike or fault current event, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**DATES:** We must receive comments on this supplemental NPRM by April 17, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590.

**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–2007–28348; Directorate Identifier 2007–NM–060–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 because of 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 we receive about this proposed AD.

### Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) (the ''first supplemental NPRM'') to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. The first supplemental NPRM was published in the **Federal Register** on January 2, 2008 (73 FR 73). That first supplemental NPRM proposed to require sealing the fasteners on the front and rear spars inside the main fuel tank and on the lower panel of the center fuel tank, inspecting the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed and determine whether the Teflon sleeve is installed, and doing related corrective actions if necessary.

### Actions Since Supplemental NPRM Was Issued

Since we issued the first supplemental NPRM, Boeing has revised Boeing Alert Service Bulletin 737–57A1279, dated January 24, 2007, (which we referred to as the appropriate source of service information in the first supplemental NPRM), because certain airplanes were assigned to an incorrect group number. Additional work is necessary for the mis-assigned airplanes. The additional work includes sealing the fuel tank fastener and general visual inspections of the wire bundle support installation, as applicable. We have reviewed Boeing Alert Service Bulletin 737–57A1279, Revision 1, dated September 25, 2008

(''Revision 1 of the service bulletin''). Revision 1 of the service bulletin includes a change to the service bulletin effectivity as well as changes to the access instructions for the Krueger flap operation.

**Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

**Request for More Detailed Information in Airplane Maintenance Manuals (AMMs)**

Continental Airlines (CAL) is concerned that not enough attention has been given in the proposed AD to ensure that the specific detailed inspections are preserved for the long-term operation of the CAL fleet. CAL notes that the AMM includes only generic information. CAL states that including information detailed by the airplane's production drawings must be available in manuals that are routinely used by maintenance personnel. Including this information will prevent inadvertent reversal of the design configuration that can lead to creating potential ignition sources.

We infer that CAL would like us to revise the first supplemental NPRM to include an action to revise maintenance documents that are routinely used by maintenance personnel. We partially agree. We agree that ensuring that the requirements of the proposed AD are maintained throughout the life of the airplane maintains the required level of safety for this design. We disagree with delaying the issuance of the AD while the manufacturer works through its processes to develop revisions to the maintenance documents. We have determined that an unsafe condition exists and that the actions proposed in this second supplemental NPRM must be mandated in a timely fashion to ensure continued operational safety. If the revised maintenance documents are available and approved, we might consider further rulemaking at that time.

In addition, we note that as a result of CAL's comment, we have initiated discussions with Boeing about including more detail in the Instructions for Continued Airworthiness (ICA) to ensure that the proposed requirements are maintained throughout the life of the airplane. We have not changed the supplemental NPRM regarding this issue.

**Explanation of Additional Change**

We have added a new paragraph (d) to this second supplemental NPRM to identify the Air Transport Association (ATA) of America code for the unsafe condition. We have re-lettered subsequent paragraphs accordingly.

**FAA's Determination and Proposed Requirements of the Supplemental NPRM**

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this second supplemental NPRM.

**Costs of Compliance**

There are about 1,754 airplanes of the affected design in the worldwide fleet; of these, 645 airplanes are U.S. registered. The following table provides the estimated costs for U.S. operators to comply with this second supplemental NPRM, at an average hourly labor rate of $80.

ESTIMATED COSTS

| Action | Group | Work hours | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Sealant application | 1 | 62 | $4,960 | 586 | $2,906,560 |
| | 2 | 28 | 2,240 | 44 | 98,560 |
| | 3 | 28 | 2,240 | 15 | 33,600 |
| Inspection | 1 | 4 | 320 | 586 | 187,520 |
| | 2 | 4 | 320 | 44 | 14,080 |
| | 3 | 2 | 160 | 15 | 2,400 |

**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 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 this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator,

the FAA 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 adding the following new AD:

**Boeing:** Docket No. FAA–2007–28348; Directorate Identifier 2007–NM–060–AD.

**Comments Due Date**

(a) We must receive comments by April 17, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model 737–600, –700, –700C, –800 and –900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–57A1279, Revision 1, dated September 25, 2008.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Unsafe Condition**

(e) This AD results from a design review of the fuel tank systems. The Federal Aviation Administration is issuing this AD to prevent arcing at certain fuel tank fasteners in the event of a lightning strike or fault current event, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**Compliance**

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

**Fastener Sealant**

(g) Within 60 months after the effective date of this AD: Seal the fasteners on the front and rear spars inside the main fuel tank and on the lower panel of the center fuel tank, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1279, Revision 1, dated September 25, 2008.

**Inspection**

(h) Within 60 months after the effective date of this AD: Perform a general visual inspection of the wire bundle support installation in the equipment cooling system bays to identify the type of clamp installed, and determine whether the Teflon sleeve is installed. Do these actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1279, Revision 1, dated September 25, 2008 (''the service bulletin''). Do all applicable corrective actions before further flight in accordance with the service bulletin.

**Actions Accomplished Previously**

(i) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–57A1279, dated January 24, 2007, are acceptable for compliance with the corresponding requirements of this AD only for the following line numbers (L/Ns): LNs 1 through 570 inclusive, and L/Ns 1692 through 1754 inclusive.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Samuel Spitzer, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6510; fax (425) 917–6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, in the FAA Flight Standards District Office (FSDO), or lacking a principal inspector, your local FSDO. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on March 10, 2009.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–6217 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0226; Directorate Identifier 2007–SW–35–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Agusta S.p.A. Model A109E, A109S, A119, and AW119MKII Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E, A109S, A119, and AW119MKII helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent for the aviation authority of Italy, with which we have a bilateral agreement, has issued an MCAI AD which states that two cases of cracks on a certain cargo hook lever (lever) have been reported by the manufacturer of the cargo hook. This lever is a critical structural component of the cargo hook, and a crack could result in inadvertent loss of the cargo hook load. The proposed AD would require actions that are intended to address the unsafe condition caused by cracks in the cargo hook lever.

**DATES:** We must receive comments on this proposed AD by April 22, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php*.

**EXAMINING THE 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 proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** John Strasburger, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5167; fax (817) 222–5961.

**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–2009–0226; Directorate Identifier 2007–SW–35–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 we receive about this proposed AD.

**Discussion**

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2007–0160–E, dated June 7, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for these Italian-manufactured products. The MCAI states that two cases of cracks in the cargo hook lever (lever), part number (P/N) 232–028–00, have been reported by the manufacturer of the cargo hook. The lever is a component of the cargo hook, P/N 528–010–01. This lever is a critical structural component of the cargo hook, and a crack could result in inadvertent loss of the cargo hook load.

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

**Relevant Service Information**

Agusta has issued Alert Bollettino Tecnico (ABT) No. 109EP–78, ABT No. 109S–12, and ABT No. 119–21, all dated June 6, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

**FAA's Determination and Proposed Requirements**

These products have been approved by the aviation authority of Italy, and are approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

**Differences Between This AD and the MCAI AD**

We have reviewed the MCAI and, in general, agree with its substance. However, we have made the following changes:

- Excluded the August 31, 2007 compliance date because that date has passed;
- Excluded the Model A109LUH from the applicability and do not reference Agusta ABT No. 109L–006 because the Model A109LUH helicopter is not on the U.S. type certificate, H7EU;
- Added the Model AW119MKII to the applicability;
- Proposed to require the use of a 10-power or higher magnifying glass to accomplish the visual inspections; and
- Excluded the kit installation P/N, relying instead on the cargo hook and lever P/N.

These differences are highlighted in the ''Differences Between the FAA AD and the MCAI AD'' section in the proposed AD.

**Costs of Compliance**

We estimate that this proposed AD would affect about 26 helicopters on the U.S. Registry with the cargo hook. We also estimate that it would take about 10 minutes to inspect each cargo hook for a crack, and about 1 work-hour to replace a cracked cargo hook. The average labor rate is $80 per work-hour. Required parts would cost about $3,677 per cargo hook. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $97,647 per year, assuming that each affected helicopter would require five inspections per week, and that two cargo hooks would have to be replaced each year.

**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 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 this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA 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 adding the following new AD:

**Agusta S.p.A.:** Docket No. FAA–2008–0226; Directorate Identifier 2007–SW–35–AD.

**Comments Due Date**

(a) We must receive comments by April 22, 2009.

**Other Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model A109E, A109S, A119, and AW119MKII helicopters with cargo hook, part number (P/N) 528–010–01, and cargo hook lever, P/N 232–028–00, installed, certificated in any category.

**Reason**

(d) The mandatory continuing airworthiness information (MCAI) states that two cases of cracks in the lever, P/N 232–028–00, have been reported by the

manufacturer of the cargo hook. The lever is a component of the cargo hook, P/N 528–010–01. This lever is a critical structural component of the cargo hook, and a crack could result in inadvertent loss of the cargo hook load.

**Actions and Compliance**

(e) Before each cargo hook operation, visually inspect the cargo hook lever, P/N 232–028–00, for any crack. Use a 10-power or higher magnifying glass and inspect in the area depicted in Figures 1 and 2 of the following Agusta Alert Bollettino Tecnico (ABT), all dated June 6, 2007:

(1) ABT No. 109EP–78 for Model A109E helicopters;

(2) ABT No. 109S–12 for Model A109S helicopters; or

(3) ABT No. 119–21 for Model A119 helicopters.

(f) If a crack is found in the lever, do not use the cargo hook until the entire cargo hook is replaced with an airworthy cargo hook with an uncracked lever.

**Differences Between the FAA AD and the MCAI AD**

(g) This AD differs from the MCAI AD in that we:

(1) Exclude the August 31, 2007 compliance date because that date has passed;

(2) Exclude the Model A109LUH from the applicability and do not reference Agusta ABT No. 109L–006 because the Model A109LUH helicopter is not on the U.S. type certificate, H7EU;

(3) Add the Model AW119MKII to the applicability;

(4) Require the use of a 10-power or higher magnifying glass to accomplish the visual inspections; and

(5) Exclude the kit installation P/N, relying instead on the cargo hook and lever P/N.

**Other Information**

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* John Strasburger, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5167; fax (817) 222–5961.

**Related Information**

(i) EASA Emergency AD No. 2007–0160–E, dated June 7, 2007, contains related information.

**Air Transport Association of America (ATA) Tracking Code**

(j) Air Transport Association of America (ATA) Code 2550: Cargo Compartments.

Issued in Fort Worth, Texas on March 4, 2009.

**Jerald E. Strentz,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E9–6224 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0227; Directorate Identifier 2007–SW–65–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 427 Helicopters

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 427 helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by the aviation authority of Canada to identify and correct an unsafe condition on an aviation product. Transport Canada, the aviation authority of Canada, with which we have a bilateral agreement, states that it has been determined that the existing hardware connecting the vertical fin to the tail rotor gearbox needs to be upgraded, to prevent the vertical fin from becoming loose.

BHTC has received reports of loose vertical fins discovered during inspections. Investigation revealed that the current vertical fin attachment hardware may not provide adequate clamp-up. If not corrected, the vertical fin could become loose and cause vibration, which could lead to subsequent loss of control of the helicopter. The proposed AD would require actions that are intended to address this unsafe condition.

**DATES:** We must receive comments on this proposed AD by April 22, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or at *http://www.bellcustomer.com/files/*.

*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 proposed AD, the economic evaluation, any comments received and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**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–2009–0227; Directorate Identifier 2007–SW–65–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 we receive about this proposed AD.

### Discussion

Transport Canada, which is the aviation authority for Canada, has issued an MCAI in the form of Canadian Airworthiness Directive CF–2007–22, dated September 14, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. Transport Canada states in the MCAI that it has been determined that the existing hardware connecting the vertical fin to the tail rotor gearbox need to be upgraded, to prevent the vertical fin from becoming loose.

BHTC has received reports of loose vertical fins discovered during inspections. Investigation revealed that the current vertical fin attachment

hardware may not provide adequate clamp-up. If not corrected, the vertical fin could become loose and cause vibration, which could lead to subsequent loss of control of the helicopter.

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

**Relevant Service Information**

Bell Helicopter Textron has issued Alert Service Bulletin No. 427–06–15, dated December 14, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

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

This model helicopter has been approved by Transport Canada, which is the aviation authority of Canada, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design, we have been notified of the unsafe condition described in the MCAI. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of this same type design.

**Differences Between This AD and the MCAI**

We have reviewed the MCAI and related service information and, in general, agree with their substance. This AD differs from the MCAI as follows:

- We do not require compliance ''no later than November 27, 2007'', because that date has passed.
- We refer to the compliance time as ''hours time-in-service'' rather than ''air time hours.''

These differences are highlighted in the ''Differences Between this AD and the MCAI'' section in the AD.

**Costs of Compliance**

We estimate that this proposed AD would affect about 17 products of U.S. registry. We also estimate that it would take about 2 work-hours per helicopter to remove and visually inspect the vertical fin and the tail rotor gearbox attachment legs and to re-install the vertical fin. The average labor rate is $80 per work-hour. Required parts would cost about $227 per helicopter. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,579 for the fleet, or $387 per helicopter, to perform the inspections and remove and re-install the vertical fin.

**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 helicopters identified in this rulemaking action.

**Regulatory Findings**

We 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 this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**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 FAA 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 adding the following new AD:

**Bell Helicopter Textron Canada (BHTC):** Docket No. FAA–2009–0227; Directorate Identifier 2007–SW–65–AD.

**Comments Due Date**

(a) We must receive comments by April 22, 2009.

**Other Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model 427 helicopters, serial numbers 56001 through 56057, 58001, and 58002, certificated in any category.

**Reason**

(d) Transport Canada states in the mandatory continuing airworthiness information (MCAI) that it has been determined that the existing hardware connecting the vertical fin to the tail rotor gearbox need to be upgraded, to prevent the vertical fin from becoming loose. BHTC has received reports of loose vertical fins discovered during inspections. Investigation revealed that the current vertical fin attachment hardware may not provide adequate clamp-up. If not corrected, the vertical fin could become loose and cause vibration, which could lead to subsequent loss of control of the helicopter.

**Actions and Compliance**

(e) Within the next 150 hours time-in-service, unless already done, do the following:

(1) Remove the vertical fin and visually inspect the inboard and outboard surfaces of the vertical fin where it attaches to the tail rotor gearbox support for a crack, an elongated bolt hole, fretting, distortion and corrosion.

(2) Visually inspect the tail rotor gearbox support attachment legs for a crack, fretting and corrosion.

(f) If a crack, elongated bolt hole, fretting, distortion or corrosion is detected, repair or replace the part with an airworthy part before further flight.

(g) Reinstall the vertical fin.

**Differences Between This AD and the MCAI**

(h) This AD differs from the MCAI as follows:

(1) We do not require compliance ''no later than November 27, 2007'', because that date has passed.

(2) We refer to the compliance time as ''hours time-in-service'' rather than ''air time hours.''

**Other Information**

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**Related Information**

(j) Mandatory Continuing Airworthiness Information (MCAI) Transport Canada Airworthiness Directive CF–2007–22, dated September 14, 2007, and Bell Helicopter Textron Alert Service Bulletin No. 427–06–15, dated December 14, 2006, contain related information.

**Subject**

(k) Air Transport Association of America (ATA) Code:5553, Vertical Stabilizer, Attach Fittings.

Issued in Fort Worth, Texas, on March 4, 2009.

**Jerald E. Strentz,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E9–6225 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0160; Directorate Identifier 2008–NM–176–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require repetitive inspections for cracks of the upper aft skin panels on the horizontal stabilizer, and related investigative and corrective actions if necessary. This proposed AD results from a report of cracks found in the aft skin panels on the upper right side of the horizontal stabilizer at the aft inboard corner. We are proposing this AD to detect and correct cracks in the fail-safe structure that may not be able to sustain limit load, which could result in the loss of overall structural integrity of the horizontal stabilizer.

**DATES:** We must receive comments on this proposed AD by May 7, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

**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–2009–0160; Directorate Identifier 2008–NM–176–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 because of 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 we receive about this proposed AD.

**Discussion**

We have received a report that one operator found two instances of a crack in the aft skin panel on the upper right side of the horizontal stabilizer at the aft inboard corner. The airplanes had accumulated 16,659 total flight cycles/31,403 total flight hours and 18,128 total flight cycles/33,959 total flight hours. The cause of the cracking on the aft skin panel on the upper right side of the horizontal stabilizer is suspected to be fatigue. This condition, if not detected and corrected, could result in cracks in the fail-safe structure that may not be able to sustain limit load, which could result in the loss of overall structural integrity of the horizontal stabilizer.

**Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008. The service bulletin describes procedures for repetitive eddy current inspections to detect cracks on the upper aft skin panels on the left and right sides of the horizontal stabilizer, and related investigative and corrective actions. The initial compliance time is 13,500 total flight cycles or 24 months after the effective date of this AD, whichever occurs later. The related investigative actions include repetitive eddy current inspections for cracks of the rear spar upper caps of the left and right sides of the horizontal stabilizer. The repetitive interval for the inspection is within 1,600 or 2,100 flight cycles, depending on the previous inspection method used.

Corrective actions include, depending on crack findings and crack location, installing the upper aft skin panel splice of the horizontal stabilizer, and replacing the upper aft skin panel of the horizontal stabilizer. The service bulletin describes three options, depending on crack findings and crack location:

- (Option 1) The service bulletin describes procedures for a high frequency eddy current inspection of the rear spar cap of the horizontal stabilizer and installation of the upper aft skin panel splice of the horizontal stabilizer before further flight, and an eddy current inspection on the upper aft skin panel of the horizontal stabilizer within 13,500 flight cycles after the installation. If the crack is on the rear spar cap of the horizontal stabilizer, the service bulletin specifies to contact

Boeing for repair instructions and do the repair before further flight.

• (Option 2) The service bulletin describes procedures for a high frequency eddy current inspection of the rear spar cap of the horizontal stabilizer, remove and replace the upper aft skin panel of the horizontal stabilizer before further flight, and an eddy current inspection of the upper aft skin panel of the horizontal stabilizer within 13,500 flight cycles. If the crack is on the rear spar cap of the horizontal stabilizer, the service bulletin specifies to contact Boeing for further repair instructions and do the repair before further flight.

• (Option 3) The service bulletin specifies one option is to contact Boeing for possible temporary repair of skin cracks and do the repair before further flight.

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

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

**Difference Between the Proposed AD and Service Bulletin**

Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• Using a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD would affect 16 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection | 4 | $80 | None | $320 per inspection cycle. | 16 | $5,120 per inspection cycle. |

**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 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 this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA 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 adding the following new AD:

**McDonnell Douglas:** Docket No. FAA–2009–0160; Directorate Identifier 2008–NM–176–AD.

**Comments Due Date**

(a) We must receive comments by May 7, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Boeing Model MD–90–30 airplanes, certificated in any category.

**Subject**

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

**Unsafe Condition**

(e) This AD results from a report of cracks found in the right upper aft skin panel of the horizontal stabilizer at the aft inboard corner. We are issuing this AD to detect and correct cracks in the fail-safe structure that may not be able to sustain limit load, which could result in the loss of overall structural integrity of the horizontal stabilizer.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Inspections**

(g) Except as required by paragraphs (h) and (i) of this AD: At the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, do an eddy current inspection for cracks of the upper aft skin panels on the left and right sides of the horizontal stabilizer, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of the service bulletin.

**Exceptions to Service Bulletin Specifications**

(h) Where Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin MD90–55A012, dated September 23, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

**Inspections Done According to Multi-Operator Message**

(j) Inspections and corrective actions done before the effective date of this AD are acceptable for compliance with the corresponding requirements of this AD, if done in accordance with Boeing Multi-Operator Message 1–669017091–1, dated November 9, 2007.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, ATTN: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, in the FAA Flight Standards District Office (FSDO), or lacking a principal inspector, your local FSDO. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, International Branch, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Issued in Renton, WA, on March 6, 2009.

**Linda Navarro,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–6218 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0064]**

**RIN 1625–AA00**

## Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing a safety zone on the Atlantic Ocean in the vicinity of Ocean City, MD to support the Ocean City Air Show. This action is intended to restrict vessel traffic on the Atlantic Ocean to protect mariners from the hazards associated with air show events scheduled to take place from June 12 to June 14, 2009.

**DATES:** Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 22, 2009 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0064 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call LT Tiffany Duffy, Chief Waterways Management Division, Sector Hampton Roads at (757) 668–5580. 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–2009–0064), 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, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0064'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### 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–2009–0064 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor

of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor between 9 a.m. and 2 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 to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Coast Guard Sector Hampton Roads has been notified that from June 12 to June 14, 2009, Ocean City, MD will host an air show event on the Atlantic Ocean between Talbot Street and 33rd Street in Ocean City, MD. In recent years, there have been unfortunate instances where jets and planes crashing during air show performances. Along with the jet crashes, there are typically a wide area of scattered debris that also damage property and could cause significant injury or death to mariners observing the air shows. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard proposes that a safety zone bound by the following coordinates be established: 38°21′30″ N/075°03′32″ W, 38°21′39″ N/075°04′08″ W, 38°29′47″ N/075°04′58″ W, 38°19′37″ N/075°04′20″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

**Discussion of Proposed Rule**

The Coast Guard proposes establishing a safety zone on specified waters of the Atlantic Ocean bound by the following coordinates: 38°21′30″ N/075°03′32″ W, 38°21′39″ N/075°04′08″ W, 38°29′47″ N/075°04′58″ W, 38°19′37″ N/075°04′20″ W (NAD 1983), in the vicinity of Ocean City, Maryland. This safety zone is proposed in the interest of public safety during the Ocean City Air Show and will be enforced from 10 a.m. to 4 p.m. each day from June 12 to June 14, 2009. Access to the safety zone will be restricted during the specified date and times. Except for vessels authorized by the Captain of the Port or his representative, no person or vessel may enter or remain in the safety zone.

**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. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners may adjust their plans accordingly.

**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 safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in place for a limited duration. Before the effective period of June 12–14, 2009, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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 Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. 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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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 a temporary safety zone that will be in effect for less than one week. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A preliminary ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule'').

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0064 to read as follows:

**§ 165.T05–0064 Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD.**

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Atlantic Ocean bound by the following coordinates: 38°21′30″ N/075°03′32″ W, 38°21′39″ N/075°04′08″ W, 38°29′47″ N/075°04′58″ W, 38°19′37″ N/075°04′20″ W (NAD 1983), in the vicinity of Ocean City, Maryland.

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

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

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

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

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

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

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

(d) *Enforcement Period.* This regulation will be enforced from 10 a.m. to 4 p.m. daily from June 12 to June 14, 2009.

Dated: February 20, 2009.

**Patrick B. Trapp,**

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

[FR Doc. E9–6183 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 240

**[Docket No. FRA–2008–0091, Notice No. 2]**

**RIN 2130–AB95**

## Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Proposed rule; notice of public hearing and reopening of comment period.

**SUMMARY:** By notice of proposed rulemaking (NPRM) published on December 31, 2008 (73 FR 80349), FRA proposed revisions to its regulations governing the qualification and certification of locomotive engineers. This document announces a public hearing to provide interested parties the opportunity to comment on the NPRM and announces a thirty (30) day reopening of the comment period, which closed March 2, 2009, to commence on the date of the public hearing. The extension provides interested parties the opportunity to comment on NPRM and to respond to matters that arise at the public hearing related to the NPRM.

**DATES:** *Public Hearing:* A public hearing will be held on the date and at the location listed below to provide interested parties the opportunity to comment on the proposed revisions contained in the NPRM. A thirty (30) day extension of the comment period will commence on the date of the hearing. The date of the public hearing is as follows: Tuesday, April 14, 2009, at 9:30 a.m. in Washington, DC.

*Reopening of Comment Period:* The comment period will reopen Tuesday, April 14, 2009 and written comments must be received by Thursday, May 14, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

**ADDRESSES:** *Public Hearing:* The public hearing will be held at the following location:

*Washington, DC:* U.S. Department of Transportation, West Building Ground Floor, Media Center—Room W11–130, 1200 New Jersey Avenue, SE., Washington, DC 20905.

*Reopening of Comment Period:* Comments related to Docket No. FRA–2008–0091, may be submitted by any of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, 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.

**FOR FURTHER INFORMATION CONTACT:** John L. Conklin, Program Manager, Locomotive Engineer Certification, U.S. Department of Transportation, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W38–208, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6318); or John Seguin, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–217, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6045).

**SUPPLEMENTARY INFORMATION:** FRA has received written comments submitted by interested parties related to various parts of the NPRM and a written request for a hearing on the NPRM. Although FRA believes that the topics addressed in the written comments containing the request for a hearing are outside of the scope of the NPRM, FRA is holding a public hearing to permit the exchange of information and concerns regarding FRA's purposed amendments. The public hearing is meant to allow interested parties to fully develop and articulate the issues and concerns they have with the NPRM so that these concerns can be fully addressed in any final rule that is developed. Interested parties are invited to present oral statements and proffer evidence at the hearing. The hearing will be informal and will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding; therefore, there will be no cross examination of persons presenting statements or proffering evidence. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which the initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

On April 14, 2009, the comment period for the NPRM will reopen for thirty (30) days so that the FRA can make the public hearing transcript available for review and comment by the general public, interested parties can provide additional comments and documents related to the NPRM, and interested parties can provide responses to matters that arise at the public hearing.

### Public Participation Procedures

Any person wishing to participate in the public hearing should notify the Docket Clerk by mail or at the address or fax number provided in the **ADDRESSES** section at least five (5) working days prior to the date of the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification.

### Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit

*http://www.regulations.gov/search/footer/privacyanduse.jsp.*

Issued in Washington, DC, on March 16, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E9–6114 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–06–P**

# Notices

Federal Register
Vol. 74, No. 54
Monday, March 23, 2009

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

March 18, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

**Agricultural Research Service**

*Title:* Information Collection for Document Delivery Services.

*OMB Control Number:* 0518–0027.

*Summary of Collection:* The National Agricultural Library (NAL) accepts requests from libraries and other organizations in accordance with the national and international interlibrary loan code and guidelines. In its national role, NAL collects and supplies copies or loans of agricultural materials not found elsewhere. 7 U.S.C. 3125a and 7 CFR part 505 gives NAL the authority to collect this information. NAL provides photocopies and loans of materials directly to USDA staff, other Federal agencies, libraries and other institutions, and indirectly to the public through their libraries. The Library charges for some of these activities through a fee schedule. In order to fill a request for reproduction or loan of items the library must have the name, mailing address, phone number of the respondent initiating the request, and may require either a fax number, e-mail address, or Ariel IP address. The collected information is used to deliver the material to the respondent, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the respondent consents to the fees charged by NAL.

*Need and Use of the Information:* The NAL document delivery staff uses the information collected to identify the protocol for processing the request. The information collected determines whether the respondent is charged or exempt from any charges and what process the recipient uses to make payment if the request is chargeable. The staff also uses the information provided to process/package the reproduction or loan for delivery. Without the requested information NAL has no way to locate and deliver the loan or reproduction to the respondent, and thus cannot meet its mandate to supply agricultural material.

*Description of Respondents:* Federal Government; not-for-profit institutions; State, Local or Tribal Government; business or other for-profit.

*Number of Respondents:* 1,525.

*Frequency of Responses: Reporting:* On occasion.

*Total Burden Hours:* 506.

**Agricultural Research Service**

*Title:* Meeting the Information Requirements of the Animal Welfare Act Workshop Registration Form.

*OMB Control Number:* 0518–0033.

*Summary of Collection:* The U.S. Department of Agriculture, National Agricultural Library (NAL), Animal Welfare Information Center conducts a workshop titled ''Meeting the Information Requirements of the Animal Welfare Act''. The registration form collects information from interested parties necessary to register them for the workshop. The information includes: workshop data preferences, signature, name, title, organization name, mailing address, phone and fax numbers and e-mail address. The information will be collected using online and printed versions of the form. Also forms can be faxed or mailed.

*Need and Use of the Information:* NAL will collect information to register participants, contact them regarding schedule changes, control the number of participants due to limited resources and training space, and compile and customize class materials to meet the needs of the participants. Failure to collect the information would prohibit the delivery of the workshop and significantly inhibit NAL's ability to provide up-to-date information on the requirements of the Animal Welfare Act.

*Description of Respondents:* Not-for-profit Institutions; business or other for-profit; Federal Government; State, Local, or Tribal Government.

*Number of Respondents:* 34.

*Frequency of Responses: Reporting:* On occasion.

*Total Burden Hours:* 3.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E9–6251 Filed 3–20–09; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent To Request an Extension of a Currently Approved Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 04–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to seek approval to collect information in support of research and related activities.

**DATES:** Comments on this notice must be received within 65 days of publication to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Jill Philpot, ARS Webmaster, 5601 Sunnyside Avenue, Beltsville, MD 20705.

**FOR FURTHER INFORMATION CONTACT:** Contact Jill Philpot, ARS Webmaster, (301) 504–5683.

**SUPPLEMENTARY INFORMATION:**

*Title:* Web Forms for Research Data, Models, Materials, and Publications as well as Study and Event Registration.

*Type of Request:* Extension of a currently approved information collection.

*OMB Number:* 0518–0032.

*Expiration Date:* June 30, 2009.

*Abstract:* Sections 1703 and 1705 of the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII, require agencies, by October 21, 2003, to provide for the option of electronic submission of information by the public. To advance GPEA goals, online forms are needed to allow the public to request from ARS research data, models, materials, and publications as well as registration for scientific studies and events. For the convenience of the public, the forms itemize the information we need to provide a timely response. Information from forms will only be used by the Agency for the purposes identified.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3 minutes per response (range: 1–5 minutes).

*Respondents:* Agricultural researchers, students and teachers, business people, members of service organizations, community groups, other Federal and local government agencies, and the general public.

*Estimated Number Respondents:* 25,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1250 hours.

Copies of forms used in this information collection can be obtained from Jill Philpot, ARS Webmaster, at (301) 504–5683.

The information collection extension requested by ARS is for a period of three years.

*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; (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 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 for OMB approval. All comments will also become a matter of public record.

Dated: March 5, 2009.

**Edward B. Knipling,**

*ARS Administrator.*

[FR Doc. E9–6257 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Solicitation of Input From Stakeholders Regarding the Smith-Lever 3(d) Extension Integrated Pest Management Competitive Grants Program

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice of public meeting and request for stakeholder input.

**SUMMARY:** Section 7403 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (FCEA) amended section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) to provide the opportunity for 1862 and 1890 Land-Grant Institutions, including Tuskegee University and West Virginia State University to compete for section 3(d) funds. Section 7417 of FCEA also provided the University of the District of Columbia the opportunity to compete for section 3(d) funds. The Extension Integrated Pest Management Coordination and Support Program (EIPM–CS) is among the Extension programs funded under this authority. By this notice, CSREES is designated to act on behalf of the Secretary of Agriculture in soliciting public comment from interested persons regarding the future design and implementation of this program.

**DATES:** The public meeting will be held on Thursday, March 26, 2009, from 1:30 p.m. to 5:30 p.m. Pacific time. All comments not otherwise presented or submitted for the record at the meeting must be submitted by close of business Wednesday, April 29, 2009, to be considered.

**ADDRESSES:** The meeting will be held in the St. Helens Meeting Room, Doubletree Hotel Portland, 1000 N.E. Multnomah, Portland, Oregon 97232, phone—800–996–0510 (toll-free in USA); 503–281–6111 (outside USA).

You may submit comments, identified by CSREES–2008–0005, by any of the following methods:

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

*E-mail: newEIPM@csrees.usda.gov.* Include CSREES–2008–0005 in the subject line of the message.

*Fax:* (202) 401–4888.

*Mail:* Paper, disk or CD–ROM submissions should be submitted to newEIPM; Plant and Animal Systems Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture; STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220.

*Hand Delivery/Courier:* EIPM; Plant and Animal Systems Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 3472, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

*Instructions:* All submissions received must include the agency name and the identifier CSREES–2008–0005. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Ley, (202) 401–6195 (phone), (202) 401–4888 (fax), or *newEIPM@csrees.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Additional Meeting and Comment Procedures

Because of the diversity of subjects, and to aid participants in scheduling their attendance, the following schedule

is anticipated for the March 26, 2009, meeting:

*1:30–2:30 p.m.* Introduction to the Extension Integrated Pest Management Coordination and Support Competitive Grant Program (EIPM).

*2:30–5:30 p.m.* Stakeholder input on general administration of EIPM, including: Solicitation of proposals; types of projects and awards; length of awards; evaluation criteria; protocols to ensure the widest program participation; allocation of funds, including protocols to solicit and consider stakeholder input; determination of priority areas; and determination of activities to be supported. A break is scheduled for 3 p.m. to 3:30 p.m.

*5:30 p.m.* Adjourn

Persons wishing to present oral comments at the March 26, 2009, meeting are requested to pre-register by contacting Ms. Juli Obudzinski at (202) 401–5136, by fax at (202) 401–4888, or by e-mail to *newEIPM@csrees.usda.gov.* Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations for oral comments will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting. All comments not presented or submitted for the record at the meeting must be received by close of business Wednesday, April 29, 2009, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the CSREES Web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Obudzinski as directed above.

**Background and Purpose**

On October 6, 2008, CSREES held a stakeholder listening session on Smith-Lever 3(d) IPM restructuring due to changes found in section 7403 of the FCEA (see *http://www.csrees.usda.gov/business/reporting/stakeholder/eipm_stakeholder.html*). Changes to Smith-Lever 3(d) funding include: (1) The requirement for a competitive program delivery model as opposed to a long-standing formula-based delivery model; and (2) the inclusion of 1890 Institutions and the University of the District of Columbia as eligible entities to receive 3(d) funds. The primary intent of the listening session was to gather stakeholder input on program focus and design. Prior to the listening session, National Program Leaders presented stakeholders with the following questions:

1. What should be the primary goals and objectives of the program?

2. How can CSREES funding be optimized?

3. Should there be a limit on the number of proposals that can be submitted by each eligible institution?

4. What criteria should be used in the proposal review and selection process?

5. Should regional, multi-institutional or multi-state proposals be encouraged?

6. Should proposals addressing gaps in current program coverage (organic, small farms, etc.) be given greater emphasis in the evaluative process?

7. What limits should be set on funding and project duration?

The written comment period ran from October 6 through November 15, 2008. Over 400 written comments were received. A written summary of the comments is available at *http://www.csrees.usda.gov/business/reporting/stakeholder/eipm_stakeholder.html*. Contained in the comments are many areas with broad agreement among stakeholders. For instance, from both verbal and written comments, it was clear that stakeholders felt the most critical issue was making the fiscal year 2009 funds available as soon as possible, which the Agency responded to by promptly issuing the EIPM–CS RFA and proceeding with the competition on a compressed schedule.

Efforts were made to incorporate suggestions from the October 6, 2008, Listening Session into the FY 2009 EIPM–CS program as allowable by law. It was felt, however, that additional input could help structure the program for future years. The March 2009, Listening Session is scheduled to assist CSREES leadership in more fully addressing stakeholder needs.

**Implementation Plans**

CSREES plans to consider stakeholder input received from this public meeting as well as other written comments in developing the FY 2010 program guidelines. CSREES anticipates releasing the FY 2010 Request for Applications (RFA) by mid July 2009.

Done at Washington, DC, this 17th day of March 2009.

**Colien Hefferan,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. E9–6193 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Fresno County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fresno County Resource Advisory Committee will be meeting in Clovis, California on April 2nd. The purpose of the meeting on April 2nd will be to approve and vote on projects that have been submitted for funding.

**DATES:** The meeting will be held on April 2, 2009 from 6 p.m. to 8:30 p.m. in Clovis, CA.

**ADDRESSES:** The meeting will be held at the Sierra National Forest Supervisor's Office, 1600 Tollhouse Rd., Clovis, CA. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

**FOR FURTHER INFORMATION CONTACT:** Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355, ext. 3341.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

March 16, 2009.

**Ray Porter,**

*District Ranger.*

[FR Doc. E9–6101 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ouachita-Ozark Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Meeting notice for the Ouachita-Ozark Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

**SUMMARY:** This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the

Ouachita-Ozark Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393. Topics to be discussed include: General information, updates on current or completed Title II projects, and next meeting agenda.

**DATES:** The meeting will be held on April 23, 2009, beginning at 6 p.m. and ending at approximately 9 p.m.

**ADDRESSES:** The meeting will be held at the Janet Huckabee Arkansas River Valley Nature Center, 8300 Wells Lake Road, Barling, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318).

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: March 16, 2009.

**Bill Pell,**

*Designated Federal Official.*

[FR Doc. E9–6100 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–52–M**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection for the Floriculture Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

**DATES:** Comments on this notice must be received by May 22, 2009 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535–0093, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

**FOR FURTHER INFORMATION CONTACT:** Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* Floriculture Survey.

*OMB Control Number:* 0535–0093.

*Expiration Date of Approval:* June 30, 2009.

*Type of Request:* Intent to seek approval to revise and extend an information collection.

*Abstract:* The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Floriculture Survey is currently conducted in 15 States and obtains basic agricultural statistics on production and value of floriculture and nursery products. The target population for this survey is all operations with production and sales of at least $10,000 of floriculture products. New floriculture operations that were discovered during the 2007 Census of Agriculture will be added to the list of potential respondents. The retail and wholesale quantity and value of sales are collected for fresh cut flowers, potted flowering plants, foliage plants, annual bedding/garden plants, herbaceous perennials, cut cultivated florist greens, propagative floriculture material, and unfinished plants. Additional detail on area in production, operation value of sales, and agricultural workers is included. Content changes are minimal year to year, but always managed to avoid significant changes to the length and burden associated with each questionnaire. These statistics are used by the U.S. Department of Agriculture to help administer programs and by growers and marketers in making production and marketing decisions.

*Authority:* These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average between 10 and 60 minutes per respondent. Operations with less than $100,000 in sales of floriculture products respond to a reduced number of questions related to operation characteristics while operations with sales greater than $100,000 complete the entire questionnaire.

*Respondents:* Farms and businesses.

*Estimated Number of Respondents:* 9,500.

*Estimated Total Annual Burden on Respondents:* 4,250 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

*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, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 2, 2009.

**Joseph T. Reilly,**

*Associate Administrator.*

[FR Doc. E9–6254 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Egg, Chicken, and Turkey Surveys.

**DATES:** Comments on this notice must be received by May 22, 2009 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535–0004, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

**FOR FURTHER INFORMATION CONTACT:** Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

**SUPPLEMENTARY INFORMATION:**

*Title:* Egg, Chicken, and Turkey Surveys.

*OMB Number:* 0535–0004.

*Expiration Date of Approval:* July 31, 2009.

*Type of Request:* Intent to Seek Approval to Revise and Extend an Information Collection.

*Abstract:* The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Egg, Chicken, and Turkey Surveys obtain basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and value estimates for eggs, chickens, and turkeys. This information is used by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the National School Lunch Program and in formulation of export-import policy. The current expiration date for this docket is July 31, 2009. NASS intends to request that the surveys be approved for another 3 years.

**Authority:** These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.3501, *et seq.*). and Office of Management and Budget regulations at 5 CFR part 1320.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated between 8 and 25 minutes per respondent per survey.

*Respondents:* Farms.

*Estimated Number of Respondents:* 3,200.

*Estimated Total Annual Burden on Respondents:* 4,000 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, technological, or other forms of information technology collection techniques.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, February 2, 2009.

**Joseph T. Reilly,**

*Associate Administrator.*

[FR Doc. E9–6255 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Lost River Subwatershed of the Potomac River Watershed, Hardy County, WV

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** The Natural Resources Conservation Service (NRCS) is withdrawing its July 9, 2007 Record of Decision (**Federal Register** Vol. 72, No. 135, July 16, 2007) for the Lost River Subwatershed of the Potomac River Watershed, Hardy County, West Virginia. NRCS has also decided to update and reissue a second draft supplemental work plan and environmental impact statement for the Lost River Subwatershed.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, is giving notice that a second draft supplemental work plan and second draft environmental impact statement (SDEIS) are being prepared for the Lost River Subwatershed of the Potomac River Watershed, Hardy County, West Virginia. The SDEIS will evaluate potential impacts to the natural, physical and human environment as a result of the flood damage reduction and water supply storage measures proposed for the Lost River Subwatershed, Hardy County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Kevin Wickey, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 284–7545.

**SUPPLEMENTARY INFORMATION:** A draft environmental impact statement (DEIS) was prepared in September 2006 and circulated for review by agencies and the public. A Final Environmental Impact Statement (FEIS) was issued in May 2007 and a Record of Decision was issued in July 2007. In order to insure that agencies and the public have the

opportunity to fully review and provide comments regarding this project, the decision was made to withdraw the ROD of July 2007 and issue a second draft work plan and second draft EIS for the Lost River Subwatershed Project.

Dated: February 19, 2009.

**Kevin Wickey,**

*State Conservationist.*

[FR Doc. E9–6247 Filed 3–20–09; 8:45 am]

**BILLING CODE 3410–16–P**

## DEPARTMENT OF COMMERCE

### Economics and Statistics Administration

### Bureau of Economic Analysis Advisory Committee

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

**DATES:** Friday, May 1, 2009, the meeting will begin at 9 a.m. and adjourn at 3:30 p.m.

**ADDRESSES:** The meeting will take place at the Bureau of Economic Analysis at 1441 L St. NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Newman, Media and Outreach Lead, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9265.

*Public Participation:* This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Jeffrey Newman of BEA at (202) 606–9265 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Jeffrey Newman at (202) 606–9265.

**SUPPLEMENTARY INFORMATION:** The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's eighteenth meeting.

Dated: March 13, 2009.

**Rosemary D. Marcuss,**

*Deputy Director, Bureau of Economic Analysis.*

[FR Doc. E9–6248 Filed 3–20–09; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–533–848)**

### Commodity Matchbooks from India: Notice of Extension of Time Limits for Preliminary Determination of Antidumping Duty Investigation

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

**EFFECTIVE DATE:** March 23, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood, 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) 482–3874.

**SUPPLEMENTARY INFORMATION:**

**Postponement of Preliminary Determination**

On November 24, 2008, the Department of Commerce (the Department) published a notice of initiation of antidumping investigation of imports of commodity matchbooks from India. *See Commodity Matchbooks from India: Initiation of Antidumping Duty Investigation*, 73 FR 70965 (Nov. 24, 2008). The notice of initiation stated that we would issue our preliminary determination no later than 140 days after the date of initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act). The preliminary determination is currently due no later than April 7, 2009.

On March 12, 2009, the petitioner, D. D. Bean & Sons Co., made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50–day extension of the preliminary determination. The petitioner requested that the determination be extended due to the complexities of the case and the difficulty in obtaining useable information from the sole respondent, Triveni Safety Matches Pvt. Ltd.

Under section 733(c)(1)(A) of the Act, if the petitioner makes a timely request for an extension of the period within which the preliminary determination must be made under subsection (b)(1), then the Department may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiated the investigation. Therefore, for the reasons identified by the petitioner and because there are no compelling reasons to deny the request, the Department is postponing the preliminary determination in this investigation until May 27, 2009, which is 190 days from the date on which the Department initiated this investigation.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: March 16, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–6177 Filed 3–20–08; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–580–825)**

### Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Amended Final Results of the Administrative Review Pursuant to Final Court Decision

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

**EFFECTIVE DATE:** March 23, 2009.

**SUMMARY:** On December 22, 2008, the United States Court of International Trade (CIT) sustained the Department of Commerce (the Department) results of redetermination pursuant to the CIT remand and entered final judgment in *Husteel Company, Ltd. and SeAH Corp., Ltd., v. United States, Consol. Ct. No. 06–00075, Slip Op. 08–139* (CIT December 22, 2008) (*Husteel v. United States III*). *See* Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd., v. United States, dated December 5, 2008 (*Final Remand Results*) (available at *http://ia.ita.doc.gov/remands*).

As there is now a final and conclusive court decision in this case, the Department is amending its final results to the administrative review covering oil country tubular goods, other than drill

pipe, from Korea covering the period of review (POR) of August 1, 2003 through July 31, 2004 to reflect the *Final Remand Results*.

**FOR FURTHER INFORMATION CONTACT:** Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0780.

**SUPPLEMENTARY INFORMATION:**

**Background**

This matter arose from a challenge to *Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13091 (March 14, 2006) (*Final Results*), and accompanying *Issues and Decision Memorandum* covering the POR of August 1, 2003 through July 31, 2004. In the *Final Results*, the Department found that the use of third country sales to a non–market economy, the People's Republic of China (PRC) in this case, were inappropriate for determining normal value, because these sales were not representative. *Id.* As such, in calculating normal value for SeAH Steel Corp. Ltd. (SeAH), the Department used SeAH's third country sales to Canada, and in calculating normal value for Husteel Co. Ltd. (Husteel), the Department used constructed value. Therefore, SeAH was assigned a rate of 6.84 percent, and Husteel was assigned a rate of 12.30 percent. *Id.*

In *Husteel Co., Ltd. and SeAH Steel Corporation Ltd. v. United States*, Consol. Ct. No. 06–00075, Slip Op. 06–2 (May 15, 2007 CIT), the CIT remanded the Department's *Final Results* holding that Department did not adequately explain its basis for finding that the prices of HuSteel's and SeAH's (collectively plaintiffs) sales to the PRC were not representative pursuant to section 773(a)(1)(B)(ii)(I) of the Tariff Act of 1930, as amended (the Act). Specifically, the CIT found that the Department failed to explain: (1) why plaintiffs' sales should be treated as sales into a non–market economy (NME); and (2) why the Department treated plaintiffs' price data differently than it treats price data for sales from market economy suppliers to NME respondents in its NME dumping cases. On October 30, 2007, the Department issued its *Results of Redetermination on Remand Pursuant to Husteel Co., Ltd. and SeAH Steel Corporation Ltd. v. United States, Consol. Ct. No. 06–00075, Slip Op. 06–2 (May 15, 2007 CIT)*, (*Remand Results I*). In *Remand Results I*, the Department continued to find Plaintiffs' sales into the PRC were not representative of section 773(a)(1)(B)(ii)(I) of the Act and provided additional support for this determination.

In *Husteel Company, Ltd., and SeAH Corp., Ltd., v. United States*, Consol. Ct. No. 06–00075, Slip Op. 08–62 (CIT June 2, 2008) (*HuSteel vs United States II*), the CIT remanded the Department's *Remand Results I*, holding that the Department's finding, that sales into an NME are not representative, was not supported by substantial record evidence. The CIT directed the Department to either present persuasive record evidence that plaintiffs' sales into the PRC were not representative within the meaning of 19 U.S.C. § 1677b(a)(1)(B)(ii)(I), or find the sales into the PRC to be representative, and then recalculate and assign the plaintiffs new antidumping duty assessment rates. On August 29, 2008, the Department issued its final results of redetermination pursuant to *Husteel vs United States II*. *See Results of Redetermination on Remand Pursuant to Husteel Company, Ltd., and SeAH Corp., Ltd., v. United States* (August 29, 2008) (*Remand Results II*). The remand redetermination explained that, in accordance with the CIT's instructions, after finding sales to the PRC to be representative, the Department recalculated the assessment rate for SeAH and Husteel. Specifically, the Department determined SeAH's new weighted–average margin to be 0.59 percent, and Husteel's new weighted–average margin to be 0.62 percent.

However, in the *Remand Results II* for Husteel, the Department inadvertently treated certain Korean inventory carrying costs as if they were denominated in U.S. dollars when they, in fact, had been denominated in Korean won. Therefore, in *Husteel Company Ltd. and SeAH Corp. Ltd., v. United States*, Consol. Ct. No. 06–000075, Slip Op. 08–127 (CIT November 21, 2008), the CIT upheld the Department's *Remand Results II*, with the exception of the calculation of certain inventory carrying costs. The CIT ordered the Department to correct its calculation of Husteel's Korean inventory carrying costs. In accordance with the CIT's order, the Department corrected its calculation with regard to Husteel's Korean inventory carrying costs. *See Final Remand Results.* As a result, Husteel's new dumping margin is now *de minimis* (*i.e.*, less than 0.50 percent) and SeAH's margin remains 0.59 percent.

On January 29, 2009, consistent with the decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the CIT's decision was not in harmony with Department's final results. *See Oil Country Tubular Goods, Other Than Drill Pipe, From Korea: Notice of Court Decision Not in Harmony with Final Results of Administrative Review*, 74 FR 5147 (January 29, 2009). There was no appeal of the CIT's decision to the U.S. Court of Appeals for the Federal Circuit filed within the appeal period. Therefore, the CIT's decision is now final and conclusive.

**Amended Final Results of the Review**

As the litigation in this case has concluded, the Department is amending the *Final Results* to reflect the results of our remand redetermination. The revised dumping margin in the amended final results is as follows:

| Exporter/Manufacturer | Weighted–Average Margin (Percent) |
|---|---|
| Husteel Company, Ltd .. | *de minimis* |
| SeAH Corp., Ltd. ..... | 0.59 |

The Department will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of OCTG from Korea during the review period at the assessment rate the Department calculated for the final results of review, as amended. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. We intend to issue assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

This notice is published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March March 13, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9–6326 Filed 3–20–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XN80**

### Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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

**ACTION:** Notice; receipt of application for exempted fishing permit.

**SUMMARY:** This notice announces receipt of an exempted fishing permit (EFP) application from the Best Use Cooperative (BUC). If granted, this permit would allow three BUC vessels to remove halibut from a codend on the deck, and release those fish back to the water after determining the physical condition of the halibut with the International Pacific Halibut Commission method for predicting halibut mortality. The EFP would allow operators of BUC non–pelagic trawl vessels to study methods for reducing halibut mortality in trawl fisheries by evaluating various fishing and handling practices. This activity has the potential to promote the objectives of the Magnuson–Stevens Fishery Conservation and Management Act by assessing techniques for reducing halibut discard mortality in non–pelagic trawl fisheries. Comments will be accepted at the April 1 to April 7, 2009, North Pacific Fishery Management Council (Council) meeting in Anchorage, AK.

**DATES:** Interested persons may comment on the EFP application during the Council's April 1 to April 7, 2009, meeting in Anchorage, AK.

**ADDRESSES:** The Council meeting will be held at the Hilton Hotel, 500 West Third Avenue, Anchorage, AK.

Copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available by writing to the Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian. The application also is available from the Alaska Region, NMFS website at *http://alaskafisheries.noaa.gov/*.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907–586–7442 or *jeff.hartman@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for Groundfish of the BSAI (FMP), which the Council prepared under the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary).

NMFS has received an application from the Best Use Cooperative (BUC) for an EFP that would allow them to evaluate methods to improve discard survival of incidentally caught halibut. This study could assist that sector in reducing halibut mortality in the non–pelagic trawl gear fishery.

**Background**

Regulations implemented by the IPHC allow Pacific halibut to be commercially harvested by the directed North Pacific longline fishery only. Halibut caught incidentally in other fisheries, such as non–pelagic trawl fisheries, must be sampled by observers, and returned to the ocean as soon as possible. Regulations implementing the FMP establish annual halibut bycatch mortality limits, also referred to as halibut prohibited species catch (PSC) limit, for the groundfish fisheries. Fisheries close when they reach their seasonal or annual halibut PSC limit even if the allowable catch of groundfish is not yet caught. In the case of the Bering Sea flatfish fishery, seasons have been closed before the fishery quotas have been reached to prevent the fishery from reaching the halibut PSC limit. Reducing halibut mortality and assuring that each halibut returned to the sea has the highest possible chance of survival are therefore high priorities for the IPHC's, the Council's, and NMFS's management goals for both halibut and groundfish.

Before halibut are returned to the sea, the catch of halibut as well as other groundfish must first be estimated by at–sea observers. A number of regulations assure that observer estimates of halibut and groundfish catch are credible, accurate, and without bias. For example, NMFS requires that all catch be made available for sampling by an observer; prohibits tampering with observer samples; prohibits removal of halibut from a cod end, bin, or conveyance system prior to being observed and counted by an at–sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

With the implementation of Amendment 80 to the FMP on September 14, 2007 (72 FR 52668), allocation of halibut PSC amounts was modified for vessels in the Amendment 80 sector, but halibut mortality continued to limit fishing in some fisheries. The Amendment 80 sector received an initial allocation of 2,525 metric tons (mt) of halibut PSC in 2008, but that allocation will decrease by 50 mt per year until it reaches 2,325 mt in 2012 and subsequent years. This amount is further allocated between the BUC and the Amendment 80 limited access fishery. In certain years, this amount of halibut PSC allocated to the Amendment 80 sector is less than the sector's historic catch; therefore, finding ways to continue to improve halibut survival is important for this sector.

The EFP applicant proposes to assess various fishing practices and their effect on halibut survival. It would allow researchers onboard the three catcher processor vessels to sort halibut removed from a codend on the deck of the vessel, and release those fish back to the water after determining the physical condition of the halibut using standard IPHC viability methods for predicting mortality of individual fish. Fishing under the EFP would occur in two phases during 2009. In May and June, Phase I fishing would allow sorting of halibut on deck to determine practices for reducing halibut mortality. Later in the year, Phase II would apply the halibut mortality saved in Phase I to allow additional EFP catch of groundfish and halibut within the BUC's allocation.

This proposed action would exempt the participating vessels from:

1. the prohibition to conduct any fishing when the fishery is closed due to reaching the limit for halibut Prohibited Species Catch (PSC) under § 679.7(a)(2);

2. the prohibition to bias the sampling procedure employed by an observer through sorting of catch before sampling, at § 679.7(g)(2);

3. the prohibition to exceed an amount of halibut cooperative quota (CQ) assigned to an Amendment 80 cooperative at § 679.7(o)(4)(v);

4. a requirement to weigh all catch by an Amendment 80 vessel on a NMFS–approved scale at § 679.27(j)(5)(ii);

5. the requirement for all catch to be made available for sampling at § 679.93(c)(1); and

6. the requirement for halibut to not be allowed on deck without an observer present at § 679.93(c)(5).

The exemptions to § 679.7(a)(2) and (o)(4) would be needed only if the BUC were to reach the 2009 Amendment 80 cooperative apportionment of halibut mortality (1,793 mt). In the event that BUC reaches this amount, the BUC's directed fishery for groundfish would close. If the amount of halibut mortality savings estimated under this EFP shows less mortality than the amount estimated using standard 2009 halibut discard mortality rates established for the Bering Sea trawl fisheries (February 17, 2009, 74 FR 7333), BUC may be allowed to continue fishing for groundfish species later in the year, with some limitations. The BUC would be required to submit a report to NMFS and the IPHC of the estimated halibut mortality saved during the Phase I agency review and determination of halibut savings. After review and approval by NMFS, the BUC may be allowed to do subsequent EFP fishing at the end of the year as Phase II fishing under the EFP. The BUC would be limited to no more than the BUC's Amendment 80 groundfish allocation. The additional amount of halibut caught would not exceed the amount of the halibut mortality savings under the EFP, or BUC's 2009 allocation of halibut PSC.

This EFP would apply for the period of time required to complete the experiment in Phase I and potentially in subsequent fishing in Phase II, during 2009, in areas of the BSAI open to directed fishing by the BUC. The EFP activities would be of limited scope and duration and would not be expected to change the nature or duration of the groundfish fishery, fishing practices or gear used, or the amount or species of fish caught by the BUC.

The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment as detailed in the categorical exclusion issued for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council will consider the EFP application during its April 2009 meeting, which will be held at the Hilton Hotel in Anchorage, Alaska. The applicant has been invited to appear in support of the application.

### Public Comments

Interested persons may comment on the application at the April 2009 Council meeting during public testimony. Information regarding the meeting is available at the Council's website at *http://alaskafisheries.noaa.gov/npfmc/council.htm*. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**).

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

Dated: March 17, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9–6350 Filed 3–20–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO19**

### Permits; Foreign Fishing

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

**ACTION:** Notice of receipt of foreign fishing application; request for comments.

**SUMMARY:** NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by Canadian vessels, submitted under provisions of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act).

**DATES:** Comments must be received by April 6, 2009.

**ADDRESSES:** Send comments or requests for a copy of the application to Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East–West Highway, Silver Spring, MD. Comments on this notice may also be submitted by e–mail to *nmfs.foreignfishing@noaa.gov*. Include in the subject line the following document identifier: RIN 0648–XO19.

**FOR FURTHER INFORMATION CONTACT:** Mi Ae Kim, Office of International Affairs, (301) 713–9090.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 204(d) of the Magnuson–Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States. In addition, Public Law 104–297, section 105(e) directs the Secretary to issue section 204(d) permits for up to 14 Canadian transport vessels to receive Atlantic herring harvested by United States fishermen and to be used in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State.

Section 204(d)(3)(D) of the Magnuson–Stevens Act provides that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated ... an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Section 204(d)(3)(B) of the Magnuson–Stevens Act provides that an application may not be approved until the Secretary determines that ''the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application.'' Section 201(c)(2) identifies multiple requirements related to monitoring, compliance, and enforcement, such as allowing authorized officers to board and inspect vessels, installation and use of position–fixing and identification equipment, and stationing of observers.

### Summary of Application

NMFS received an application requesting authorization for 10 Canadian transport vessels to receive transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).

Dated: March 18, 2009.

**Rebecca Lent,**

*Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. E9–6349 Filed 3–20–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Technical Information Service

### Publication of the 2009 Export Administration Regulations

**AGENCY:** National Technical Information Service, Commerce.

**ACTION:** Regulations available for purchase.

**SUMMARY:** The National Technical Information Service (NTIS) is accepting orders for the 2009 edition of the Export Administration (EA) Regulations, which should be available on or about April 5, 2009. The EA Regulations are meant to protect the United States from foreign threats. Failure to comply with the EA Regulations can result in adverse publicity, loss of export privileges, fines, and imprisonment

**DATES:** Orders may be placed upon publication of this notice.

**ADDRESSES:** To order the Export Administration Regulations fax: (703) 605–6880 (24 hours/7 days a week); or e-mail: *subscriptions@ntis.gov*. To order by mail: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact the subscription desk at 1–800–363–2068 or (703) 605–6060, 8:30 a.m.–5 p.m., Eastern Time, M–F.

**SUPPLEMENTARY INFORMATION:** The EA Regulations are issued by the United States Department of Commerce, Bureau of Industry & Security (BIS) under laws relating to the control of certain exports, re-exports, and related activities. The EA Regulations serve the national security, foreign policy, and nonproliferation interests of the United States. They assist the United States in carrying carry out certain international obligations. They restrict access to dual use items by countries or persons that might apply such items to uses inimical to U.S. interests. They protect the United States from the adverse impact of the unrestricted export of commodities in short supply. In addition, they contain provisions designed to ensure that United States persons are not improperly supporting an unsanctioned foreign boycott or restrictive trade practice. The EA Regulations offer authoritative guidance on all of these matters as well as assisting businesses in determining when an export license is necessary; explaining how to obtain one; clarifying the policies that are followed in considering license applications; and explaining how exporters can learn about the latest changes and requirements.

Dated: February 27, 2009.

**Donald Hagen,**

*Associate Director, NTIS.*

[FR Doc. E9–6348 Filed 3–20–09; 8:45 am]

**BILLING CODE 3510–04–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2009–OS–0047]**

### Privacy Act of 1974; Systems of Records

**AGENCY:** National Security Agency/ Central Security Service, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The National Security Agency (NSA) is proposing to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 22, 2009 unless comments are received which would result in a contrary determination.

**ADDRESSES:** Send comments to the National Security Agency/ Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

**FOR FURTHER INFORMATION CONTACT:** Ms. Anne Hill at (301) 688–6527.

**SUPPLEMENTARY INFORMATION:** The National Security Agency's systems of notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 18, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**GNSA 12**

NSA/CSS Training (February 22, 1993, 58 FR 10531).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with ''NSA/ CSS Education, Training and Workforce Development.''

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Files may consist of individual name, Social Security Number (SSN), employee identification number, date of birth, home address, home telephone number, education level, and scholastic achievements; forms; correspondence; memoranda; testing information (tests, test results, test grades); course grades; student course and instructor evaluations; course and class rosters/ attendance rosters; grade reports; registration records requirements; course and training histories; rosters of individuals by skill community/ specialty; attendance and time utilization reports for students and instructors; biographical sketches where required and appropriate; student disciplinary actions and complaints; waiver requests and responses; reimbursement and service agreements where appropriate; and other records related to civilian and military training as required and appropriate (*e.g.*, copies of contracts, Authorizations, Agreement, and Certification of Training forms, Economy Act Orders, welcome letters, course agendas; class schedules; visit request information; bus confirmation e-mail; course materials; e-print order for course material; Video Teleconferencing confirmation; and additional assessment tool forms.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''5 U.S.C. 4101–4118, Training; E.O. 11348, Providing for the Further Training of Government Employees; Section 10 of Public Law 86–36, National Security Agency Act of 1959; and E.O. 9397 (SSN).''

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''In addition to those disclosures generally

permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Portions of these files are made available to other governmental and non-governmental entities in support of training requirements.

To contractor employees to make determinations as noted in the purposes above.

In any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body (including, but not limited to, the Equal Employment Opportunity Commission and Merit Systems Protection Board).

The 'DoD Blanket Routine Uses' set forth at the beginning of NSA/CSS' compilation of systems of records notices apply to this system.''

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with ''Paper in file folders and electronic storage media.''

**RETRIEVABILITY:**

Delete entry and replace with ''By name, Social Security Number (SSN) or employee identification number.''

**SAFEGUARDS:**

Delete entry and replace with ''Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection. Access to information is limited to those individuals authorized and responsible for personnel management or supervision.''

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''The Associate Director for Education and Training, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.''

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.''

* * * * *

**GNSA 12**

**SYSTEM NAME:**

NSA/CSS Education, Training and Workforce Development

**SYSTEM LOCATION:**

Primary location—National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

Decentralized segments—Each staff, line, contract and field element as authorized and appropriate.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

NSA/CSS employees, personnel under contract, military assignees and other government employees, designees and military personnel as required and appropriate who attend courses or receive training by or under NSA/CSS sponsorship.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Files may consist of individual name, Social Security Number (SSN), employee identification number, date of birth, home address, home telephone number, education level, and scholastic achievements; forms; correspondence; memoranda; testing information (tests, test results, test grades); course grades; student course and instructor evaluations; course and class rosters/ attendance rosters; grade reports; registration records requirements; course and training histories; rosters of individuals by skill community/ specialty; attendance and time utilization reports for students and instructors; biographical sketches where required and appropriate; student disciplinary actions and complaints; waiver requests and responses; reimbursement and service agreements where appropriate; and other records related to civilian and military training as required and appropriate (*e.g.*, copies of contracts, Authorizations, Agreement, and Certification of Training forms, Economy Act Orders, welcome letters, course agendas; class schedules; visit request information; bus confirmation e-mail; course materials; e-print order for course material; Video Teleconferencing confirmation; and additional assessment tool forms.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 4101–4118, Training; E.O. 11348, Providing for the Further Training of Government Employees; Section 10 of Public Law 86–36, National Security Agency Act; and E.O. 9397 (SSN).

**PURPOSE(S):**

To maintain training records necessary to assure the equitable selection and approval of employees for NSA/CSS training or sponsorship; to provide documentation concerning military crypto linguist resources and individual training, develop training requirements, refine training methods and techniques, and provide individual career and training counseling.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Portions of these files are made available to other governmental and non-governmental entities in support of training requirements.

To contractor employees to make determinations as noted in the purposes above.

In any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body (including, but not limited to, the Equal Employment Opportunity Commission and Merit Systems Protection Board).

The 'DoD Blanket Routine Uses' set forth at the beginning of NSA/CSS'

compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper in file folders and electronic storage media.

**RETRIEVABILITY:**

By name, Social Security Number (SSN) or employee identification number.

**SAFEGUARDS:**

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection. Access to information is limited to those individuals authorized and responsible for personnel management or supervision.

**RETENTION AND DISPOSAL:**

Primary System—Records are reviewed annually and retained or destroyed as appropriate. Copies of items of significance with respect to the individual are included in the Personnel File and retention is in accordance with the retention policies for that system. Items used as the basis of statistical studies or other research efforts may be retained indefinitely. Computer listings and records are purged and updated as required and appropriate.

Decentralized System—Records are reviewed annually and retained or destroyed as appropriate. Individual's file may be transferred to gaining organization if appropriate. Computer listings and records are purged and updated as required and appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Associate Director for Education and Training, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Written inquiries should contain the individual's full name, Social Security Number (SSN) and mailing address.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

**RECORD SOURCE CATEGORIES:**

Individual, supervisors, training counselors, instructors and other training personnel; other governmental entities nominating individuals for training; other training and educational institutions; Personnel File, and other sources as required and appropriate.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a(k)(1), (k)(5) and (k)(6), as applicable. An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact the system manager.

[FR Doc. E9–6277 Filed 3–20–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2009–0012]**

### Privacy Act of 1974; System of Records

**AGENCY:** U.S. Marine Corps, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The U.S. Marine Corps is proposing to alter system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on April 22, 2009 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380–1775.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracy Ross at (703) 614–4008.

**SUPPLEMENTARY INFORMATION:** The U.S. Marine Corps system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on March 16, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 18, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**M01040–2**

**SYSTEM NAME:**

Marine Corps Total Force System (MCTFS) Records (September 9, 1996, 61 FR 47503).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Primary locations: Defense Mega-Center, St. Louis, MO 63120–1798.

Defense Finance and Accounting Service—Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001.

Technology Services Organization (TSO), 1500 East Bannister Road, Kansas City, MO 64197–0001.

Manpower Information Systems Support Activity (MISSA), 1500 East Bannister Road, Kansas City, MO 64197–0001.

**DECENTRALIZED SEGMENTS:**

Manpower Information System Support Office-02, Marine Corps Base, Camp LeJeune NC 28542–5000.

Manpower Information System Support Office-03, Marine Corps Base, Camp Pendleton, CA 92055–5000.

Manpower Information System Support Office-06, Marine Corps Base, Hawaii, Kaneohe Bay, HI 96863–5000.

Manpower Information System Support Office-09, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Manpower Information System Support Office-16 and 17, Marine Corps Support Activity, Kansas City, MO 64197–0001.

Manpower Information System Support Office-11, Headquarters, Washington, DC 20380–1775.

Manpower Information System Support Office-27, Marine Corps Base, Camp S.D. Butler, Okinawa, JA, FPO AP 98773–5001.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Civilians and other services personnel along with Active, Reserve, and retired Marines personnel.''

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''10 U.S.C. 5013. Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps: function; composition and E.O. 9397 (SSN).''

**PURPOSE(S):**

Delete entry and replace with ''The Marine Corps Total Force System (MCTFS) is the single, integrated, personnel, and pay system supporting both Active Duty and Reserve components. The system also includes the capability to report certain entries to enhance personnel management for civilians, other service personnel, retired Marines. In addition, it will provide the necessary management reports.''

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Attorney General in connection with litigation, law enforcement or other matters under the legal representative of the Executive Branch agencies.

To officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

To officials and employees of federal, state and local government through Official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.''

* * * * *

**STORAGE:**

Delete entry and replace with ''Electronic storage media and paper records in file folders.''

**RETRIEVABILITY:**

Delete entry and replace with ''By name and/or Social Security Number (SSN).''

**SAFEGUARDS:**

Delete entry and replace with ''Login to systems and network is by using the DoD Common Access Card (CAC). Public Key Infrastructure (PKI) network login is required and allows for documents to be digitally signed and encrypted and/or the receiving of encrypted mail. All personnel and staff use the CAC and PKI to login to their computer, digitally sign and encrypt email and other documents and to establish secure internet sessions. Building management employs security guards; building is locked nights and Holidays. Authorized persons may enter and leave the building during nonworking hours but must sign in and out. Records maintained in areas assessable only to authorized personnel who has a specific and recorded need-to-know. Online data sets (both type and disc) pertaining to personnel information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being accessed.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Magnetic records are maintained on all military personnel and certain civilians while they are in service or employed by the service and for a period of 11 months after separation. Paper and film records are maintained for a period of 10 years after the final transaction, then destroyed.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''The Commandant of the Marine Corps, (Code MIF), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Director, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

Director, Manpower Information Systems Support Activity, 1500 East Bannister Road, Kansas City, MO 64197–0001.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals (Active Duty/Reserve Members) seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the member's local disbursing office, or reviewed on-line with Marine Corps Total Force System or Marine-on-Line. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Retired Members should address written inquiries to the Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775, or contact Director, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

Requests should contain individual's name, Social Security Number (SSN), and the request must be signed.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals (Active Duty/Reserve Members) seeking access to information about themselves contained in this system of records should address written inquiries to the member's local disbursing office, or reviewed on-line with Marine Corps Total Force System or Marine-on-Line. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Retired Members should address written inquiries to the Commandant of the Marine Corps, (Code MIF), Headquarters. U.S. Marine Corps, Washington, DC 20380–1775, or contact Director, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

Requests should contain individual's name, Social Security Number (SSN), and the request must be signed.''

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with ''The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy

Instruction 5211.5E; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.''

* * * * *

**M01040–2**

**SYSTEM NAME:**

Marine Corps Total Force System (MCTFS) Records.

**SYSTEM LOCATION:**

Primary locations—Defense Mega-Center, St. Louis, MO 63120–1798.

Defense Finance and Accounting Service-Kansas City Center, 1500 East Bannister Road, Kansas City, MO 64197–0001.

Technology Services Organization (TSO), 1500 East Bannister Road, Kansas City, MO 64197–0001.

Manpower Information Systems Support Activity (MISSA), 1500 East Bannister Road, Kansas City, MO 64197–0001.

Decentralized segments: Manpower Information System Support Office-02, Marine Corps Base, Camp LeJeune NC 28542–5000.

Manpower Information System Support Office-03, Marine Corps Base, Camp Pendleton, CA 92055–5000.

Manpower Information System Support Office-06, Marine Corps Base, Hawaii, Kaneohe Bay, HI 96863–5000.

Manpower Information System Support Office-09, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Manpower Information System Support Office-16 and 17, Marine Corps Support Activity, Kansas City, MO 64197–0001.

Manpower Information System Support Office-11, Headquarters, Washington, DC 20380–1775.

Manpower Information System Support Office-27, Marine Corps Base, Camp S.D. Butler, Okinawa, JA, FPO AP 98773–5001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilians and other services personnel along with Active, Reserve, and retired Marines personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains personnel and pay data which includes, but is not limited to individual's name, rank/grade, Social Security Number (SSN), date of birth, citizenship, marital status, home of record, records of emergency data, enlistment contract or officer acceptance form identification, duty status, component code, population group, sex, ethnic group, duty information duty station/personnel assignment, unit information, security investigation date/type, leave account information, separation document code, test scores/information, language proficiency, military/civilian/off-duty education, dependents information including their Social Security Numbers (SSN), training information to include marksmanship data, physical fitness data, swim qualifications, military occupational specialties (MOS), military skills and schools, awards, combat tour information, aviation/pilot/flying time data, reserve drill information, reserve unit information, lineal precedence number, limited duty officer/warrant officer footnote, temporary additional duty data, overseas deployment data, limited medical data, conduct and proficiency marks, years in service, promotional data, weight control and military appearance data, commanding officer assignment/relief data, joint military occupational specialty data. Pay data included leave and earnings statement which may include base pay, allowances, allotments, bond authorization, health care coverage, dental coverage (if applicable), special pay and bonus data, federal and state withholding/income tax data, Federal Deposit Insurance Corporation contributions, Medicare, Social Security and Service members' Group Life Insurance deductions, leave account, wage and summaries, reserve drill pay, reserve Active Training (AT) pay, and other personnel/pay management data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps: function; composition and E.O. 9397 (SSN).

**PURPOSE(S):**

The Marine Corps Total Force System (MCTFS) is the single, integrated, personnel, and pay system supporting both Active Duty and Reserve components. The system also includes the capability to report certain entries to enhance personnel management for civilians, other service personnel, retired Marines. In addition, it will provide the necessary management reports.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Attorney General in connection with litigation, law enforcement or other matters under the legal representative of the Executive Branch agencies.

To officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

To officials and employees of federal, state and local government through Official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media and paper records in file folders.

**RETRIEVABILITY:**

By name and/or Social Security Number (SSN).

**SAFEGUARDS:**

Login to systems and network is by using the DoD Common Access Card (CAC). Public Key Infrastructure (PKI) network login is required and allows for documents to be digitally signed and encrypted and/or the receiving of encrypted mail. All personnel and staff use the CAC and PKI to login to their computer, digitally sign and encrypt e-mail and other documents and to establish secure Internet sessions. Building management employs security guards; building is locked nights and Holidays. Authorized persons may enter and leave the building during nonworking hours but must sign in and out. Records are maintained in areas assessable only to authorized personnel who has a specific and recorded need-to-know. Online data sets (both type and disc) pertaining to personnel information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being accessed.

**RETENTION AND DISPOSAL:**

Magnetic records are maintained on all military personnel and certain civilians while they are in service or employed by the service and for a period of 11 months after separation. Paper and film records are maintained for a period of 10 years after the final transaction and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Commandant of the Marine Corps (Code MIF), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Director, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

Director, Manpower Information Systems Support Activity, 1500 East Bannister Road, Kansas City, MO 64197.

**NOTIFICATION PROCEDURES:**

Individuals (Active Duty/Reserve Members) seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the member's local disbursing office, or reviewed on-line with Marine Corps Total Force System or Marine-on-Line. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Retired Members should address written inquiries to the Commandant of the Marine Corps (Code MIF), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775, or contact Director, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

Requests should contain individual's name, Social Security Number (SSN), and the request must be signed.

**RECORD ACCESS PROCEDURES:**

Individuals (Active Duty/Reserve Members) seeking access to information about themselves contained in this system of records should address written inquiries to the member's local disbursing office, or reviewed on-line with Marine Corps Total Force System or Marine-on-Line. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Retired Members should address written inquiries to the Commandant of the Marine Corps (Code MIF), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775, or contact Director, Defense Finance and Accounting Service—Cleveland Center, 1240 E. 9th Street, Cleveland, OH 44199–2055.

Requests should contain individual's name, Social Security Number (SSN), and the request must be signed.

**CONTESTING RECORD PROCEDURES:**

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5E; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9–6278 Filed 3–20–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Renewal of Federal Advisory Committee

**AGENCY:** Department of Defense.

**ACTION:** Notice; renewal of Federal Advisory Committee.

**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 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Board of Regents of the Uniformed Services University of the Health Sciences (hereafter referred to as the Board of Regents).

The Board of Regents, pursuant to 10 U.S.C. 2113, is a non-discretionary Federal advisory committee established to assist the Secretary of Defense in an advisory capacity in carrying out the Secretary's responsibility to conduct the business of the Uniformed Services University of the Health Sciences (hereafter referred to as the University). In addition, the Board of Regents shall provide advice and recommendations on academic and administrative matters critical to the full accreditation and successful operation of the University.

**FOR FURTHER INFORMATION CONTACT:** Contact Jim Freeman, Deputy Committee Management Officer, 703–601–6128.

**SUPPLEMENTARY INFORMATION:** Pursuant to 10 U.S.C. 2113(a), the Board of Regents is composed of: (1) Nine persons in the fields of health and health education who shall be appointed from civilian life by the Secretary of Defense; (2) the Secretary of Defense, or his designee, who shall be an ex officio member; (3) the surgeons general of the uniformed services, who shall be ex officio members; and (4) the President of the University, who shall be a nonvoting ex officio member.

The terms of office for those members appointed by the Secretary of Defense pursuant to 10 U.S.C. 2113(b) shall be six years except that: (1) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; (2) the terms of office of the members first taking office shall expire, as designated by the Secretary of Defense at the time of the appointment; and (3) any member whose term of office has expired shall continue to serve until his successor is appointed.

The Secretary of Defense shall designate one appointed member of the Board of Regents to serve as Chair. Members of the Board of Regents who are not full-time or permanent part-time Federal employees shall serve as Special Government Employees under the authority of 5 U.S.C. 3109, and, pursuant to 10 U.S.C. 2113(e), shall receive compensation of no more than $100 per day, as determined by the Secretary of Defense, in addition to travel expenses and per diem while serving away from their place of residence.

The Board of Regents shall meet at the call of the Designated Federal Officer, in consultation with the Chair and the President of the University. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or Alternate Designated Federal Officer shall attend all Board of Regents' meetings and subcommittee meetings.

The Board of Regents is authorized to establish subcommittees and workgroups, as necessary and consistent with its mission. Board of Regents subcommittees and workgroups shall operate under the provisions of 5 U.S.C., Appendix, as amended, the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and other appropriate Federal regulations.

Board of Regents subcommittees and workgroups shall not work independently of the Board of Regents and shall report all their recommendations and advice to the Board of Regents for full deliberation and discussion. Board of Regents subcommittees and workgroups have no authority to make decisions on behalf of the Board of Regents and may not report directly to the Department of Defense or any Federal officers or employees who are not Board of Regents members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Regents about its mission and functions. Written statements should be submitted to the advisory committee's Designated Federal Officer for consideration by the membership of the Board of Regents. The advisory committee's Designated Federal Officer contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Dated: March 18, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–6280 Filed 3–20–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Defense Representative Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia and Republic of Palau; Notice of Extension of Public Comment Period for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for the Mariana Islands Range Complex

**AGENCY:** Department of Defense Representative Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia and Republic of Palau.

**ACTION:** Notice.

**SUMMARY:** A notice of availability was published by the U.S. Environmental Protection Agency in the **Federal Register** (74 FR 5652) on January 30, 2009 for the Mariana Islands Range Complex (MIRC) Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS). This notice announces the extension of the public comment period by 15 days from March 16, 2009 until March 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mariana Islands Range Complex EIS, 258 Makalapa Drive, Suite 100, Attn: EV2, Pearl Harbor, HI 96860–3134; email at: *marianas.tap.eis@navy.mil.*

**SUPPLEMENTARY INFORMATION:** The public comment period on the MIRC Draft EIS/OEIS will be extended until March 31, 2009. Comments may be submitted in writing to Mariana Islands Range Complex EIS, 258 Makalapa Drive, Suite 100, Attn: EV2, Pearl Harbor, HI 96860–3134; or e-mailed to *marianas.tap.eis@navy.mil.* In addition, comments may be submitted Online at *http://www.MarianasRangeComplexEIS.com* during the comment period. All comments must be postmarked by March 31, 2009, to ensure they become part of the official record. All comments will be addressed in the Final EIS/OEIS. Copies of the Draft EIS/OEIS are available for public review at the following libraries:

1. University of Guam Robert F. Kennedy Memorial Library, Government Documents Tan Siu Lin Building, UOG Station, Mangilao, GU 96923;

2. Nieves M. Flores Memorial Library, 254 Martyr Street, Hagätna, GU 96910;

3. Rota Public Library, P.O. Box 879, Rota, MP 96951;

4. Joeten-Kiyu Public Library, P.O. Box 501092, Saipan, MP 96950;

5. Northern Marianas College Public Library, P.O. Box 459, Tinian, MP 96952.

The MIRC Draft EIS/OEIS is also available for electronic public viewing or download at *http://www.MarianasRangeComplexEIS.com.*

Dated: March 17, 2009.

**A.M. Vallandingham,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E9–6173 Filed 3–20–09; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs)—Technology Access in Resource-Limited Environments; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.133A–6.

*Dates:*

*Applications Available:* March 23, 2009.

*Date of Pre-Application Meeting:* April 23, 2009.

*Deadline for Transmittal of Applications:* May 22, 2009.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

*Priorities:* NIDRR has established two priorities for this competition. The *General DRRP Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The *Technology Access in Resource-Limited Environments* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132).

**Note:** On February 1, 2008, we also published a notice in the **Federal Register** (73 FR 6162) inviting applications for a number of competitions, including one using the *Technology Access in Resource-Limited Environments* priority. None of the applications we received for this priority were successful. On June 12, 2008, we published another notice in the **Federal Register** (73 FR 33420) inviting applications for the *Technology Access in Resource-Limited Environments* priority and, once again, none of the applications we received for this priority were successful. Consequently, due to this lack of quality applications, NIDRR is again recompeting this priority. NIDRR is seeking applications that address all elements of the priority and that propose appropriate, quality research methodologies.

Accordingly, through this notice, we are inviting applications for another competition using the *Technology Access in Resource-Limited Environments* priority.

*Absolute Priorities:* For FY 2009, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

*General Disability and Rehabilitation Research Projects (DRRP) Requirements* and *Technology Access in Resource-Limited Environments.*

*Program Authority:* 29 U.S.C. 762(g) and 764(a).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority and definitions for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132).

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

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* We intend to use an estimated $950,000 for this DRRP competition. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Maximum Award:* We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

**Note:** The maximum amount includes direct and indirect costs.

*Estimated Number of Awards:* 1.

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

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian Tribes and Tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a)(3)(i) and will be negotiated at the time of the grant award.

## 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/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

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

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133A–6.

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

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

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 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 application narrative. Single spacing may be used for 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 recommended 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 recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

*Applications Available:* March 23, 2009.

*Date of Pre-Application Meeting:* Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on April 23, 2009. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

*Deadline for Transmittal of Applications:* May 22, 2009.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (*http://Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

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

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed

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

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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

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

*a. Electronic Submission of Applications*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Disability Rehabilitation Research Projects competition, CFDA number 84.133A–6, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Disability Rehabilitation Research Projects competition, CFDA number 84.133A–6, at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.133, not 84.133A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (*see http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: 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.
- If you submit your application electronically, 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.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR**

**FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*b. Submission of Paper Applications by Mail*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–6), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

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

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

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

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

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

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

(1) A private metered postmark.

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

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

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

*c. Submission of Paper Applications by Hand Delivery*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–6), 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 notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows:

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V.2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

## VI. Award Administration Information

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

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

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

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

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

**Note:** NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly-awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.

• The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

• The percentage of new grants that includes studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their annual performance reports in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult this site on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

**VII. Agency Contact**

*For Further Information Contact:* Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*.

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

*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. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official 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 18, 2009.

**Andrew J. Pepin,**

*Executive Administrator, Delegated the Authority to Perform the Functions of the Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E9–6322 Filed 3–20–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Energy Information Administration; Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency Information Collection Activities: Proposed Collection; Comment Request.

**SUMMARY:** The EIA is soliciting comments on the proposed three-year extension to Form NWPA–830R, ''Appendix G—Standard Remittance Advice for Payment of Fees (including Annex A and Annex B to Appendix G).''

**DATES:** Comments must be filed by May 22, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Send comments to Tom Murphy. To ensure receipt of the comments by the due date, submission by FAX (202–287–1933) or e-mail (*thomas.murphy@eia.doe.gov*) is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI–52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Murphy may be contacted by telephone at 202–586–1517.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of any forms and instructions should be directed to Mr. Murphy at the address listed above.

**SUPPLEMENTARY INFORMATION:**



**I. Background**

The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Also, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Form NWPA–830R 'Appendix G—Standard Remittance Advice for Payment of Fees', and 'Annex A and Annex B to Appendix G—Standard Remittance Advice for Payment of Fees' are designed to serve as the source documents for entries into DOE accounting records to transmit data from Purchasers to the DOE concerning payment of their fees for spent nuclear fuel and high-level waste disposal into the Nuclear Waste Fund. The Remittance Advice (RA) must be submitted by Purchasers who signed the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the DOE. Appendix G is an appendix to the Standard Contract.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the ''For Further Information Contact'' section.

**II. Current Actions**

The EIA will be requesting a three-year extension of approval to its existing Form NWPA–830R 'Appendix G—Standard Remittance Advice for Payment of Fees' with no change to the existing collection. The NWPA–830R, 'Appendix G—Standard Remittance Advice for Payment of Fees' is required to transmit data from Purchasers to the DOE concerning payment of their fees into the Nuclear Waste Fund, as required by the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste.

**III. Request for Comments**

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

*As a Potential Respondent to the Request for Information*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the respondent by the due date?

E. To complete the Form NWPA–830R 'Appendix G—Standard Remittance Advice for Payment of Fees' the average time per response is 5 hours. The data for the Form NWPA–830R is collected quarterly. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

*As a Potential Data User of the Information To Be Collected*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

*Statutory Authority:* Section 3507(h)(1) of the Paperwork Reduction Act of 1995, Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), and the DOE Organization Act (42 U.S.C. 7101 *et seq.*).

Issued in Washington, DC, March 10, 2009.

**Renee Miller,**

*Director, Forms Clearance and Information Quality Division, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. E9–6335 Filed 3–20–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. PR09–20–000]**

## Enbridge Pipelines (Louisiana Intrastate) LLC; Notice of Petition for Rate Approval

March 16, 2009.

Take notice that on March 4, 2009, Enbridge Pipelines (Louisiana Intrastate) LLC filed a petition for rate approval for NGPA section 311 maximum transportation rates for interruptible transportation service, pursuant to section 284.123(b)(2) of the Commission's regulations. Louisiana Intrastate proposes to increase its currently effective maximum system-wide rate for interruptible transportation from $0.1810 per MMBtu to $0.2687 per MMBtu, plus fuel and lost-and-unaccounted for gas.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time March 30, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–6281 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8785–8]**

## Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board (SAB)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Chartered SAB to: discuss EPA's long range strategic research directions, discuss the FY 2010 EPA research budget, and plan for future SAB activities including the SAB's plan for conducting a study and delivering advice on strengthening science assessments at the EPA.

**DATES:** The public meeting will be held on Thursday, April 23, 2009 from 8:30 a.m. to 5 p.m. (Eastern Daylight Time) and Friday, April 24, 2009 from 8 a.m. to 2 p.m. (Eastern Daylight Time).

**ADDRESSES:** The meeting will be held at the Westin Arlington Gateway Hotel, 801 N. Glebe Road, Arlington, VA 22203; phone (703) 717–6200.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants further information concerning the teleconference meeting may contact Mr. Thomas Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9982; fax (202) 233–0643; or e-mail at *miller.tom@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

*Background: (1) Strategic Research Vision:* The purpose of this meeting will be to allow the Chartered SAB to discuss with Agency representatives the strategic research directions of EPA's Office of Research and Development over the next 10 years. These discussions will permit consideration of the overall strategic direction of the program in relation to EPA's overall mission, as well as permit the evaluation of smaller components of the total program as they fit into the total program. (2) *Research Budget:* If the President's FY 2010 budget is released prior to this meeting, the SAB will consider that budget and how it relates to the overall goals of EPA and the EPA strategic research directions. The SAB has reviewed the EPA research budget request each year for over twenty years and provides written advice to the EPA Administrator and, when requested, provides testimony to the U.S. Congress on how the budget might contribute to the achievement of EPA's overall research goals. (3) *SAB Future Activities:* The Board will discuss future advisory activities including a draft plan for a study to develop advice to EPA on strengthening its science assessment program for key areas of EPA's mission.

*Availability of Meeting Materials:* A meeting agenda, charge questions and other materials for the meeting will be placed on the SAB Web site at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/BOARD.*

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the April 23–24, 2009 meeting, interested parties should notify Mr. Thomas Miller, DFO, by e-mail no later than April 16, 2009. Individuals making oral statements will be limited to three minutes per speaker. *Written Statements:* Written statements for the April 23–24, 2009 meeting should be received in the SAB Staff Office by April 16, 2009, so that the information may be made available to the SAB for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Mr. Miller at the phone number or e-mail address noted above, preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: March 17, 2009.

**Anthony F. Maciorowski,**

*Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. E9–6256 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–409–OAR–09–0148; FRL–8783–2]**

## Proposed Determination for Washoe County Moe

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

**ACTION:** Notice; request for comments and notice of opportunity for public hearing.

**SUMMARY:** EPA has made a proposed determination that reduction in expenditures of non-Federal funds for the Washoe County District Health Department (WCDHD) in Reno, Nevada are a result of county-wide non-selective reductions in expenditures. This determination, when final, will permit the WCDHD to receive grant funding for FY2009 from the EPA, under Section 105 of the Clean Air Act (CAA).

**DATES:** Comments and/or requests for a public hearing must be received by EPA at the address state below by April 22, 2009.

**ADDRESSES:** Submit comments, identified by docket number [09–0148], by one of the following methods:

1. *Federal Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: ford.roy@epa.gov*

3. *or deliver to:* Roy Rod (Air-8), 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 districted by 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., 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:** Roy Ford, EPA Region IX, (415) 972–3997, *ford.roy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of Section 105 of the CAA, EPA provides grant funding to the WCDHD to aid in the operation of its air

pollution control programs. In FY2008, EPA awarded the WCDHD $632,694, which represented approximately 36% of the WCDHD budget. In FY2009, EPA will award the WCDHD $632, 649, which represents approximately 43% pf the WCDHD budget.

Section 105(c) (1) of the CAA, 42 U.S.C. 7405(c) (1) provides that ''no agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. However, pursuant to Section 105(c) (2) of the CAA, EPA may still award a grant to an agency not meeting the requirements of Section 105(c) (2), ''if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of the Government.'' These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35 140–35.148.

WCDHD's final Financial Status Report for FY08 indicated that WCDHD's maintenance of effort (MOE) level was $1,711,833. The budgeted FY2009 MOE is $1,451,265.

The projected MOE is not sufficient to meet the MOE requirements under the CAA Section 105 because it is not equal to or greater than the MOE for the previous fiscal year. In order for the WCDHD to be eligible to receive its FY2009 CAA Section 105 grant, EPA must make a determination (after notice and opportunity for a public hearing) that the reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all the Washoe County agencies. EPA, Region IX has yet to award the Section 105 award for the FY09 to the WCDHD.

The shortfall stems from an action taken by the Washoe County Board of County Commissioners in February 2008, directing Washoe County agencies to reduce budget expenditures in order to make up for a budget deficit of $22,700,000. The budget cuts were not aimed solely at the Health District. Each entity in Washoe County was required to reduce budget expenditures, including police and fire protection services, etc.

The Health District has five divisions: (1) Administrative Health Services (AHS); (2) Air Quality Management (AWM); (3) Community and Clinical Health Services (CCHS); (4) Environmental Health Services (EHS); and (5) Epidemiology and Public Health Preparedness (EPHP). Each division has borne a percentage of the total FY09 reduction. The combined reduction in budgeted expenditures for the Health District in FY2009 (July 1, 2008 through June 30, 2009) totaled approximately $1,581,515 as summarized below:

| Division | FY09 $ reduction | FY09 % of total reduction |
|---|---|---|
| AHS* ..... | $(188,509) | −11.89% |
| AQM** ..... | $84,000 | 5.32% |
| CCHS ..... | $1,105,569 | 69.91% |
| EHS ..... | $435,681 | 27.55% |
| EPHP ..... | $144,188 | 9.12% |
| Total ... | $1,581,515 | 100% |

*AHS ''negative'' reduction due to payout budget for organizational retirements $147,000 and reorganization of personnel from CCHS and EHS to AHS (Department Computer Application Specialist, GIS Specialist, Account Clerk II, and Administrative Assistant II, −41,509).

**AQM reduction only reflects one vacancy Public Information Officer. However, two additional vacancies (Administrative Secretary Supervisor and Senior Air Quality Specialist) are anticipated to remain unfilled until funding is available. Therefore, three vacancies are reflected in FY09 anticipated MOE of $1,451,265.

To meet the $1,057,965 reduction requirements for FY09, the Health District substantially reduced budget for personnel (−$1,022,065) and minimally reduced budget for operating expenditures (−$35,000). Ten positions were permanently abolished and the Health District is holding seven (7) vacancies ''dark''. The ''dark'' positions will remain vacant until sufficient funding is available. To meet the additional $532,550 reduction requirements for FY09, the Health District substantially reduced the budget for personnel: (−$501,550) and minimally reduced the budget for operating expenditures (−$31,000). The majority of the reduction came from the Family Planning Program local budget, which was reduced by 50%, or $372,250.

The WCDHD's MOE reduction resulted from a loss of revenues from the County to all agencies due to circumstances beyond its control. EPA proposes to determine that the WCDHD lower FY9 MOE level meets the CAA Section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the CAA. All written comments received by April 22, 2009 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by April 22, 2009. If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Roy Ford at the above address.

**Authority:** 42 U.S.C. 7405 *et seq.*

Dated: March 9, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9–6159 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8785–5]**

## Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122 (h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Malone Service Company Superfund Site, Texas City, Galveston County, Texas.

The settlement requires the seventy-four (74) settling parties to pay a total of $4,403,290 payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to Sections 106 or 107 of CERCLA, 42, U.S.C. 9606 or 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

**DATES:** Comments must be submitted on or before April 22, 2009.

**ADDRESSES:** The proposed settlement and additional background information

relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Patrice Miller, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–3158. Comments should reference the Malone Service Company Superfund Site, Texas City, Galveston County, Texas, and EPA Docket Number 06–17–07, and should be addressed to Patrice Miller at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Anne Foster, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–2169 or I-Jung Chiang, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–2160.

Dated: March 10, 2009.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E9–6274 Filed 3–20–09; 8:45 am]

**BILLING CODE 6560–50–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Sunshine Act; Notice of Meeting

**DATE AND TIME:** Thursday, March 19, 2009, 10 a.m. Eastern Time.

**PLACE:** Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street, NE., Washington, DC 20507.

**STATUS:** The meeting will be closed to the public.

**Matters To Be Considered**

*Closed Session:* Litigation Recommendation: Amicus Curiae Participation.

**Note:** Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information.

**CONTACT PERSON FOR MORE INFORMATION:** Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: March 18, 2009.

**Stephen Llewellyn,**

*Executive Officer, Executive Secretariat.*

[FR Doc. E9–6370 Filed 3–19–09; 11:15 am]

**BILLING CODE 6570–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

March 11, 2009.

**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 collection(s), as required by the Paperwork Reduction Act (PRA) 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; 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.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 22, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0979.

*Title:* License Audit Letter.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and State, local or tribal government.

*Number of Respondents:* 310,000 respondents; 310,000 responses.

*Estimated Time per Response:* .50 hours.

*Frequency of Response:* One time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for these information collections are contained in 47 U.S.C. Sections 15, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534 and 535.

*Total Annual Burden:* 155,000 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* Yes. The FCC has a System of Records Notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records'', to cover the personally identifiable information affected by these information collection requirements. At this time, the Commission (FCC) is not required to complete a Privacy Impact Assessment.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirement) of this information collection. The Commission is reporting no change in the estimated number of respondents/responses and/or burden hours.

The Wireless Telecommunications Bureau (WTB) of the Federal Communications Commission (FCC) conducts audit(s) of the construction and/operational status of various wireless radio stations in its licensing database that are subject to rule-based construction and operational requirements. The Commission's rules, 47 CFR 1.80, 90.155 and 90.157, for these wireless services require construction within a specified time frame and require a station to remain operational in order for the license to remain valid. The Commission sends a License Audit Letter to the wireless licensee requesting that they respond to the instructions in the letter (and

applicable rules) within 30 calendar days from the date on the letter.

This reporting requirement will be used by Commission staff to assure that licensees' stations are constructed and currently operating in accordance with the parameters of the current FCC authorization and rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–6126 Filed 3–20–09; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Proposed Agency Informational Collection Activities; Comment Request

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Notice of Forms SF–424, SF–270 (LM–6), LM–8, SF–269a, LM–7, LM–9 and LM–3 to be submitted for extension to the Office of Management and Budget.

**SUMMARY:** This notice announces that seven information collection requests contained among the Federal Mediation and Conciliation Service (FMCS), Labor Management Corporation Program have come up for renewal. FMCS will submit to the Office of Management and Budget (OMB) a request for review of these seven forms: Application for Federal Assistance (SF–424), Request for Advance or Reimbursement SF–270 (LM–6), Project Performance (LM–8), Financial Status Report SF–269a (LM–7), Grants Program Grantee Evaluation Questionnaire (agency form LM–9), and Accounting System and Financial Capability Questionnaire (LM–3). The request seeks OMB approval for a three-year extension with an expiration date of March 12, 2012, for forms SF–424, SF–270 (LM–6), (LM–8), SF–269a, (LM–7), (LM–9) and (LM–3). FMCS is soliciting comments on aspects of the collection as described below.

**DATES:** Comments must be submitted on or before April 22, 2009.

**ADDRESSES:** Submit written comments by mail to Office of Labor Management Grants Program, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed, **FOR FURTHER INFORMATION CONTACT**. Comments may be submitted by fax at (202) 606–3434 or electronically by sending electronic (e-mail) to Michael Bartlett, Federal Register Liaison at *mbartlett@fmcs.gov* or Linda Stubbs the Grants Management Specialist at *lstubbs@fmcs.gov.* All comments must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI''. Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by FMCS without prior notice. All written comments will be available for inspection in Room 610 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Linda Stubbs, Grants Management Specialist, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone number (202) 606–8181, e-mail to *lstubbs@fmcs.gov* or fax at (202) 606–3434.

**SUPPLEMENTARY INFORMATION:** Copies of the complete agency forms are available from the Office of Labor Management Grants Program by calling, faxing, or writing Linda Stubbs at the address above. Please ask for forms by agency number.

#### I. Information Collection Requests

FMCS is seeking comments on the following information collection requests contained in FMCS agency forms.

*Agency:* Federal Mediation and Conciliation Service.

*Form Number:* OMB No. 3076–0006.

*Expiration date:* December 12, 2006.

*Type of Request:* Extension of a previously approved collection without change in the substance or method of collection.

*Affected Entities:* Potential applicants and/or grantees who received our grant application kit. Also applicants who have received a grant from FMCS.

*Frequency:*

a. Three of the forms, the SF–424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7and LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a ''similar information'' requirement could apply. That form takes the requirement into consideration by accepting recent audit reports in lieu of applicant completion of items C2 through 9 and items D1 through 3.

*Abstract:* Except for the FMCS Forms LM–3 and LM–9, the forms under consideration herein are either required or recommended in OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-public sector potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

*Burden:* Application for Federal Assistance (SF–424) is an OMB form which we do not include in the burden. We have not added to it; however we have deleted the requirements for completion of sections C, D, and E. We received approximately 113 responses. Request for Advance or Reimbursement SF–270 (LM–6) is an OMB form with no agency additions. The number of respondents is approximately 37 and estimated time per response is 30 minutes. Project Performance (LM–8) had approximately 37 respondents and the estimated time per response is 30 minutes. Financial Status Report (SF–269a) (LM–7) is an OMB form with no agency additions. The estimated time per response is 30 minutes and there are approximately 37 respondents. FMCS Grants Program Evaluation Questionnaire (LM–9) form number of respondents is approximately 12 and the estimated time per response is 60 minutes. The Accounting System and Financial Capability Questionnaire (LM–3) has approximately 28 respondents and the estimated time per response is 60 minutes.

#### II. Request for Comments

The FMCS is particularly interested in comments which:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, e.g. permitting electronic and fax submission of responses.

**III. The Official Records**

The official records are the paper electronic records maintained at the address at the beginning of this document. FMCS will transfer all electronically received comments into printed-paper form as they are received.

**List of Subjects**

Labor-Management Cooperation Program and Information Collection Requests.

Dated: March 17, 2009.

**Michael Bartlett,**

*Deputy General Counsel.*

[FR Doc. E9–6184 Filed 3–20–09; 8:45 am]

**BILLING CODE 6732–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60 Day–09–09AY]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov.*

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 a 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 information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Laboratory Response Network (LRN)—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39, which outlined national anti-terrorism policies and assigned specific missions to Federal departments and agencies. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond to suspected acts of biological, chemical, or radiological terrorism and other public health emergencies.

When Federal, State and local public health laboratories voluntarily join the LRN, they assume specific responsibilities and are required to provide information to the LRN Program Office at CDC. Each laboratory must submit and maintain complete information regarding the testing capabilities of the laboratory. Biannually, laboratories are required to review, verify and update their testing capability information. Complete testing capability information is required in order for the LRN Program Office to determine the ability of the Network to respond to a biological or chemical terrorism event. The sensitivity of all information associated with the LRN requires the LRN Program Office to obtain personal information about all individuals accessing the LRN Web site. In addition, the LRN Program Office must be able to contact all laboratory personnel during an event so each laboratory staff member that obtains access to the restricted LRN Web site must provide his or her contact information to the LRN Program Office.

As a requirement of membership, LRN Laboratories must report all biological and chemical testing results to the LRN Program at CDC using a CDC developed software tool called the LRN Results Messenger. This information is essential for surveillance of anomalies, to support response to an event that may involve multiple agencies and to manage limited resources. LRN Laboratories must also participate in and report results for Proficiency Testing Challenges or Validation Studies. LRN Laboratories participate in multiple Proficiency Testing Challenges, Exercises and/or Validation Studies every year consisting of five to 500 simulated samples provided by the LRN Program Office. It is necessary to conduct such challenges in order to verify the testing capability of the LRN Laboratories. The rarity of biological or chemical agents perceived to be of bioterrorism concern prevents some LRN Laboratories from maintaining proficiency as a result of day-to-day testing. Simulated samples are therefore distributed to ensure proficiency across the LRN. The results obtained from testing these simulated samples must also be entered into Results Messenger for evaluation by the LRN Program Office.

During a surge event resulting from a bioterrorism or chemical terrorism attack, LRN Laboratories are also required to submit all testing results using LRN Results Messenger. The LRN Program Office requires these results in order to track the progression of a bioterrorism event and respond in the most efficient and effective way possible and for data sharing with other Federal partners involved in the response. The number of samples tested during a response to a possible event could range from 10,000 to more than 500,000 samples depending on the length and breadth of the event. Since there is potentially a large range in the number of samples for a surge event, CDC estimates the annualized burden for this event will be 3,000,000 hours or 625 responses per respondent.

Semiannually the LRN Program Office may conduct a Special Data Call to obtain additional information from LRN Member Laboratories in regards to biological or chemical terrorism preparedness. Special Data Calls are conducted using the LRN Web site.

There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

| Forms | Number of respondents | Average number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|
| Biannual Requalification | 200 | 1 | 2 | 400 |
| General Surveillance Testing Results | 200 | 25 | 24 | 120,000 |
| Proficiency Testing/Validation Testing Results | 200 | 5 | 56 | 56,000 |
| Surge Event Testing Results | 200 | 625 | 24 | 3,000,000 |
| Special Data Call | 200 | 2 | 30/60 | 200 |
| Total | | | | 3,176,600 |

Dated: March 11, 2009.

**Maryam I. Daneshvar,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–6213 Filed 3–20–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–09–09BD]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Written comments should be received within 60 days of this notice.

**Proposed Project**

Field Evaluation of Prototype Kneel-assist Devices in Low-seam Mining—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

According to the Mining Safety and Health Administration (MSHA) injury database, 227 knee injuries were reported in underground coal mining in 2007. With data from the National Institute for Occupational Safety and Health (NIOSH), it can be estimated that the financial burden of knee injuries was nearly three million dollars in 2007.

Typically, mine workers utilize kneepads to better distribute the pressures at the knee. The effectiveness of these kneepads was only recently investigated in a study by NIOSH that has not yet been published. The results of this study demonstrated that kneepads do decrease the maximum stress applied to the knee albeit not drastically. Additionally, the average pressure across the knee remains similar to the case where subjects wore no kneepads at all. Thus, the injury data and the results of this study suggest the need for the improved design of kneel-assist devices such as kneepads. NIOSH is currently undertaking the task of designing more effective kneel-assist devices such as a kneepad and a padded support worn at the ankle where mine workers can comfortably rest their body weight.

These devices must also be field tested to verify they do not result in body discomfort or inadvertent accidents. It is also important to determine how usable and durable these devices are in the harsh mining environment. In order to quantitatively demonstrate that these prototype devices are superior to their predecessors, mine workers using these prototypes must be interviewed. Their feedback will identify any necessary changes to the design of the devices such that NIOSH can ensure the prototypes will be well-accepted by the mining community.

To collect this type of information, a field study must be conducted where kneel-assist devices currently used in the mining industry (i.e. kneepads) are compared to the new prototype designs. The study suggested here would take approximately 13 months.

A pilot mine will be identified to test the prototype kneel-assist devices prior to commencing a full study. The data collected at this pilot mine will ensure that the prototype kneel-assist devices are likely to be successful. Data will be collected via interviews with individual mine workers and through a focus group where all mine workers come together to express their opinions about the devices. If the prototype kneel-assist devices do not appear to be successful, the data collected will be used to adequately redesign them and the above described process will begin again. If the prototype kneel-assist devices appear to be successful, the full study will commence.

Once the full study is ready to commence, cooperating mines will be identified. Every month, the section foreman at the cooperating mines will be asked to supply some information regarding the current mine environment.

Initially, the mine workers will be given a control kneel-assist device. Currently, mine workers only utilize kneepads as a kneel-assist device. Therefore, only a control kneepad will be provided. They will then be asked some basic demographics information

such as their age and time in the mining industry. Additional data will then be collected at 1, 3, and 6 months after the study commences. The mine workers will be asked to provide their feedback regarding factors such as body part discomfort, usability, durability, and ease of movement.

There will be no cost to the respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Section Foreman (pilot mine) | 1 | 1 | 10/60 | 0.5 |
| Mine Workers (pilot mine—baseline) | 9 | 1 | 20/60 | 3 |
| Mine Workers (pilot mine—one month) | 9 | 1 | 30/60 | 4.5 |
| Mine Workers (pilot mine—focus group) | 9 | 1 | 1 | 9 |
| Section Foreman (full study) | 6 | 12 | 10/60 | 12 |
| Mine Workers (full study—baseline) | 54 | 1 | 20/60 | 18 |
| Mine Workers (full study—1, 3, and 6 months for control and prototypes) | 54 | 6 | 25/60 | 135 |
| Total | | | | 182 |

Dated: March 11, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–6214 Filed 3–20–09; 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): CDC Grants for Public Health Research Dissertation, Panel F, Funding Opportunity Announcement (FOA) PAR07–231

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:* 2 p.m.–5 p.m., May 12, 2009 (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 review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel F, FOA PAR07–231.''

*For Further Information Contact:* Susan B. Stanton, D.D.S., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D74, Atlanta, GA 30333, Telephone: (404) 639–4640.

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 16, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–6216 Filed 3–20–09; 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): Acceptability, Feasibility and Validity of Genital Self-Sampling for HPV Among Men, PEP 2009–R–01

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.–12 p.m., May 18, 2009 (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 review, discussion, and evaluation of ''Acceptability, Feasibility and Validity of Genital Self-Sampling for HPV Among Men, PEP 2009–R–01.''

*Contact Person for More Information:* Linda Shelton, Public Health Analyst, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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 6, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–6220 Filed 3–20–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Injury Prevention and Control Initial Review Group (NCIPC, IRG)

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) announce the following meeting:

*Times and Date:* 1 p.m.–1:30 p.m., April 30, 2009 (Open). 1:30 p.m.–6 p.m., April 30, 2009 (Closed).

*Place:* Teleconference, Toll Free: 888–793–2154, Participant Passcode: 4424802, CDC, Chamblee Campus, Building 106, 4770 Buford Highway, Atlanta, GA 30341.

*Status:* Portions of the meetings 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 Section 10(d) of Public Law 92–463.

*Purpose:* This group is charged with providing advice and guidance to the Secretary, Department of Health and Human

Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of individual research cooperative agreement applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: RFA–CE–09–003 ''Preventing Sexual Violence Perpetration: Targeting Modifiable Risk Factors (U01).''

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Jane Suen, Dr. P.H., M.S., NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–62, Atlanta, Georgia 30341. Telephone: (770) 488–4281.

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 16, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–6219 Filed 3–20–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Proposed Project:*

*Title:* Supporting Healthy Marriage (SHM) Demonstration and Evaluation Project—Wave 2 Survey.

*OMB No.* 0970–0339.

The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is conducting a demonstration and evaluation called the Supporting Healthy Marriage (SHM) Project. SHM is a test of marriage education demonstration programs in eight sites that will enroll about 800 couples per site, with half assigned to participate in the SHM program, and the other half assigned to the control group.

SHM is designed to inform program operators and policymakers of the effectiveness of programs designed to help low-income married couples strengthen and maintain healthy marriages and improve outcomes for adults and children.

This notice of information collection is for a second adult survey instrument and new instruments to obtain information from children and youth about 30 months after study entry and for an extension of the period of approval for the first survey and observation instruments, which are used to obtain information from research participants about 12 months after study entry.

The proposed second wave of information collection will involve:

- An adult survey instrument to assess study participants' longer term marital status and stability, quality of relationships, and a range of other measures.
- A survey of focal children of study participants in both the program and control groups who are over 8 years of age (the youth survey).
- A direct child assessment of focal children of study participants in both the program and the control groups who are 8 years of age or younger.

*Respondents:* Low-income married couples and their children in the SHM evaluation research sample.

ANNUAL BURDEN ESTIMATES

| Instrument | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Estimated annual burden hours |
|---|---|---|---|---|
| 12-month adult survey | 4,267 | 1 | 0.83 | 3,542 |
| 12-month adult observational study | 1,632 | 1 | 0.66 | 1,077 |
| 12-month child observational study | 816 | 1 | 0.33 | 269 |
| 2nd wave (30-month) adult survey | 4,267 | 1 | 0.83 | 3,542 |
| Youth survey (30-month) | 633 | 1 | 0.50 | 317 |
| Child observational study (30-month) | 1,329 | 1 | 0.50 | 665 |

*Estimated Total Annual Burden Hours:* 9,412.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *opreinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 within 60 days of this publication.

Dated: March 11, 2009.

**Brendan C. Kelly,**

*OPRE Reports Clearance Officer.*

[FR Doc. E9–6039 Filed 3–20–09; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Service Administration

### Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

*Dates and Times:* April 20, 2009, 8:30 a.m. to 5 p.m., April 22, 2009, 8:30 a.m. to 3 p.m.

*Place:* Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. Telephone: 301–652–2000.

*Status:* The meeting will be open to the public.

*Purpose:* The Committee members will focus on the working topic for the Ninth Annual Report—Toward Quality Healthcare Reform: Preparing the Interprofessional Healthcare Workforce for Primary Care. The Committee has invited Dr. Madeline Schmitt, Professor Emeritus/University of Rochester; Dr. Gail Jensen, Dean/Graduate School/Creighton University; Dr. Jody Gandy, Director/Department of Physical Therapy Education, American Physical Therapy Association; and Dr. Edward O'Neil, Director/Center for the Health Professions/University of California at San Francisco to engage in dialogue specific to the working report topic. The meeting will afford committee members with the opportunity to identify and discuss the current status of healthcare reform, best practices, lessons learned from the international perspective of interdisciplinary care, interprofessional competencies, and the like in an effort to formulate appropriate recommendations for the Secretary and the Congress.

*Agenda:* The ACICBL agenda includes an overview of the Committee's general business activities, presentations by and dialogue with experts, and discussion sessions specific for the development of recommendations to be addressed in the Ninth Annual ACICBL Report.

Agenda items are subject to change as dictated by the priorities of the Committee.

*Supplementary Information:* The ACICBL will join the Council on Graduate Medical Education (COGME), the National Advisory Council on Nurse Education and Practice (NACNEP), and the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD) on April 21, 2009, for the second Bureau of Health Professions (BHPr) All Advisory Committee Meeting. Please refer to the **Federal Register** notice for the BHPr All Advisory Committee Meeting for additional details.

*For Further Information Contact:* Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, Designated Federal Official for the ACICBL, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm. 9–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6950 or *jweiss@hrsa.gov.* Additionally, CAPT Norma J. Hatot, Senior Nurse Consultant, can be contacted at (301) 443–2681 or *nhatot@hrsa.gov.*

Dated: March 17, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–6232 Filed 3–20–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

*Date And Time:* April 20, 2009, 8:30 a.m.–4:30 p.m.

*Place:* Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

*Status:* The meeting will be open to the public.

*Purpose:*. The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting, the Advisory Committee will work on its eighth report about the re-design of the delivery of primary health care and its implications for the training of primary care practitioners. Reports are submitted to Congress and to the Secretary of the Department of Health and Human Services.

*Agenda:* The meeting on Monday, April 20 will begin with opening comments from the Chair of the Advisory Committee and introductory remarks from senior management of the Health Resources and Services Administration. In the plenary session, the Advisory Committee will continue its work on key report elements and final recommendations for the eighth report. The Advisory Committee will determine next steps in the report preparation process and plan for the next Advisory Committee meeting. An opportunity will be provided for public comment.

*For Further Information Contact:* Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190. The Web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: March 17, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–6233 Filed 3–20–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Bureau of Health Professions; All Advisory Committee Meeting; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Bureau of Health Professions All-Advisory Committee Meeting (AACM).

*Dates and Times:* April 21, 2009, 8:30 a.m.–4:30 p.m.

*Place:* Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814, Telephone: 301–652–2000.

*Status:* The meeting will be open to the public.

*Purpose:* The purpose of the meeting is to provide a venue for the Bureau of Health Professions' (BHPr) four advisory committees [the Council on Graduate Medical Education (COGME), the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD), the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL), and the National Advisory Council on Nurse Education and Practice (NACNEP)] to finalize recommendations for a joint report on interdisciplinary education and practice, and to also discuss and identify future opportunities for collaboration.

*Agenda:* The AACM agenda will include updates on Bureau and Departmental priorities, discussion of the joint report and recommendations, and proposals for future Advisory Committee Collaboration. Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information can contact the Bureau of Health Professions, Office of the Associate Administrator, 5600 Fishers Lane, room 9–05, Rockville, Maryland, 20857, telephone (301) 443–5794. Information can also be found at the following Web site: *http://bhpr.hrsa.gov/.*

Dated: March 17, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–6244 Filed 3–20–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Council on Graduate Medical Education (COGME).

*Dates and Times:* April 22, 2009, 8:30 a.m.–5 p.m.

*Place:* DoubleTree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, Telephone: (301) 652–2000.

*Status:* The meeting will be open to the public.

*Agenda:* On the morning of April 22, 2009, following the welcoming remarks from the COGME Chair and the Executive Secretary of COGME, there will be a short presentation given by Dr. Robert Phillips of COGME on his tracking of the COGME recommendations made in its 16th Report. Followed will be a presentation given by the American College of Physicians on two recent ACP papers concerning primary care.

In the late morning, Dr. Charles Roehrig of Altarum will present an update of his modeling and analysis for determining supply of and demand for residency positions by specialty. There will be discussions of COGME on the implications of this modeling and analysis work for its next report and continued activities for that report.

Agenda items are subject to change as priorities dictate.

*Supplementary Information:* COGME will join the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD), the National Advisory Council on Nurse Education and Practice (NACNEP) and the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL) on April 21, 2009, for the second Bureau of Health Professions (BHPr) All-Advisory Committee Meeting. Please refer to the **Federal Register** notice for the BHPr All Advisory Committee Meeting for additional details.

*For Further Information Contact:* Jerald M. Katzoff, Executive Secretary, COGME, Division of Medicine and Dentistry, Bureau of Health Professions, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4443.

Dated: March 17, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–6231 Filed 3–20–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meetings:

*Name:* National Advisory Council on Nurse Education and Practice (NACNEP).

*Dates and Times:* April 22, 2009, 8:30 a.m.–4:30 p.m.

April 23, 2009, 8:30 a.m.–4 p.m.

*Place:* Doubletree Bethesda Hotel & Executive Meeting Center 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Status:* The meeting will be open to the public.

*Agenda:* Agency and Bureau administrative updates will be provided.

*Purpose:* The purpose of this meeting is to address issues relating to the nursing faculty shortage and its impact on nurse education and practice. The objectives of the meeting are: (1) To analyze achievements toward meeting recommendations that have been suggested to address the faculty shortage put forth in the National Advisory Council on Nurse Education and Practice: Second Report to the Secretary of Health and Human Services and the Congress; (2) to examine strategies instituted to address the faculty shortage; and (3) to address faculty salaries and any barriers to increasing faculty salaries. This meeting is a continuation of the meeting that was held November 2008, which thoroughly addressed the academic preparation of nurse educators.

During this meeting, the NACNEP council members will deliberate on the content presented and formulate recommendations to the Secretary of Health and Human Services and the Congress on the impact the faculty shortage is having on nursing education and practice. Members from professional nursing, public and private organizations will present their initiatives on addressing the nursing faculty shortage. Strategies on how to prepare nursing faculty for their role will be presented. This meeting will form the basis for NACNEP's mandated Ninth Annual Report. The NACNEP will join the Council on Graduate Medical Education (COGME), the Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD), and the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL) on April 21, 2009 for the second Bureau of Health Professions (BHPr) All Advisory Committee Meeting. Please refer to the **Federal Register** notice for the BHPr All Advisory Committee Meeting for additional details.

For further information regarding NACNEP, to obtain a roster of members, minutes of the meeting, or other relevant information contact Lakisha Smith, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5688. Information can also be found at the following Web site: *http://bhpr.hrsa.gov/nursing/nacnep.htm*

Dated: March 17, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–6230 Filed 3–20–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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) and552b(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; BDCN Member Conflict.

*Date:* April 7–9, 2009.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *manospa@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.

(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 17, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6481 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

**[Docket No. NIH–2009–0002]**

### Public Meeting on Expansion of the Clinical Trial Registry and Results Data Bank

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** With this notice, the National Institutes of Health (NIH) of the U.S. Department of Health and Human Services (HHS) announces a public meeting and requests input from interested parties on issues that the agency will consider as it develops regulations to expand the clinical trial registry and results data bank commonly known as ClinicalTrials.gov in accordance with section 801 of the Food and Drug Administration Amendments Act of 2007 (FDAAA) [Pub. L. 110–85]. FDAAA requires a public meeting to be held to provide an opportunity for input from interested parties with regard to regulations that are to be issued within three years of enactment of the law. The NIH seeks input from all interested parties about issues to be considered in the proposed rulemaking. Comments on these issues will inform the development of draft regulations, which will be made available for public comment via a separate Notice of Proposed Rulemaking (NPRM) that will be issued in the **Federal Register** at a later date. Section III of this document lists specific topics and questions on which input is sought.

*Public Meeting Date and Time:* The public meeting will be held on Monday, April 20, 2009, from 9 a.m. to 5 p.m.

*Location:* The public meeting will be held in Masur Auditorium, which is located on the NIH Campus, Building 10, South Side, First Floor, 10 Center Drive, Bethesda, Maryland 20892. The NIH, like all Federal Government facilities, has instituted security measures to ensure the safety of its patients, employees, visitors, and facilities. All visitors must enter the NIH campus through the Gateway Center, which is located adjacent to the Medical Center Metro Station (Red Line) at the South Drive entrance to the campus from Rockville Pike/Wisconsin Avenue (Route 355). Security personnel will ask you to submit to vehicle and personal inspection. Visitors over 15 years of age must provide a form of government-issued ID, such as a driver's license or passport. Visitors under 16 years of age must be accompanied by an adult. Additional information is available online at *http://www.nih.gov/about/visitor/.*

*Registration and participation:* The NIH desires broad participation in the public meeting. To ensure sufficient seating for all participants, we request that you register by 5 p.m. on Monday, April 13, 2009. Registration may be accomplished online at *http://prsinfo.clinicaltrials.gov/public-meeting-april09.html* or by submitting the following information to the Contact Person indicated below: Name; Title; Business affiliation (if any); Address; Telephone and fax numbers; and e-mail address. When registering, please indicate whether you need any special accommodations (such as wheelchair access). Sign-language interpretation will be provided at the meeting. Registration is on a first-come, first-served basis. Walk-in registrations will be accepted at the site on a space-available basis. Interested parties may also view the meeting remotely via live videocast, which will be accessible on the Internet at *http://videocast.nih.gov.*

**Oral Statements at the Meeting**

Participants wishing to make an oral statement during the public meeting should make their request when they register and should submit a written statement summarizing their remarks. Written statements should be submitted to the meeting docket at *http://www.regulations.gov* or to the Contact Person indicated below by 5 p.m. on Monday, April 13, 2009. Written statements should identify by number each discussion question addressed, and written statements that exceed 10 pages should include a one-page executive summary. Registered individuals will be notified of the approximate scheduled time of their remarks prior to the meeting. The NIH will try to accommodate all persons who wish to make a public comment at the meeting, including those who register at the site, but it may need to limit the number of presentations and/or the time allotted for each presentation. Nevertheless, the full text of all written statements will be included in the docket, which will remain open for submissions after the conclusion of the meeting. In order that they may be considered by the agency during the development of the proposed rule, written comments should be submitted to the docket by Monday, June 22, 2009. Instructions for submitting written comments are described in Section IV of this notice.

*Agenda and other meeting materials:* An agenda for the public meeting will be posted on the meeting Web site *http://prsinfo.clinicaltrials.gov/public-meeting-april09.html* and submitted to the public docket by Wednesday, April 15, 2009. The NIH may make other background material available on the meeting Web site in advance of the meeting and will submit all such information to the public docket.

*Contact Person:* Christine Ireland, Committee Management Officer, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968; telephone: 301–594–4929; fax: 301–402–2952; e-mail: *irelanc@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The NIH, through its National Library of Medicine (NLM), has maintained a clinical trial registry data bank, commonly known as ClinicalTrials.gov, since 2000. The registry was established, in part, in response to the Food and Drug Administration Modernization Act of 1997 [Pub.L. 105–115], and as of March 2009 it contained information on more than 69,000 clinical trials conducted in more than 160 countries.

The Food and Drug Administration Amendments Act of 2007 (FDAAA) [Pub.L. 110–85], enacted in September of 2007, increases the amount and type of clinical trial information that is to be made publicly available through the data bank. Section 801 of the FDAAA requires the Director of NIH to expand the data bank and requires ''responsible parties'' (generally, trial sponsors or designated principal investigators) to submit specified registration and results information describing ''applicable clinical trials'' (as defined in FDAAA) of certain drugs, biological products, and devices. The FDAAA specifies a set of registration data elements to be submitted to the data bank and authorizes the Secretary to modify the registration data elements by regulation if such modification ''improves and does not reduce'' the clinical trial information submitted to ClinicalTrials.gov. The FDAAA also specifies the deadline by which responsible parties are to submit registration information (in general, within 21 days of enrolling the first patient) and establishes a requirement

for updating information if there are changes to report.

The FDAAA also requires the NIH to expand ClinicalTrials.gov to include information describing the results of certain applicable clinical trials. The law requires responsible parties to submit ''basic results'' information for applicable clinical trials for which the drugs, biological products, and devices under study are approved under section 505, 515, or 520(m) of the Federal Food, Drug, and Cosmetic (FDC) Act, licensed under section 351 of the Public Health Service (PHS) Act, or cleared under section 510(k) of the FDC Act. As specified in the law, the information to be submitted consists of certain administrative information and two categories of numerical data related to the clinical trial: (1) A table of demographic and baseline characteristics of the patient population, overall and for each arm of the clinical trial, including the number of patients who dropped out of the clinical trial or were excluded from the analysis; and (2) a table of values for each of the primary and secondary outcome measures, for each arm of the trial, including the results of scientifically appropriate tests of the statistical significance of such outcome measures. Narrative summaries of the trial results are not permitted. The required basic results information has been implemented in ClinicalTrials.gov as four modules of tabular data that describe the participant flow, baseline characteristics of the patient population, outcome measures and statistical analysis, and adverse events. The FDAAA specifies that, in general, results must be submitted not later than 12 months after the trial completion date, which is defined as the date that the final subject was examined or received an intervention for the purposes of final collection of data for the primary outcome; however, the law provides several options for delayed submission of results information (*e.g.*, when seeking initial approval of a drug or device or seeking approval of a new use for the drug or device). The FDAAA includes provisions to ensure that information submitted to the data bank is complete and accurate and not false, misleading, or promotional. The NIH and the Food and Drug Administration (FDA) are instructed to conduct a pilot quality control project to determine the ''optimal method'' of verifying that submitted results information is nonpromotional and not false or misleading in any particular way.

The FDAAA required the NIH Director to modify Clinical Trials.gov to include the required registration information by December 26, 2007, and to accommodate the submission of required ''basic results information'' by September 27, 2008. The NIH met these deadlines, and, since those dates, registration information has been submitted for more than 20,000 clinical trials, and basic results information has been submitted for more than 430 clinical trials. In addition, data providers may submit adverse event reporting information on a voluntary basis; reporting of adverse event information will become mandatory at a later date.

To provide more complete results information and to enhance patient access to and understanding of the results of clinical trials, the FDAAA (as codified in 42 U.S.C. 242(j)(3)(D)) requires the Secretary to further expand the registry and results data bank by regulation. The regulations are to be promulgated within three years of the law's enactment. The FDAAA specifies topics to be considered in developing the regulations and requires the Secretary to convene a public meeting to solicit input from interested parties with regard to the regulations. Specific elements that are to be considered or included in the rulemaking are those identified for discussion at the public meeting in Section III.

## III. Purpose and Scope of the Public Meeting

This public meeting is intended to provide an opportunity for interested parties to share their perspectives on the issues to be considered in the rulemaking for the expanded registry and results data bank that is required by the FDAAA. The NIH anticipates that the event will be of interest to a broad range of stakeholders, including patients and human subjects; patient advocacy groups; manufacturers of drugs, biological products, and devices whose products are subject to registration and results reporting under FDAAA; academic medical centers; researchers, and other organizations that engage in clinical research; members of Institutional Review Boards; journal editors who publish the result of clinical trials; and experts in evidence-based medicine who make use of the results of clinical trials. The NIH encourages broad participation in the public meeting. To provide an additional opportunity for interested parties to provide input on the issues to be considered in the rulemaking, the docket will remain open for submission of written comments after the meeting. In order for the agency to consider the comments during development of the proposed rule, the comments should be submitted by Monday, June 22, 2009.

## III. Issues for Discussion

In keeping with the topics to be considered in the rulemaking for the expanded registry and results data bank, the NIH invites comments from interested parties on any and all of the following topics and questions:

1. Whether to require submission of results information for applicable clinical trials of drugs, biological products, and devices that are not approved under sections 505, 515, or 520(m) of the FDC Act, licensed under section 351 of the PHS Act, or cleared under section 510(k) of the FDC Act (whether or not clearance, approval or licensure was sought). Please comment on issues such as the potential advantages and disadvantages to the public and public health of disclosing results information for trials involving drugs, biological products, and devices that are not approved, licensed, or cleared; the effects (if any) on the development of drugs, biological products, and devices; the reporting burden on data submitters; and the appropriate timing of submission and public disclosure of information, taking into account the certification process established by the FDAAA when approval, licensure, or clearance is sought for a product under study in an applicable clinical trial. In particular, consider scenarios involving trials of different types of unapproved products: (a) Applicable clinical trials of products for which marketing applications or premarket notification submissions are never submitted to the FDA; (b) applicable clinical trials of products for which marketing applications or premarket notification submissions are submitted, but a decision is pending; and (c) applicable clinical trials of products for which marketing applications or premarket notification submissions are submitted and the FDA decides not to approve, license, or clear the product for marketing.

2. Whether narrative summaries of the clinical trial and its results can be included in the data bank without being misleading or promotional. Comment on issues such as the potential advantages and disadvantages to patients, research subjects, and the public of requiring responsible parties to submit narrative summaries that are written in nontechnical, understandable language for patients; the utility to the scientific community of requiring responsible parties to submit narrative summaries written in technical language; the content and structure of any such narratives; and procedures that could be established to help ensure the content is not misleading or promotional.

3. What additional information, if any, that is written in nontechnical, understandable language for patients should be required to be submitted to the data bank or should be provided in the data bank to assist patients in understanding and interpreting the information available in the data bank. Please consider the types of information that would best assist patients and other members of the public in understanding and interpreting results information in the data bank, including information on adverse events. Comment on issues such as the types of information that might assist patients and the public in understanding the results of individual clinical trials and of clinical trials in general. Identify existing sources of explanatory information that are oriented toward patients and the public and could be included in or linked to the data bank.

4. Whether to require submission of the full clinical trial protocol or only such information on the protocol as may be necessary to help evaluate the results of the trial. Comment on the value of the full clinical trial protocol versus partial information from the protocol in evaluating the results of a trial and the completeness of results data submission.

5. Procedures the agency might consider for quality control, with respect to completeness and content of clinical trial information, to help ensure that data elements are not false or misleading and are nonpromotional. Consider the effect of different approaches on the workload of both data submitters and the agency and on the quality of data available to the public, as well as suitable means for the agency to communicate information about its quality assurance processes to data submitters and the public.

6. Whether the 1-year period for submission of basic results information should be increased to a period not to exceed 18 months. Comment on the advantages and disadvantages of increasing the period for submission of clinical trial information from 1-year after the completion date to a period not to exceed 18 months. Consider the implications for all stakeholders, including governmental bodies, data submitters, and users of ClinicalTrials.gov; the extent to which such a change would affect public health or the utility of the data bank; the possible effect on the number of requests that responsible parties would submit to the NIH requesting an extension of the results reporting deadline; and the possible improvements to the quality and or completeness of initial submissions of results data to the NIH. Consider the implications of delay periods of different lengths between 12 and 18 months.

7. Whether the clinical trial information required by the regulation should be required to be submitted for applicable clinical trials for which ''basic results'' information is submitted before the effective date of the regulation. Consider the advantages and disadvantages to data submitters and users of the data bank, including patients, prospective human subjects, care providers, and researchers.

8. The appropriate timing and requirements for updates of clinical trial information and procedures for tracking such updates. Please comment on the advantages and disadvantages of requiring more frequent updating of information submitted to the clinical trial registry and results data bank, which elements (if any) would benefit from more frequent updating, and what would be the optimal frequency of such updates.

9. The standard format for the submission of clinical trial information required by the regulation, including adverse event information, and additions or modifications to the manner of reporting of the data elements established under the basic results reporting provisions of the FDAAA.

10. A statement to accompany the entry for an applicable clinical trial when the primary and secondary outcome measures for such clinical trial are submitted as a ''voluntary submission'' after the date specified in the FDAAA for submission of such information.

11. Other issues associated with Section 801 of the FDAAA that will inform rulemaking.

## IV. Request for Comments

As described previously in this Notice, participants wishing to make an oral statement at the Public Meeting are requested to notify the NIH and to submit to the meeting docket or the Contact Person a written version of their remarks on the topics identified in Section IV by 5 p.m. on Monday, April 13, 2009. The docket will remain open after the meeting, and, regardless of attendance at the public meeting, interested persons may submit written or electronic comments to the docket so that they may be considered by the agency during the subsequent rulemaking. To ensure consideration, written comments should be submitted to the docket by Monday, June 22, 2009. Submit electronic comments to Docket No. NIH–2009–0002 at *http://www.regulations.gov*. The site contains instructions for submitting comments.

## V. Transcripts

A transcript of the public meeting will be submitted to the docket and posted to *http://prsinfo.clinicaltrials.gov/public-meeting-april09.html* approximately 15 working days after the public meeting.

Dated: March 16, 2009.

**Raynard S. Kington,**

*Acting Director, National Institutes of Health.*

[FR Doc. E9–6198 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

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## 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. Appendix 2), notice is hereby given of a meeting of the National Advisory Allergy and Infectious Diseases Council.

The meeting will be open to the public. Individuals who wish to listen to the meeting should register with Jemma Long at the phone number of the contact person listed below at least two days in advance of the meeting.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

*Date:* March 31, 2009.

*Time:* 1 p.m. to 1:30 p.m.

*Agenda:* The subcommittee will be discussing a concept clearance for the Human Immunology Profiling Centers of Excellence (U01/U19).

*Place:* National Institutes of Health, 6610 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Daniel Rotrosen, PhD, Director, Division of Allergy, Immunology & Transplantation, National Institutes of Health/NIAID, 6610 Rockledge Drive, MSC 6601, Bethesda, MD 20892–6601, 301–496–1886, *drotrosen@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting date due to timing limitations created by the Economic Recovery Act.

Information is also available on the Institute's/Center's home page: *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 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6199 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); 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 Cancer Institute Special Emphasis Panel; ''Improved Effectiveness of Smoking Cessation Interventions and Programs in Low Income Adult Populations''.

*Date:* April 2–3, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD.

*Contact Person:* Gerald G. Lovinger, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301–496–7987, *lovingeg@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 17, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6339 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

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:* Sleep Disorders Research Advisory Board.

*Date:* April 14, 2009.

*Time:* 12 p.m. to 4:30 p.m.

*Agenda:* To discuss sleep research, education priorities, and programs.

*Place:* National Institutes of Health, Building 45, 45 Center Drive, Natcher Auditorium, Bethesda, MD 20892.

*Contact Person:* Michael J Twery, PhD, Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952, 301–435–0199, *twerym@nhlbi.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6205 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Conference Grants (R13's).

*Date:* March 31–April 1, 2009.

*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:* David A Wilson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6207 Filed 3–20–09; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Water Balance.

*Date:* April 10, 2009.

*Time:* 3 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:* Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Clinical Trial Review.

*Date:* April 13, 2009.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7797. *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6204 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Allergy and Infectious Diseases Special Emphasis Panel, Highly Innovative Technologies to Interrupt Transmission of HIV.

*Date:* April 23–24, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Clayton C Huntley, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2570, *chuntley@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6200 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 7–9, 2009.

*Time:* June 7, 2009, 7 p.m. to 8:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Time:* June 8, 2009, 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, Room 117, Bethesda, MD 20814.

*Time:* June 9, 2009, 8 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 30, Room 117, Rockville, MD 20817.

*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 17, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6201 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change for the meeting of the Services Subcommittee of the Interagency Autism Coordinating Committee (IACC), March 26, 2009, 1 p.m. to 5 p.m. Eastern Time at the Hubert H. Humphrey Building, Conference Room 335G2, 200 Independence Avenue, SW., Washington, DC, 20201which was published in the **Federal Register** on March 9, 2009, 74FR10060.

The Webinar Link for Registration and Access Information that was listed in the notice has been changed. The correct Webinar link is *https://www1.gotomeeting.com/register/892570174.* To access the conference call the Dial-in number is 888–455–2920 and the Access code is 3857872. The time remains the same.

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6202 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Lupus Program Project.

*Date:* April 7, 2009.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Room 3146, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Kenneth E. Santora, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2605, *ks216i@nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Studies of Immunosenescence and Other Late Effects of Acute Radiation Exposure in Atomic Bomb Survivors.

*Date:* April 15, 2009,

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6203 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review Extramural Loan Repayment Applications.

*Date:* April 29, 2009.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 16, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6206 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Multi-Drug Combinations to Promote Neurological Recovery in Traumatic Brain Injury.

*Date:* April 16, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research;

93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 17, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–6343 Filed 3–20–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2008–1122]**

### Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0048

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0048, Vessel Reporting Requirements. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before April 22, 2009.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2008–1122] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at *http://www.regulation.gov*. (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov*.

(2) Mail or Hand delivery. (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in time, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov*.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. Comments to Coast Guard must contain the docket number of this request, [USCG 2008–1122]. For your comments to OIRA to be considered, it is best if they are received on or before April 22, 2009.

*Public participation and request for comments:* We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

*Submitting comments:* If you submit a comment, please include the docket number [USCG–2008–1122], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

*Viewing comments and documents:* Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number [USCG–2008–1122] in the Search box, and click, ''Go>>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (73 FR 75463, December 11, 2008) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

**Information Collection Request**

*Title:* Vessel Reporting Requirements.
*OMB Control Number:* 1625–0048.
*Type of Request:* Extension of a currently approved collection.
*Affected Public:* Businesses or other for profit organizations.
*Abstract:* Section 2306(a) of 46 U.S.C. requires the owner, charterer, managing operator, or agent of a vessel of the United States to immediately notify the Coast Guard if: (1) There is reason to believe the vessel may have been lost or imperiled, or (2) more than 48 hours have passed since last receiving communication from the vessel. These reports must be followed by written confirmation submitted to the Coast Guard within 24 hours. The implementing regulations are contained in 46 CFR Part 4.
*Forms:* None.
*Burden Estimate:* The estimated annual burden remains 137 hours per year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: March 12, 2009.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. E9–6337 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form G–639, Revision of an Existing Information Collection; Comment Request

**ACTION:** 60-Day Notice of Information Collection Under Review: Form G–639, Freedom of Information/Privacy Act Request; OMB Control No. 1615–0102.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 22, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When you submit comments by e-mail please add the OMB Control Number 1615–0102 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information 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 information collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–639. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: March 18, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–6272 Filed 3–20–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5288–N–01]**

### Notice of Proposed Information Collection for Public Comment; Disaster Housing Assistance Program-Ike (DHAP-Ike)

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 22, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Lillian L. Deitzer, Department Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000; *telephone:* 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

**FOR FURTHER INFORMATION CONTACT:** Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; *telephone:* 202–708–0713, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed

information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Disaster Housing Assistance Program-Ike (DHAP-Ike).

*OMB Control Number:* 2577–0258.

*Description of Information Collection:* This document provides notice that HUD and the Federal Emergency Management Agency (FEMA) have executed an Interagency Agreement (IAA) establishing a grant program called the Disaster Housing Assistance Program-Ike (DHAP-Ike), and that the operating requirements for the DHAP-Ike have been issued through HUD Notice. DHAP-Ike is a joint initiative undertaken by HUD and FEMA to provide monthly rent subsidies and case management services for individuals and families displaced by Hurricane Ike and/or Hurricane Gustav who were not receiving housing assistance from HUD.

*Agency form number, if applicable:* HUD–5251; HUD–5256.

*Members of affected public:* State, Local or Tribal Government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* The estimated total number of burden hours needed to prepare the information collection is 1,838,520; the number of respondents is 120; the frequency of response for each form varies from quarterly and annually.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 13, 2009.

**Bessy Kong,**

*Deputy Assistant Secretary, Policy, Program and Legislative Initiatives.*

[FR Doc. E9–6325 Filed 3–20–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–922–09–1310–FI; COC62063]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC62063 from Red Willow Production, LLC for lands in Jackson County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof, per year and 18 ⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC62063 effective September 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: March 16, 2009.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E9–6215 Filed 3–20–09; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLUT922000 L13100000 FI0000 257A]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Leases, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Utah.

**SUMMARY:** In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), OXY USA Inc. timely filed a petition for reinstatement of oil and gas lease UTU82533 for lands in Sanpete County, Utah, and it was accompanied by all required rentals and royalties accruing from August 1, 2008, the date of termination.

**FOR FURTHER INFORMATION CONTACT:** Kent Hoffman, Deputy State Director, Division of Lands and Minerals at (801) 539–4080, or Becky Hammond, Chief, Branch of Fluid Minerals at (801) 539–4039.

**SUPPLEMENTARY INFORMATION:** The Lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The $500 administrative fee for the leases has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 2008, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Dated: March 16, 2009.

**Selma Sierra,**

*State Director.*

[FR Doc. E9–6228 Filed 3–20–09; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 7, 2008.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 7, 2009.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

**CALIFORNIA**

**Placer County**

Carnegie Library, 557 Lincoln St., Roseville, 09000199

**FLORIDA**

**Hillsborough County**

St. Andrews Episcopal Church, 505 N. Marion St., Tampa, 09000200

**MICHIGAN**

**Berrien County**

Mary's City of David, 1158 E. Britain Ave., Benton Harbor, 09000201

**Delta County**

Richter Brewery, 1615 Ludington St., Escanaba, 09000202

**Ottawa County**

Robbins, Nathaniel and Esther (Savidge), House, 20 S. 5th Ave., Grand Haven, 09000203

**Wayne County**

River Terrace Apartments, 7700 E. Jefferson St., Detroit, 09000204

**MISSOURI**

**Jackson County**

Jones, R. Bryson, House, 1045 W. 56th St., Kansas City, 09000205

Pennbroke Apartments, (Working-Class and Middle-Income Apartment Buildings in Kansas City, Missouri MPS) 604 W. 10th St., Kansas City, 09000206

Villa Serena Apartment Hotel, 325 Ward Pkwy., Kansas City, 09000207

**NEW YORK**

**Broome County**

Rivercrest Historic District, 4601–4609 Vestal Rd. & 4613–4729 Vestal Pkwy. E., Vestal, 09000208

**OHIO**

**Clark County**

Old Enon Road Stone Arch Culvert, Rocky Pt. Rd. approx. 185 ft. W. of Old Mill Rd., Enon, 09000209

**Cuyahoga County**

Inglewood Historic District, Inglewood Dr., Oakridge Dr., Cleveland Heights Blvd., Yellowstone & Glenwood Rds., & Quilliams, Cleveland Heights, 09000210

**Jackson County**

Wells, Harvey, House, 403 E. A St., Wellston, 09000211

**Tuscarawas County**

Railway Chapel, The, 301 Grant St., Dennison, 09000212

**OKLAHOMA**

**Blaine County**

United States Post Office Watonga, (Oklahoma Post Offices with Section Art MPS) 121 N. Noble Ave., Watonga, 09000213

**Coal County**

United States Post Office Coalgate, (Oklahoma Post Offices with Section Art MPS) 38 N. Main St., Coalgate, 09000214

**Harmon County**

United States Post Office Hollis, (Oklahoma Post Offices with Section Art MPS) 120 N. 2nd St., Hollis, 09000215

**Marshall County**

United States Post Office Madill, (Oklahoma Post Offices with Section Art MPS) 223 W. Lille Blvd., Madill, 09000216

**Nowata County**

United States Post Office Nowata, (Oklahoma Post Offices with Section Art MPS) 109 N. Pine St., Nowata, 09000217

**WASHINGTON**

**Pierce County**

American Lake Veterans Hospital, 9600 Veterans Dr., SW., Tacoma, 09000218

**WISCONSIN**

**Eau Claire County**

Roosevelt Avenue Historic District, 415, 419, 429, 443, 449 & 455 Roosevelt Ave., Eau Claire, 09000219

Salsbury Row House, 302–310 W. Grand Ave., Eau Claire, 09000220

A request for removal has been made for the following resources:

**LOUISIANA**

**Tangipahoa Parish**

Dykes Log Cabin, 17250 State Line Rd., Kentwood, 02001036

**OREGON**

**Jackson County**

Colver, Samuel, House, 150 S. Main St. Phoenix, 90001596

[FR Doc. E9–6179 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from February 2 to February 6, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: March 17, 2009.

**J. Paul Loether,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

Key: State, County, Property Name, Address/ Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

**ARKANSAS**

**Faulkner County**

Mt. Zion Missionary Baptist Church, 249 AR 107, Enola, 09000003, Listed, 2/05/09 (Mixed Masonry Buildings of Silas Owens, Sr. MPS)

**ARIZONA**

**Maricopa County**

Valley Field Riding and Polo Club, 2530 N. 64th St., Scottsdale, 08001405, Listed, 2/05/09

**CALIFORNIA**

**Orange County**

Dewella Apartments, 234–236 E. Wilshire Ave., Fullerton, 08001406, Listed, 2/02/09

**San Francisco County**

Uptown Tenderloin Historic District, All or part of 33 blocks roughly bounded by Market, McAllister, Golden Gate, Larkin, Geary, Taylor, Ellis Sts., San Francisco, 08001407, Listed, 2/05/09

**GUAM**

**Guam County**

Umang Dam, S. side of Finile Rd., Agat, 08001408, Listed, 2/06/09

**KENTUCKY**

**Fulton County**

Whitesell, Jesse, Farm (Boundary Increase), KY 116, W of Purchase Parkway, Fulton vicinity, 06001200, Listed, 2/04/09

**Larue County**

Buffalo School, 50 School Loop, Buffalo, 09000005, Listed, 2/05/09

**MAINE**

**York County**

District No. 5 School, 781 Gore Rd., Alfred, 09000015, Listed, 2/04/09

**MISSOURI**

**Christian County**

Ozark Courthouse Square Historic District, Portions of 2nd. Ave., Church, Elm, and 2nd Sts. on the Courthouse Square, Ozark, 08001409, Listed, 2/05/09

**St. Louis Independent City**

Wellston J.C. Penney Building, 5930 Dr. Martin Luther King Dr., St. Louis, 08001410, Listed, 2/05/09

**NEW HAMPSHIRE**

**Hillsborough County**

Union Chapel, 220 Sawmill Rd., Hillsborough, 08001411, Listed, 2/03/09

**NORTH CAROLINA**

**Gaston County**

McAdenville Historic District, 100–413 Main St., Elm and Poplar Sts., and cross sts. from I–85 to S. Fork of Catawba River, McAdenville, 08001412, Listed, 2/05/09

**Madison County**

Hot Springs Historic District, Roughly bounded by Bridge St., Andrews Ave. S. and Meadow Ln., Hot Springs, 08001413, Listed, 2/05/09

**New Hanover County**

Westbrook-Ardmore Historic District, Bounded by Dock St., Wrightsville Ave., Queen and Lingo Sts., and by S. 14th St., Wilmington, 08001414, Listed, 2/05/09

**Wake County**

Mary Elizabeth Hospital, 1100 Wake Forest Rd., Raleigh, 08001415, Listed, 2/05/09

**TENNESSEE**

**Obion County**

Whitesell, Jesse Farm (Boundary Increase), KY 116 W of Purchase Pkwy., Fulton vicinity, 06001199, Listed, 2/04/09

**UTAH**

**Summit County**

Boyden Block, 2 S. Main St., Coalville, 09000019, Listed, 2/06/09

[FR Doc. E9–6181 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–506]**

### Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2008 Review of Competitive Need Limit Waivers

**AGENCY:** United States International Trade Commission.

**ACTION:** Change in scope of investigation.

**SUMMARY:** At the direction of the Acting United States Trade Representative (USTR) in letters received on March 3, 2009 and March 10, 2009, the U.S. International Trade Commission (Commission) has terminated its investigation with respect to the following articles, and will not provide advice with respect to these articles:

Calcium silicon ferroalloys (HTS subheading 7202.99.20) from Argentina (USTR accepted case 2008–18).

Amino-naphthols and amino-phenol, their ethers, esters, except those with more than one kind of oxygen function; and salts thereof, nesoi (HTS subheading 2922.41.00) from Brazil (USTR accepted case 2008–14).

Ferrochromium containing by weight more than 4 percent of carbon (HTS subheading 7202.41.00) from India (USTR accepted case 2008–17).

The letters stated that the petitions requesting waivers of the competitive need limit for the subject articles have been withdrawn. All other information and due dates relating to this investigation remain the same as previously announced by the Commission, and the Commission expects to transmit its report containing its advice to the USTR by April 13, 2009.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

**FOR FURTHER INFORMATION CONTACT:** Information may be obtained from Eric Land, Project Leader, Office of Industries (202–205–3349 or *eric.land@usitc.gov*) or Gail Burns, Deputy Project Leader, Office of Industries (202–205–2501 or *gail.burns@usitc.gov*). For information on the legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://www.usitc.gov/secretary/edis.htm.* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

*Background:* The Commission instituted its investigation on January 23, 2009, following receipt of a letter from the USTR on January 12, 2009. Notice of institution of the investigation and the scheduling of a public hearing, which was held on February 27, 2009, was published in the **Federal Register** of January 28, 2009 (74 FR 4974).

Issued: March 17, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–6166 Filed 3–20–09; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Foreign Claims Settlement Commission

### Commencement of Claims Programs

**AGENCY:** Foreign Claims Settlement Commission of the United States.

**ACTION:** Notice.

**SUMMARY:** This notice announces the commencement by the Foreign Claims Settlement Commission (''Commission'') of a program for adjudication of a certain category of claims of United States nationals against the Government of Libya, as defined below, which were settled under the ''Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya'' (''Claims Settlement Agreement'') effective August 14, 2008.

**DATES:** These claims can now be filed with the Commission and the deadline for filing will be July 23, 2009. The

deadline for completion of this claims adjudication program will be March 23, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jaleh F. Barrett, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street, NW., Room 6002, Washington, DC 20579, Tel. (202) 616–6975, FAX (202) 616–6993.

**Notice of Commencement of Claims Adjudication Program, and of Program Completion Date**

Pursuant to the authority conferred upon the Secretary of State and the Commission under subsection 4(a)(1)(C) of Title I of the International Claims Settlement Act of 1949 (Pub. L. 455, 81st Cong., approved March 10, 1950, as amended by Pub. L. 105–277, approved October 21, 1998 (22 U.S.C. 1623(a)(1)(C))), the Foreign Claims Settlement Commission hereby gives notice of the commencement of a program for adjudication of a category of claims of United States nationals against the Government of Libya. These claims, which have been referred to the Commission by the Department of State by letter dated December 11, 2008, are defined as:

Claims of U.S. nationals for physical injury, provided that

(1) The claim meets the standard for physical injury adopted by the Commission;

(2) The claim is set forth as a claim for injury other than emotional distress alone by a named party in the Pending Litigation; and

(3) The Pending Litigation against Libya and its agencies or instrumentalities; officials, employees, and agents of Libya or Libya's agencies or instrumentalities; and any Libyan national (including natural and juridical persons) has been dismissed before the claim is submitted to the Commission.

The ''Pending Litigation'' referenced above is composed of the following cases:

*Baker* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 03–cv–749

*Pflug* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08–cv–505

*Clay* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06–cv–707

*Estate of John Buonocore III* v. *Socialist Libyan Arab Jamahiriya* (D.D.C) 06–cv–727

*Simpson* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08–cv–529

*Franqui* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06–cv–734

*Harris* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06–cv–732

*Knowland* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 08–cv–1309

*McDonald* v. *Socialist People's Arab Jamahiriya* (D.D.C.) 06–cv–729

*Patel* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 06–cv–626

*Simpson* v. *Socialist People's Libyan Arab Jamahiriya* (D.D.C.) 00–cv–1722

In conformity with the terms of the referral, the Commission will determine the claims in accordance with the provisions of 22 U.S.C. 1621 *et seq.*, which comprises Title I of the International Claims Settlement Act of 1949, as amended. The Commission will then certify to the Secretary of the Treasury those claims that it finds to be valid, for payment out of the claims fund established under the Claims Settlement Agreement.

The Commission will administer this claims adjudication program in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR part 500 *et seq.*). In particular, attention is directed to subsection 500.3(a) of these regulations based on 22 U.S.C. 1623(f) which limits the amount of attorney's fees that may be charged for legal representation before the Commission. These regulations are also available over the Internet at *http://www.gpoaccess.gov/cfr/index.html.*

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0088, expiration date 9/30/2009.

**Mauricio J. Tamargo,**

*Chairman.*

[FR Doc. E9–6194 Filed 3–20–09; 8:45 am]

**BILLING CODE 4410–01–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,723]**

### General Motors Corporation, GMNA Powertrain—Massena, Including On-Site Leased Workers From Aerotek, Inc., Knights Facilities Management, IS One, APC Worforce, Securitas Security Services, The Bar Tech Group, Maxsys USA, Inc., Adroit Software & Consulting, Inc., ACRO Service Corp., Kelly Services, Inc., Interim, and EDS; Messena, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 3, 2008, applicable to workers of General Motors Corporation, GMNA Powertrain—Massena, Massena, New York. The Department's notice was published in the **Federal Register** on September 18, 2008 (73 FR 54174). On November 18, 2008, the Department issued an amended certification to include on-site leased workers. The Department's Notice of amended certification was published in the **Federal Register** on December 1, 2008 (73 FR 72850).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of aluminum castings for engines.

New information provided by the State and the company official shows that workers leased from the following agencies were employed on-site at the Massena, New York location of General Motors Corporation, GMNA Powertrain—Massena: Kelly Services, Inc., Interim, and EDS. The Department has determined that these workers were sufficiently under the control of General Motors Corporation, GMNA Powertrain—Massena to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the above mentioned firms working on-site at the Massena, New York location of the subject firm.

The intent of the Department's certification is to include all workers employed at General Motors Corporation, GMNA Powertrain—Massena, Massena, New York who qualify as secondarily affected by increased imports of aluminum castings for engines.

The amended notice applicable to TA–W–63,723 is hereby issued as follows:

''All workers of General Motors Corporation, GMNA Powertrain—Massena, including on-site leased workers from Aerotek, Inc., Knights Facilities Management, IS One, APC Workforce, Securitas Security Services, The Bar Tech Group, Maxsys USA, Inc., Adroit Software & Consulting, Inc., Acro Service Corp., Kelly Services, Inc., Interim, and EDS, Massena, New York, who became totally or partially separated from employment on or after July 16, 2007, through September 3, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 10th day of March 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6235 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,335]**

### Indiana Handle Co., Inc., Currently Known as Crestwood Manufacturing, Inc., Paoli, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 12, 2008, applicable to workers of Indiana Handle Co., Paoli, Indiana. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wooden furniture components and wood turnings.

New information shows that due to a change in ownership, Indiana Handle Co., Inc., is currently known as Crestwood Manufacturing, Inc.

Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Crestwood Manufacturing, Inc.

Accordingly, the Department is amending this certification to include workers of the subject firm whose UI wages are reported under the successor firm, Crestwood Manufacturing, Inc., Paoli, Indiana.

The amended notice applicable to TA–W–64,335 is hereby issued as follows:

''All workers of Indiana Handle Co., Inc., currently known as Crestwood Manufacturing, Inc., Paoli, Indiana, who became totally or partially separated from employment on or after October 29, 2008, through December 12, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 9th day of March, 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6238 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**TA–W–64,733**

### Modine Manufacturing, Truck Division, Including On-Site Leased Workers From Staffmark, Lawrenceburg, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 23, 2009, applicable to workers of Modine Manufacturing, Truck Division, Lawrenceburg, Tennessee. The notice was published in the **Federal Register** on February 10, 2009 (74 FR 6652).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of charged air coolers, air filters, and oil coolers used in trucks.

New information provided by the company shows that workers leased from Staffmark were employed on-site at Modine Manufacturing, Truck Division, Lawrenceburg, Tennessee.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by the shift in production of charged air coolers, air filters, and oil coolers to Mexico.

The Department has determined that these workers were sufficiently under the control of Modine Manufacturing to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from working on-site at the Lawrencebury, Tennessee location of the subject firm.

The amended notice applicable to TA–W–64,733 is hereby issued as follows:

''All workers of Modine Manufacturing, Truck Division, Lawrenceburg, Tennessee, including on-site leased workers from Staffmark, who became totally or partially separated from employment on or after December 17, 2007 through January 29, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 6th day of March 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6241 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,135]**

### Panasonic Electronic Devices Corporation of America, General and Administrative, Production Engineering, Switch Engineering, Including On-Site Leased Workers From Express Employment Professionals and Johnson Service Group, Knoxville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 14, 2008, applicable to workers of Panasonic Electronic Devices Corporation of America, General and Administrative, Production Engineering, Switch Engineering, including on-site leased workers from Express Employment Professionals, Knoxville, Tennessee. The notice was published in the **Federal Register** on October 21, 2008 (73 FR 62324).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide general and administrative services, production engineering, and switch engineering for the Panasonic speaker manufacturing facility in Knoxville, Tennessee.

New information provided by the company shows that workers leased from Johnson Service Group were employed on-site at Panasonic

Electronic Devices Corporation of America, General and Administrative, Production Engineering, Switch Engineering, Knoxville, Tennessee.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by the shift in production of speakers to Mexico.

The Department has determined that these workers were sufficiently under the control of Panasonic Electronic Devices Corporation of America to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Johnson Service Group working on-site at Panasonic Electronic Devices Corporation of America, General and Administrative, Production Engineering, Switch Engineering, Knoxville, Tennessee.

The amended notice applicable to TA–W–64,135 is hereby issued as follows:

''All workers of Panasonic Electronic Devices Corporation of America, General and Administrative, Production Engineering, Switch Engineering, Knoxville, Tennessee, including on-site leased workers from Express Employment Professionals and Johnson Service Group, who became totally or partially separated from employment on or after September 29, 2007 through October 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 11th day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6236 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,452]**

### Kensington Windows, Inc., a Subsidiary of Jancor Companies, Inc., Vandergrift, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked February 27, 2009, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers (IUE), Local 188643 requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on January 9, 2009. The Notice of Determination was published in the **Federal Register** on February 2, 2009 (74 FR 5871).

The initial investigation resulted in a negative determination based on the finding that imports of vinyl replacement windows and doors did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding imports of vinyl replacement windows and doors and alleged that the customers might have increased imports of vinyl replacement windows and doors in the relevant period.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 12th day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6239 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,681]**

### United State Steel—Granite City Works, Granite City, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 28, 2009, the United Steelworkers, District 7 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on December 23, 2008 and published in the **Federal Register** on January 14, 2009 (74 FR 2139).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination, which was based on the finding that imports of flat rolled steel did not contribute importantly to worker separations at the subject facility and there was no shift of production to a foreign country. The subject firm did not import flat rolled steel in 2006, 2007 and January through November 2008. Furthermore, the investigation revealed that sales and production of flat rolled steel at the subject firm increased from January through November, 2008 when compared with the same period in 2007.

The petitioner alleged that aggregate imports of flat rolled steel, although diminished from one year earlier, still amounted to a significant amount contributing importantly to the worker separations and to the decline in sales and production at the Granite City plant.

In order to establish import impact, the Department considers sales, production and import numbers for the relevant period (one year prior to the date of the petition). Imports of flat rolled steel did not increase during the relevant period, while sales and production of flat rolled steel increased at the subject firm. There was no shift in production from subject firm abroad during the relevant period.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

**Conclusion**

After review of the application and investigative findings, I conclude that

there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, D.C., this 11th day of March, 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6240 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,912]**

### Road and Rail Services, Venice, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated February 27, 2009, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 20, 2009 and published in the **Federal Register** on March 10, 2009 (74 FR 10303).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Road & Rail Services, Venice, Illinois was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioners contend that the Department erred in its interpretation of work performed at the subject facility and indicate that the workers of the subject firm performed services under contract to Norfolk and Southern Railroad in Venice, Illinois and that the railroad had a contract with Chrysler in Fenton, Missouri. The petitioner also stated that the workers of the subject firm prepared railcars so that the assembled Chrysler vehicles could safely be loaded. Furthermore, the petitioner alleged that the workers of the subject firm were laid off because Chrysler shifted production to Canada and stopped shipping its products through Venice, Illinois.

The petitioners alleged that because the subject firm provided services to a customer who in its turn provided services to another customer producing automobiles and which might be import impacted; workers of the subject firm should be eligible for Trade Adjustment Assistance.

The nature of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but whether they produced an article within the meaning of section 222 of the Trade Act of 1974. The fact that workers of the subject firm performed services for customers, which produces articles, does not imply production of an article within the meaning of Section 222.

The investigation revealed that the workers of Road & Rail Services, Venice, Illinois performed railcar maintenance for a local railroad and did not support production. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 12th day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6242 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA-W–64,321]**

### Olympic Panel Products, Shelton, WA; Notice of Revised Determination on Reconsideration

On January 23, 2009, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 10, 2009 (74 FR 6651).

The initial investigation initiated on October 31, 2008, resulted in a negative determination issued on December 12, 2008, was based on the finding that imports of overlay plywood did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred. The denial notice was published in the **Federal Register** on December 30, 2008 (73 FR 79915).

On reconsideration, the Department requested an additional list of customers of the subject firm and conducted a customer survey to determine whether imports of overlay plywood negatively impacted employment at the subject firm.

The survey of the major declining customers revealed that the customers increased their reliance on imported overlay plywood from 2006 to 2007 and during January through September 2008 over the corresponding 2007 period.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with

those produced at Olympic Panel Products, Shelton, Washington, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Olympic Panel Products, Shelton, Washington, who became totally or partially separated from employment on or after October 22, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 11th day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6237 Filed 3–20–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,476]**

### Valentine Tool and Stamping, Inc., Norton, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2009 in response to a worker petition filed by the company official on behalf of workers of Valentine Tool and Stamping, Inc., Norton, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of March 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–6234 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Reinstate With Revision an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request reinstatement of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by May 22, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Persons with Disabilities Majoring in Science, Engineering, Math and Technology.

*OMB Approval Number:* 3145–0164.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to reinstate an information collection for three years.

*Abstract:* The National Science Foundation (NSF) requests a reinstatement of the information collection for the Program for Persons with Disabilities, now called the Research in Disabilities Education (RDE) program. This on-line, annual data collection will describe and track the impact of RDE program funding on Nation's science, technology, engineering and mathematics (STEM) education and STEM workforce.

NSF funds grants, contracts, and cooperative agreements to colleges, universities, and other eligible institutions, and provides graduate research fellowships to individuals in all parts of the United States and internationally. The Directorate for Education and Human Resources (EHR), a unit within NSF, promotes rigor and vitality within the Nation's STEM education enterprise to further the development of the 21st century's STEM workforce and public scientific literacy. EHR does this through diverse projects and programs that support research, extension, outreach, and hands-on activities serving STEM learning and research at all institutional (e.g. pre-school through postdoctoral) levels in formal and informal settings; and individuals of all ages (birth and beyond). The RDE program focuses specifically on broadening the participation and achievement of people with disabilities in all fields of STEM education and associated professional careers. The RDE program has been funding this objective since 1994 under the prior name Program for Persons with Disabilities. Particular emphasis is placed on contributing to the knowledge base by addressing disability related differences in secondary and post-secondary STEM learning and in the educational, social and pre-professional experiences that influence student interest, academic performance, retention in STEM degree programs, STEM degree completion, and career choices. Research and demonstration projects also investigate effective practices for transitioning students with disabilities across critical academic junctures, retaining students in undergraduate and graduate STEM degree programs, and graduating students with STEM associate, baccalaureate and graduate degrees. Research, demonstration, and enrichment project results inform the delivery of innovative, transformative and successful practices employed by the Alliances for Students with Disabilities in STEM to increase the number of students with disabilities completing associate, undergraduate and graduate degrees in STEM and to increase the number of students with disabilities entering our nation's science and engineering workforce. RDE projects contribute to closing the gaps occurring for people with disabilities in STEM fields by successfully disseminating findings, project evaluation results, and proven good practices and products to the public.

The original information collection, approved by OMB in 1996, surveyed three groups of students: Students with disabilities in STEM fields, students with disabilities in other fields, and students without disabilities in STEM fields. These data allowed NSFD to understand more fully the population of students with disabilities in STEM fields and the issues they faced. The collection that will be submitted for

reinstatement focuses more specifically on the outcomes of the RDE program, and how alliances and researchers receiving NSF RDE funding have improved the academic environment for students with disabilities. This information collection will consist of an on-line data instrument that RDE awardees will use to submit annual data on their project activities and participants, as well as future evaluation activities.

*Use of the Information:* This information is required for effective administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project and strategic goals, as required by the President's Management agenda as represented by the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0648.* Data collected will be used for accountability purposes, including responding from queries from Committees of Visitors and other scientific experts, and for separate research and evaluation studies.

**Estimate of Burden**

*Respondents:* Principal Investigators and/or project staff receiving NSF RDE awards.

*Number of respondents:* 45.

*Estimated Total Annual Burden on Respondents:* 1220 hours.

*Frequency of Responses:* Data will be collected from awardees annually, and on an as-needed basis for future evaluation work.

*Comments:* Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (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.

Dated: March 17, 2009.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. E9–6180 Filed 3–20–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Polar Programs; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Polar Programs (1130).

*Date/Time:* May 4, 2009, 8 a.m. to 5 p.m.
May 5, 2009, 8 a.m. to 3 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs, and activities on the polar research community, to provide advice to the Director of OPP on issues related to long-range planning.

*Agenda:* Staff presentations and discussion on opportunities and challenges for polar research, education and infrastructure; strategic planning; and planning for Arctic and Antarctic Committees of Visitors.

Dated: March 18, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. E9–6211 Filed 3–20–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0042]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *The title of the information collection:* NRC Form 748, ''National Source Tracking Transaction Report.''

2. *Current OMB approval number:* 3150–0202.

3. *How often the collection is required:* Initially, at completion of a transaction, and at inventory reconciliation.

4. *Who is required or asked to report:* Licensees that manufacture, receive, transfer, disassemble, or dispose of nationally tracked sources.

5. *The estimated number of annual respondents:* 1,350 (350 NRC Licensees + 1,000 Agreement State Licensees).

6. *An estimate of the total number of hours needed annually to complete the requirement or request:* 412 hours.

7. *Abstract:* In 2006, The NRC amended its regulations to implement a National Source Tracking System for certain sealed sources. The amendments require licensees to report certain transactions involving nationally tracked sources to the National Source Tracking System. These transactions include manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. This information collection is mandatory and is used to populate the National Source Tracking System.

Submit, by May 22, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2009–0042. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0042. Mail comments to NRC Clearance Officer, Russell Nichols (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Russell Nichols (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301-415–6874, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 12th day of March 2009.

For the Nuclear Regulatory Commission.

**Gregory Trussell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. E9–6245 Filed 3–20–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–70; EA–09–042; NRC–2009–0124]**

## In the Matter of Exelon Generation Company, LaSalle County Station, Independent Spent Fuel Installation, Order Modifying License (Effective Immediately)

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Issuance of order for implementation of additional security measures and fingerprinting for unescorted access to Exelon Generation Company, LLC.

**FOR FURTHER INFORMATION CONTACT:** L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3316; fax number: (301) 492–3348; e-mail: *LRaynard.Wharton@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of LaSalle County Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

### Further Information

**I**

NRC has issued a general license to Exelon Generating Company, LLC (Exelon), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. This Order is being issued to Exelon, which has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission's regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Exelon to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

**II**

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at Exelon's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require through an Order, certain ASMs, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

**III**

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *it is hereby ordered,* effective immediately, that your general license is modified as follows:

A. Exelon shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the LaSalle County Station's reactor physical security plan. Exelon shall immediately start implementation of the requirements in Attachments 1 and 2 to the Order and shall complete implementation no later than 180 days from the date of this Order, with the exception of the ASM B.4 of Attachment 1 [''Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)''], which shall be implemented no later than 365 days from the date of this Order. In any event, Exelon shall complete implementation of all ASMs before the first day that spent fuel is initially placed in the ISFSI.

B.1. Exelon shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause Exelon to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Exelon's justification for seeking relief from, or variation of, any specific requirement.

2. If Exelon considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, Exelon must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, Exelon must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C.1. Exelon shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. Exelon shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Exelon's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled, in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

**IV**

In accordance with 10 CFR 2.202, Exelon must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, Exelon and any other person adversely affected by this Order may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which Exelon relies and the reasons as to why the Order should not have been issued. If a person other than Exelon requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which NRC promulgated in August 2007, 72 FR 49139 (August 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary

that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for, and receive digital ID certificates before a hearing requests are filed so that they may obtain access to the documents via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact-Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MHSD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file motions, in accordance with 10 CFR 2.302(g), with their initial paper filings requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail, addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete, by first-class mail, as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair-Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by Exelon or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Exelon may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 11th day of March, 2009.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)**

Contains Safeguards Information and is not included in the **Federal Register** Notice.

**Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, dated December 19, 2007**

*A. General Basis Criteria*

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the NRC-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

*B. Additional Security Measures for Access Authorization Program*

1. The licensee shall develop, implement and maintain a program, or enhance their existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past 3 years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than 3 years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (*e.g.*, driver's license, passport, government identification, State, Province or Country of birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with

''Protection of Information,'' Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), and shall verify and ensure to the extent possible, the accuracy of the provided social security number and alien registration number as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service, and academic enrollment and attendance in lieu of employment, for the past 3 and 5 years respectively.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.*, Top Secret, Secret or Confidential.

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past 3 years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.*, Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed 5 years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.*, Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

*C. Fingerprinting Program Requirements*

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the ''reviewing official,'' must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to SGI or unescorted access to any facility subject to NRC regulation if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (*e.g.*, a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to the facility.

*D. Prohibitions*

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

*E. Procedures for Processing Fingerprint Checks*

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process is an administrative determination that is outside the scope of the Order.

each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. In order to be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an e-mail to *det@nrc.gov.* The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once licensees have established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739. Combined payment for multiple applications is acceptable. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

*F. Right To Correct and Complete Information*

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

*G. Protection of Information*

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need-to-know.

4. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. E9–6246 Filed 3–20–09; 8:45 am]
**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review, Request for Comments

*Summary:* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek

to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and Purpose of Information Collection:* Employer's Quarterly Report of Contributions Under the RUIA, RRB Form DC–1; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the amount of each employer's contribution is determined by the RRB, primarily on the basis of RUIA benefit payments made to the employees of that employer. These experienced based contributions, take into account the frequency, volume and duration of RUIA benefits, both unemployment and sickness, attributable to a railroad's employees. Each employer's contribution rate includes a component for administrative expenses and a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR 345.

RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act, is currently utilized by the RRB for the reporting and remitting of quarterly contributions by railroad employers. The RRB utilizes a manual version of Form DC–1 and also provides railroad employers with the option of reporting the required information and remitting their quarterly contributions via an Internet equivalent version Form DC–1.

One response is requested quarterly of each respondent and completion is mandatory. The estimated completion for the manual and Internet version of Form DC–1 is estimated at 25 minutes.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (74 FR 3115 on January 16, 2009) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Employer's Quarterly Report of Contributions Under the RUIA.

*Form(s) submitted:* DC–1.

*OMB Control Number:* 3220–0012.

*Expiration date of current OMB clearance:* 3/31/2009.

*Type of request:* Extension without change of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated annual number of respondents:* 540.

*Total annual responses:* 2,160.

*Total annual reporting hours:* 900.

*Abstract:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

*Changes Proposed:* The RRB proposes no changes to Form DC–1.

2. *Title and Purpose of Information Collection:* Applicant Background Survey: RRB Form EEO–44, OMB 3220–0201.

This information collection is needed to comply with Federal laws and regulations. 5 U.S.C. Chapter 72 section 7201 establishes an anti-discrimination policy. Title VII of the Civil Rights Act of 1964, section 2000e–8 [section 709], requires agencies to make and keep relevant records to identify unlawful employment practices. 29 CFR section 1602 allows agencies to collect data to determine if there is any adverse impact on employment practices such as recruitment or selection.

The RRB's Equal Employment Office collects data to assess the impact of the agency's recruitment processes on the hiring of minorities, women and people with disabilities. To obtain the information necessary to conduct a proper assessment, the RRB utilizes Form EEO–44, Applicant Background Survey, which collects information about the racial or ethnic identity, gender and disability of applicants for RRB jobs from outside of the Federal government.

Form EEO–44 is only viewed by RRB Human Resources personnel and Equal Employment Opportunity officials. Summarized data from all external applicants for a position is used to identify hiring barriers which limit or tends to limit employment opportunities for members of a particular sex, race, or ethnic background, or based on an individual's disability status.

The EEO–44 contains a ''Plain English'' assurance that the information will be kept highly confidential and only shared with authorized RRB officials. This assurance specifically states that the information obtained is kept as a running tally which cannot be disaggregated into individual names, that information from the form is not entered into the RRB's personnel database, that the information is not provided to selecting officials or any others who can affect the selection, or to the public, and that the form is destroyed after the position is filled. The information maintained does not include the applicant's name or other identifier.

Completion of one form EEO–44 is requested of each respondent and completion is voluntary. The RRB estimates the completion time Form EEO–44 at 5 minutes.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (74 FR 3115 on January 16, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Applicant Background Survey.

*Form(s) submitted:* EEO–44.

*OMB Control Number:* 3220–0201.

*Expiration date of current OMB clearance:* 3/31/2009.

*Type of request:* Extension without change of a currently approved collection.

*Affected Public:* Individuals or Households, Business or other for-profit.

*Estimated annual number of respondents:* 800.

*Total annual responses:* 800.

*Total annual reporting hours:* 67.

*Abstract:* To meet reporting requirements of Equal Employment Opportunity Commission (EEO) Management Directive 715, the RRB collects information needed to properly assess the impact of its recruitment process on the hiring of minorities, women, and people with disabilities.

*Changes Proposed:* The RRB proposes no changes to Form EEO–44.

*Additional Information or Comments:* Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or

*Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. E9–6223 Filed 3–20–09; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 28649; 812–13519]**

## Massachusetts Financial Services Company, et al.; Notice of Application

March 17, 2009.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

*Summary of the Application:* The requested order would (a) permit certain registered management investment companies to acquire shares of certain registered open-end management investment companies that are outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

*Applicants:* MFS Series Trust I, MFS Series Trust III, MFS Series Trust IV, MFS Series Trust V, MFS Series Trust IX, MFS Series Trust X, MFS Series Trust XI, MFS Series Trust XII, and MFS Series Trust XIII (collectively, the ''Trusts''), Massachusetts Financial Services Company (the ''Adviser''), and MFS Fund Distributors, Inc. (the ''Distributor'').

*Filing Dates:* The application was filed on April 17, 2008, and amended on November 26, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is contained in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 13, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 500 Boylston Street, Boston, MA 02116.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

### Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act and organized as Massachusetts business trusts. Each Trust is comprised of separate series that pursue distinct investment objectives and strategies. The Trusts are part of the same ''group of investment companies'' within the meaning of section 12(d)(1)(G)(ii) of the Act. The Adviser, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Trusts.[1] The Distributor is a Delaware corporation and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act''). The Distributor serves as principal underwriter and distributor for the shares of the Underlying Funds (as defined below) and the Related Funds of Funds (as defined below).

2. Applicants request an exemption to permit registered management investment companies that operate as a ''fund of funds'' and that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts (''Unrelated Funds of Funds'') to acquire shares of separate series of the Trusts that do not operate as ''funds of funds'' (''Underlying Funds'')[2] in excess of the limits in section 12(d)(1)(A) of the Act, and to permit Underlying Funds, any principal underwriter for an Underlying Fund, and any broker or dealer registered under the Exchange Act (''Broker'') to sell shares of an Underlying Fund to an Unrelated Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants request that the relief apply to: (1) Each registered open-end management investment company or series thereof that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts, and that is advised or sponsored by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (such registered open-end management investment companies or their series are included in the term ''Underlying Funds''); (2) each Unrelated Fund of Funds that enters into a Participation Agreement (as defined below) with an Underlying Fund to purchase shares of the Underlying Fund; and (3) any principal underwriter to an Underlying Fund or Broker selling shares of an Underlying Fund.[3]

3. Each Unrelated Fund of Funds will be advised by an investment adviser, within the meaning of section 2(a)(20)(A) of the Act, that is registered as an investment adviser under the Advisers Act (an ''Unrelated Fund of

[1] All references to the term ''Adviser'' include successors-in-interest to the Adviser. Successors-in-interest are limited to any entity resulting from a name change, a reorganization of the Adviser into another jurisdiction or a change in the type of business organization.

[2] As of the date of the application, the Underlying Funds include the following series of MFS Series Trust I: MFS Core Growth Fund, MFS New Discovery Fund, MFS Research International Fund, MFS Value Fund; the following series of MFS Series Trust III: MFS High Income Fund; the following series of MFS Series Trust IV: MFS Mid Cap Growth Fund, MFS Money Market Fund; the following series of MFS Series Trust V: MFS International New Discovery Fund, MFS Research Fund; the following series of MFS Series Trust IX: MFS Inflation-Adjusted Bond Fund, MFS Limited Maturity Fund, MFS Research Bond Fund; the following series of MFS Series Trust X: MFS Emerging Markets Equity Fund, MFS Floating Rate High Income Fund, MFS International Growth Fund, MFS International Value Fund; the following series of MFS Series Trust XI: MFS Mid Cap Value Fund; and the following series of MFS Series Trust XIII: MFS Government Securities Fund.

[3] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Unrelated Fund of Funds may rely on the requested order only to invest in an Underlying Fund and not in any other registered investment company.

Funds Adviser''). An Unrelated Fund of Funds or its Adviser may contract with an investment adviser that meets the definition of section 2(a)(20)(B) of the Act (an ''Unrelated Fund of Funds Subadviser''). Applicants state that Unrelated Funds of Funds will be interested in using the Underlying Funds as part of their overall investment strategy.

4. Applicants also request an exemption to the extent necessary to permit any existing or future funds that operate as ''funds of funds'' and that are part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts (''Related Funds of Funds'') and which invest in other Underlying Funds in reliance on section 12(d)(1)(G) of the Act, and which are also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[4]

5. Consistent with its fiduciary obligations under the Act, each Related Fund of Fund's board of trustees will review the advisory fees charged by the Related Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Related Fund of Funds may invest.

**Applicants' Legal Analysis**

**Investments in Underlying Funds by Unrelated Funds of Funds**

*A. Section 12(d)(1)*

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Unrelated Funds of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to an Unrelated Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither an Unrelated Fund of Funds nor an Unrelated Fund of Funds Affiliate would be able to exert undue influence over the Underlying Funds.[5] To limit the control that an Unrelated Fund of Funds may have over an Underlying Fund, applicants propose a condition prohibiting the Unrelated Fund of Funds Adviser, any person controlling, controlled by, or under common control with the Unrelated Fund of Funds Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Unrelated Fund of Funds Adviser or any person controlling, controlled by, or under common control with the Unrelated Fund of Funds Adviser (the ''Unrelated Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to the Unrelated Fund of Funds Subadviser, any person controlling, controlled by or under common control with the Unrelated Fund of Funds Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Unrelated Fund of Funds Subadviser or any person controlling, controlled by or under common control with the Unrelated Fund of Funds Subadviser (the ''Unrelated Fund of Funds Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Underlying Funds, including that no Unrelated Fund of Funds or Unrelated Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an open-end fund) will cause an Underlying Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, investment adviser, subadviser, or employee of the Unrelated Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, subadviser, or employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Underlying Fund is covered by section 10(f) of the Act.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Unrelated Fund of Funds, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''), will find that the advisory fees charged under such advisory contract are based on services

[4] Applicants request that the relief apply to each registered open-end management investment company or series thereof that operates as a ''fund of funds'' and that currently or subsequently is part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Trusts, and is advised or sponsored by the Adviser or any entity controlling, controlled by or under common control with the Adviser (such registered open-end management investment companies or their series are included in the term ''Related Fund of Funds'').

[5] An ''Unrelated Fund of Funds Affiliate'' is an Unrelated Fund of Funds Adviser, Unrelated Fund of Funds Subadviser, a promoter, or a principal underwriter of an Unrelated Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. An ''Underlying Fund Affiliate'' is an investment adviser, sponsor, promoter, or principal underwriter of an Underlying Fund, and any person controlling, controlled by, or under common control with any of those entities.

provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Unrelated Fund of Funds may invest. In addition, an Unrelated Fund of Funds Adviser will waive fees otherwise payable to it by the Unrelated Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Underlying Fund under rule 12b–1 under the Act) received from an Underlying Fund by the Unrelated Fund of Funds Adviser or an affiliated person of the Unrelated Fund of Funds Adviser, other than any advisory fees paid to the Unrelated Fund of Funds Adviser or its affiliated person, by an Underlying Fund, in connection with the investment by the Unrelated Fund of Funds in the Underlying Fund. Applicants also state that with respect to registered separate accounts that invest in an Unrelated Fund of Funds, no sales load will be charged at the Unrelated Fund of Funds level or at the Underlying Fund level.[6] Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rules''), if any, will only be charged at the Unrelated Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in an Unrelated Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Unrelated Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except in certain circumstances identified in condition 12 below. Applicants also represent that to ensure that Unrelated Funds of Funds comply with the terms and conditions of the requested exemption from section 12(d)(1)(A) of the Act, an Unrelated Fund of Funds must enter into a participation agreement between a Trust, on behalf of the relevant Underlying Fund, and the Unrelated Funds of Funds (''Participation Agreement'') before investing in an Underlying Fund in excess of the limits in section 12(d)(1)(A). The Participation Agreement will require the Unrelated Fund of Funds to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Unrelated Fund of Funds that it may rely on the requested order only to invest in the Underlying Funds and not in any other registered investment company.

*B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit an Underlying Fund that is an affiliated person of an Unrelated Fund of Funds because the Unrelated Fund of Funds holds 5% or more of the Underlying Fund's shares to sell its shares to and redeem its shares from an Unrelated Fund of Funds. Applicants state that any proposed transactions directly between an Underlying Fund and an Unrelated Fund of Funds will be consistent with the policies of each Underlying Fund and Unrelated Fund of Funds. The Participation Agreement will require any Unrelated Fund of Funds that purchases shares from an Underlying Fund to represent that the purchase of shares from the Underlying Fund by an Unrelated Fund of Funds will be accomplished in compliance with the investment restrictions of the Unrelated Fund of Funds and will be consistent with the investment policies set forth in the Unrelated Fund of Funds' registration statement.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[7] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants note that any consideration paid for the purchase or redemption of shares directly from an Underlying Fund will be based on the net asset value of the Underlying Fund. Applicants state that the proposed transactions will be consistent with the policies of each Underlying Fund and each Unrelated Fund of Funds and with the general purposes of the Act.

**Other Investments by Related Funds of Funds**

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment

[6] Applicants represent that each Unrelated Fund of Funds will represent in the Participation Agreement (as defined below) that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the Unrelated Fund of Funds unless the insurance company has certified to the Unrelated Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Unrelated Fund of Funds, including fees and charges at the separate account, Unrelated Fund of Funds, and Underlying Fund levels, will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

[7] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Unrelated Fund of Funds, or an affiliated person of such person, for the purchase by the Unrelated Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to an Unrelated Fund of Funds may be prohibited by section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Related Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Related Funds of Funds to invest in Other Investments. Applicants assert that permitting the Related Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

**Investments in Underlying Funds by Unrelated Funds of Funds**

1. The members of an Unrelated Fund of Funds Advisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of an Unrelated Fund of Funds Subadvisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Underlying Fund, the Unrelated Fund of Funds Advisory Group or the Unrelated Fund of Funds Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an Underlying Fund, it (except for any member of the Unrelated Fund of Funds Advisory Group or Unrelated Fund of Funds Subadvisory Group that is a separate account funding variable insurance contracts) will vote its shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's shares. This condition does not apply to the Unrelated Fund of Funds Subadvisory Group with respect to an Underlying Fund for which the Unrelated Fund of Funds Subadviser or a person controlling, controlled by, or under common control with the Unrelated Fund of Funds Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act. A registered separate account funding variable insurance contracts will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An unregistered separate account funding variable insurance contracts will either (i) vote its shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Unrelated Fund of Funds or Unrelated Fund of Funds Affiliate will cause any existing or potential investment by the Unrelated Fund of Funds in shares of an Underlying Fund to influence the terms of any services or transactions between the Unrelated Fund of Funds or an Unrelated Fund of Funds Affiliate and the Underlying Fund or an Underlying Fund Affiliate.

3. The board of directors or trustees of an Unrelated Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Unrelated Fund of Funds Adviser and any Unrelated Fund of Funds Subadviser(s) are conducting the investment program of the Unrelated Fund of Funds without taking into account any consideration received by the Unrelated Fund of Funds or an Unrelated Fund of Funds Affiliate from an Underlying Fund or an Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Unrelated Fund of Funds in the securities of an Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Underlying Fund (the ''Board''), including a majority of the Independent Trustees, will determine that any consideration paid by the Underlying Fund to the Unrelated Fund of Funds or an Unrelated Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Underlying Fund; (b) is within the range of consideration that the Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Underlying Fund and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Unrelated Fund of Funds or Unrelated Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund) will cause an Underlying Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Underlying Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Fund in an Affiliated Underwriting once an investment by an Unrelated Fund of Funds in the securities of the Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Unrelated Fund of Funds in shares of the Underlying Fund. The Board of the Underlying Fund shall consider, among other things, (i) whether the purchases were consistent with the investment objectives and policies of the Underlying Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Underlying Fund shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to

assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. Each Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Unrelated Fund of Funds in the securities of an Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

8. Before investing in shares of an Underlying Fund in excess of the limits in section 12(d)(1)(A), each Unrelated Fund of Funds and Underlying Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), an Unrelated Fund of Funds will notify the Underlying Fund of the investment. At such time, the Unrelated Fund of Funds will also transmit to the Underlying Fund a list of the names of each Unrelated Fund of Funds Affiliate and Underwriting Affiliate. The Unrelated Fund of Funds will notify the Underlying Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Underlying Fund and the Unrelated Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Unrelated Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory contracts are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Unrelated Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Unrelated Fund of Funds.

10. An Unrelated Fund of Funds Adviser will waive fees otherwise payable to it by the Unrelated Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Underlying Fund under rule 12b–1 under the Act) received from an Underlying Fund by the Unrelated Fund of Funds Adviser, or an affiliated person of the Unrelated Fund of Funds Adviser, other than any advisory fees paid to the Unrelated Fund of Funds Adviser or its affiliated person by the Underlying Fund, in connection with the investment by the Unrelated Fund of Funds in the Underlying Fund. Any Unrelated Fund of Funds Subadviser will waive fees otherwise payable to the Unrelated Fund of Funds Subadviser, directly or indirectly, by the Unrelated Fund of Funds in an amount at least equal to any compensation received from any Underlying Fund by the Unrelated Fund of Funds Subadviser, or an affiliated person of the Unrelated Fund of Funds Subadviser, other than any advisory fees paid to the Unrelated Fund of Funds Subadviser or its affiliated person by the Underlying Fund, in connection with the investment by the Unrelated Fund of Funds in the Underlying Fund made at the direction of the Unrelated Fund of Funds Subadviser. In the event that the Unrelated Fund of Funds Subadviser waives fees, the benefit of the waiver will be passed through to the Unrelated Fund of Funds.

11. With respect to registered separate accounts that invest in an Unrelated Fund of Funds, no sales load will be charged at the Unrelated Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the NASD Conduct Rules, if any, will only be charged at the Unrelated Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in an Unrelated Fund of Funds, any sales charges and/or service fees charged with respect to shares of the Unrelated Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

**Other Investments by Related Funds of Funds**

13. The Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Related Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–6209 Filed 3–20–09; 8:45 am]

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## 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 26, 2009 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)(5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

*The subject matter of the Closed Meeting scheduled for Thursday, March 26, 2009 will be:*

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings of an enforcement nature;
- 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 19, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–6434 Filed 3–19–09; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59586; File No. SR–FINRA–2008–045]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the FINRA Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 17, 2009.

### I. Introduction

The 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'') and amended on December 11, 2008,[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change relating to amendments to the FINRA Rule 9520 Series, which governs the eligibility procedures for persons subject to certain disqualifications, to comport with the amended definition of disqualification in the FINRA By-Laws. The proposed rule change was published for comment in the **Federal Register** on January 13, 2009.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

### II. Description of the Proposed Rule Change

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Section 3(a)(39) of the Act also is subject to disqualification under Article III, Section 4 of the FINRA By-Laws.[5] Consequently, as further detailed in the proposed *Regulatory Notice* (filed with the Commission as Exhibit 2 to SR–FINRA–2008–045), FINRA's revised definition of disqualification incorporates 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.

Absent the proposed rule change, all persons subject to any of the added categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. The proposed rule change would both amend the text of the FINRA Rule 9520 Series generally to reflect the amended definition of disqualification in the By-Laws, as well as include the proposed *Regulatory Notice* that outlines in detail the applicable eligibility procedures. The amended FINRA Rule 9520 Series would incorporate by reference the procedures set forth in the *Regulatory Notice.* As further detailed in the *Regulatory Notice,* the need for a member to file an application with FINRA for approval notwithstanding the disqualification would depend on (1) the type of the disqualification; (2) the date of the disqualification; and (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

The proposed rule change would amend FINRA Rule 9522 to address the initiation of eligibility proceedings and the authority of FINRA's Department of Member Regulation (''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, FINRA Rule 9522(a)(1) provides, among other things, that if FINRA staff has reason to believe that a disqualification exists, FINRA staff will issue a written notice to the member or applicant for membership under NASD Rule 1013, specifying the grounds for such disqualification. The proposed amendments to FINRA Rule 9522(a)(1) provide that FINRA staff would issue such written notice with respect to the added categories of disqualification only when the member or applicant is required to file an application pursuant to the Regulatory Notice. Similarly, the proposed rule change would amend FINRA Rule 9522(b) to require a member to file an application with FINRA with respect to the added categories of disqualification only when instructed to submit one by the *Regulatory Notice.*

Moreover, under the current rules, Member Regulation is responsible for evaluating applications for relief from a disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council (''NAC''). The proposed amendments to FINRA Rule 9522 would authorize Member Regulation to approve applications based on the added categories of disqualification. In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member would have the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.

In addition, if Member 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

[1] Amendment No. 1 to SR–FINRA–2008–045 replaced and superseded the original rule filing submitted to the Commission on September 8, 2008.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59208 (January 6, 2009), 74 FR 1738 (January 13, 2009) (SR–FINRA–2008–045) (notice).

[5] *See* Securities Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR–NASD–2007–023) (notice). *See also* Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SR–NASD–2007–023) (approval order), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). *See also* NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007).

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 FINRA Rule 9523(b) would authorize Member Regulation to approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. Consistent with the current rule regarding the submission of supervisory plans,[6] proposed FINRA 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 waive 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 Member 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 FINRA 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 FINRA Rule 9524.

The proposed rule change also would make several technical amendments. For example, the proposed rule change would amend FINRA 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 NAC by filing a written notice with FINRA's Department of Registration and Disclosure and FINRA's Office of General Counsel. In addition, for purposes of clarity and consistency, the proposed rule change would amend FINRA Rule 9522(e) to replace references that Member Regulation ''may grant'' or ''may approve'' certain matters with ''is authorized to approve'' such matters.

## III. Discussion and 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 that are applicable to a national securities association.[7] In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] 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. The Commission believes that the proposed rule change is consistent with the provisions of the Act noted above because it should allow FINRA to integrate filings mandated by the revised definition of disqualification into established programs that monitor subject persons and allow FINRA and the Commission to focus resources on filings that raise important investor protection concerns.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–FINRA–2008–045), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–6208 Filed 3–20–09; 8:45 am]

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[6] *See* FINRA Rule 9523(b)(1) (to be renumbered as FINRA Rule 9523(a)(1)).

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59579; File No. SR–NASDAQ–2006–056]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 2 Thereto To Establish Nasdaq Custom Data Feeds

March 13, 2009.

On December 12, 2006, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a data filtration service called Nasdaq Custom Data Feeds (''Service''). The Service would permit entities to request and receive customized data feeds containing data elements from Nasdaq's current data feeds. The proposed rule change was published in the **Federal Register** on December 27, 2006.[3] On March 9, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. On March 10, 2009, Nasdaq filed Amendment No. 2 to the proposed rule change.[4]

The Commission received one comment on the proposal from the Securities Industry and Financial Markets Association (''SIFMA'').[5] SIFMA believes that the proposed rule change does not meet the requirements of the Act because ''there is no cost-based analysis or justification for the service in the release.'' [6] SIFMA also asserts that the proposed rule change ''raises problems regarding how the proposed fee was calculated.'' [7] Finally, SIFMA questions if competitors will be disadvantaged by the proposal as Nasdaq will have processed the raw data into a customized data feed when the data is released, and if a commercial service should be provided by Nasdaq or if it should instead ''be offered by an affiliate on the condition that the terms under which that affiliate receives the underlying market data are offered to other vendors so as to assure competition and prevent commercial conflicts of interest.'' [8]

The Commission has reviewed carefully the proposed rule change and 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[9] and, in particular, Section 6(b)(4) of the Act,[10] which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54959 (December 18, 2006), 71 FR 77842 (''Notice'').

[4] Amendment No. 2 replaced Amendment No. 1, which was withdrawn. In Amendment No. 2, Nasdaq proposed to re-number the new rule from Rule 7038 to Rule 7047, as rule number 7038 has since been used for a subsequent rule. Nasdaq also clarified that the Service will only be available with respect to data feeds that contain non-core market data. Nasdaq also listed the current data feeds which can be customized through the Service. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

[5] *See* letter from Melissa MacGregor, Assistant Vice President and Assistant General Counsel, SIFMA, to Nancy M. Morris, Secretary, Commission, dated January 17, 2007.

[6] *Id.* at 1.

[7] *Id.*

[8] *Id.* at 2.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

issuers and other persons using any facility or system which Nasdaq operates or controls. The Commission also finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[11] which requires, among other things, that Nasdaq's rules not unfairly discriminate between customers, issuers, brokers or dealers.

The Commission finds that the proposed rule change is consistent with these statutory standards. Use of the Service is optional, and the fees associated with the Service will be imposed on all subscribers equally, based on the level of service that is selected. The fees for the Service are intended to approximate the average costs of establishing and maintaining a customized feed.[12]

In addition, the proposal meets the criteria, formulated by the Commission [13] in connection with the petition filed by NetCoalition,[14] for approval of proposed rule changes concerning the distribution of non-core market data.[15] In its order issued in connection with the NetCoalition petition, the Commission stated that ''reliance on competitive forces is the most appropriate and effective means to assess whether terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.'' [16] As such, the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [17] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the proposal will be approved unless the Commission determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.'' [18]

In its order approving NYSEArca–2006–21, the Commission also stated that the terms of a proposed rule change to distribute market data for which the exchange is the exclusive processor must provide for an equitable allocation of fees under Section 6(b)(4) of the Act,[19] not be designed to permit unfair discrimination under Section 6(b)(5) of the Act,[20] be fair and reasonable under Rule 603(a)(1),[21] and not be unreasonably discriminatory under Rule 603(a)(2).[22] If the proposal involves non-core market data, an analysis of competitive forces may be used, and that analysis will apply to findings under Section 6 of the Act, and to findings under Rule 603.[23]

The Service customizes the information that is available through Nasdaq's current proprietary data feeds. These current data feeds serve as an alternative to the Service, and potential subscribers to the Service can determine if the Service provides a benefit over the current data feeds that justifies its added cost. In addition, Nasdaq has represented that there is significant competition in the distribution of market data to broker-dealers and to other consumers, and that it fully expects its competitors to quickly replicate the Service.[24] In that scenario, potential subscribers to the Service would have the added option of selecting a customized product offered by a competitor.

Nasdaq was subject to significant competitive forces in formulating the terms of the Service—specifically, the availability to market participants of alternatives to purchasing the Service. Because the proposed Service involves the distribution of non-core market data, and significant competitive forces are present, the Service is thus consistent with Section 6(b)(4) [25] and Section 6(b)(5) of the Act,[26] and with Rule 603(a).[27] There is not a substantial countervailing basis that would render the proposal inconsistent with the Act or the rules thereunder.

As described above, SIFMA submitted a comment letter in which it asserted that Nasdaq did not include a cost-based analysis or justification for the Service in its proposed rule change. SIFMA also questioned whether competitors would be disadvantaged by the proposal, and queried whether the Service should be offered through an affiliate of Nasdaq, with Nasdaq offering the underlying data to its affiliate and to other vendors on equal terms.

With respect to the basis for the proposed fees for the Service, Nasdaq has represented that those fees are intended to approximate the average costs of establishing and maintaining a customized feed. Moreover, the Commission has stated that proposed fees need not be subject to a cost-based review in order to conclude that such fees are fair and reasonable.[28] Rather, the criteria for review should be ''appropriate to the circumstances,'' and the existence of competitive forces is ''particularly appropriate'' when assessing a proposed fee.[29] As noted above, Nasdaq was subject to significant competitive forces in formulating the terms of the Service. A cost-based review is therefore not necessary here.

With respect to SIFMA's proposal that the Service be offered through an affiliate of Nasdaq, and that Nasdaq offer the underlying data on equal terms to its affiliate and competitors alike, a similar proposal was made in the context of SR–NYSEArca–2006–21.[30] In its order approving that rule change, the Commission found that such a proposal was not necessary or appropriate, as NYSE Arca, Inc. was subject to significant competitive forces in setting the terms of its data product.[31] Given the presence of significant competitive forces here, SIFMA's proposal that Nasdaq offer the Service through an affiliate, and provide Nasdaq and other vendors access to the underlying data on equal terms, is also unnecessary.[32]

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Notice at 77843.

[13] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[14] *See* Securities Exchange Act Release No. 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21).

[15] The Commission's order distinguishes between core market data, which is defined as ''the best-priced quotations and last sale information of all markets in U.S.-listed equities that Commission rules require to be consolidated and distributed to the public by a single central processor,'' and non-core market data. *See* 73 FR at 74771. Because the Service, which provides customized data feeds using data that is available through Nasdaq's current proprietary data feeds, does not involve core market data, this proposed rule change is properly categorized as a non-core market data proposal.

[16] *Id.* at 74781.

[17] *Id.* at 74781–82.

[18] *Id.* at 74781. In approving NYSEArca–2006–21, the Commission found that the proposed rule change was consistent with Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4). *See* 73 FR at 74779. The Commission also found that the proposal was consistent with Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5), Section 6(b)(8) of the Act, 15 U.S.C. 78f(b)(8), and Rule 603(a) of Regulation NMS, 17 CFR 242.603(a). *See* 73 FR at 74779. The Commission noted that the presence of competitive forces guided its analysis under both Section 6 of the Act and Rule 603 of Regulation NMS. *Id.*

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 242.603(a)(1).

[22] 17 CFR 242.603(a)(2). *See* 73 FR at 74782.

[23] *See* 73 FR at 74779.

[24] *See* Notice at 77844.

[25] 15 U.S.C. 78f(b)(4).

[26] 15 U.S.C. 78f(b)(5).

[27] 17 CFR 242.603(a).

[28] *See* 73 FR at 74787.

[29] *Id.*

[30] *See* FR at 74775 (summarizing comments received on the proposed rule change from, among others, SIFMA).

[31] *Id.* at 74787.

[32] In its filing, Nasdaq represented that it would make the data delivered by the Service available at the same time that the data is made available through Nasdaq's current data feeds. In addition, Nasdaq stated that, due to factors such as bandwidth and equipment capacity, a subscriber to the Service may receive the current data feed before receiving its customized data feed. *See* Notice at 77843.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NASDAQ–2006–056), as modified by Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–6146 Filed 3–20–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59580; File No. SR–NASDAQ–2007–006]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto To Establish the Nasdaq Daily Share Volume Service and To Establish Fees for the Service

March 13, 2009.

On February 7, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Nasdaq Daily Share Volume Service (''Service'') and to establish fees for the Service. The Service will provide the volume of shares traded each day by issue for participating market participants on a T+1 basis. The volume data will consist of trades from the Nasdaq Execution System.[3] Subscribers will have File Transfer Protocol (''FTP'') access to the full underlying data set to create custom reports. Subscribers will also be able to redistribute the data, although the subscriber will be required to enter into a distributor agreement.

Nasdaq proposes to charge $2,500 per month for the Service. Participation by eligible market participants will be voluntary, and eligible market participants who choose to participate will be able to decide whether to advertise their trade volume by market participant ID code and issue.

The proposed rule change was published in the **Federal Register** on March 16, 2007.[4] The Commission received no comments on the proposal. On March 6, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change.[5]

The Commission has reviewed carefully the proposed rule change and 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[6] and, in particular, Section 6(b)(4) of the Act,[7] which requires, among other things, that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that Nasdaq's rules are not designed to unfairly discriminate between customers, issuers, brokers or dealers.

The Commission finds that the proposed rule change is consistent with these statutory standards. Use of the Service is optional, and the fee associated with the Service will be imposed on all subscribers equally. The fee for the Service is intended to cover the costs of establishing and maintaining the Service.[9]

In addition, the proposal meets the criteria, formulated by the Commission[10] in connection with the petition filed by NetCoalition,[11] for approval of proposed rule changes concerning the distribution of non-core market data.[12] In its order issued in connection with the NetCoalition petition, the Commission stated that ''reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.''[13] As such, the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[14] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the proposal will be approved unless the Commission determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.''[15]

In its order approving NYSEArca–2006–21, the Commission also stated that the terms of a proposed rule change to distribute market data for which the exchange is the exclusive processor must provide for an equitable allocation of fees under Section 6(b)(4) of the Act,[16] not be designed to permit unfair discrimination under Section 6(b)(5) of the Act,[17] be fair and reasonable under Rule 603(a)(1),[18] and not be unreasonably discriminatory under Rule 603(a)(2).[19] If the proposal involves non-core market data, an analysis of competitive forces may be used, and that analysis will apply to findings

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq also proposed to include internalized prints from the FINRA/Nasdaq Trade Reporting Facility (''TRF'') in the Service. However, as part of Amendment No. 1, Nasdaq has represented that it will not include any TRF data in the Service until FINRA has submitted a separate filing to include TRF data in the Service, and the Commission has acted favorably upon that filing. *See* note 5 *infra.*

[4] *See* Securities Exchange Act Release No. 55444 (March 12, 2007), 72 FR 12648 (''Notice'').

[5] In Amendment No. 1, Nasdaq clarified certain aspects of the Service. For example, Nasdaq noted that it will not include any data in the Service that is received from the FINRA/Nasdaq TRF until FINRA has submitted a separate filing to include TRF data in the Service, and the Commission has acted favorably upon that filing. Nasdaq also noted that it is eliminating the individual access fee for web subscribers from the Service, and deleted the corresponding portion of the proposed rule text. Because the Amendment is technical in nature, it is not subject to notice and comment.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Notice at 12649.

[10] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[11] *See* Securities Exchange Act Release No. 55011 (December 27, 2006) (order granting petition for review of SR–NYSEArca–2006–21).

[12] The Commission's order distinguishes between core market data, which is defined as ''the best-priced quotations and last sale information of all markets in U.S.-listed equities that Commission rules require to be consolidated and distributed to the public by a single central processor,'' and non-core market data. *See* 73 FR at 74771. Because the Service, which provides daily traded share volume for trades executed by, or reported to, Nasdaq systems, does not involve core market data, this proposed rule change is properly categorized as a non-core market data proposal.

[13] *Id.* at 74781.

[14] *Id.* at 74781–82.

[15] *Id.* at 74781. In approving NYSEArca–2006–21, the Commission found that the proposed rule change was consistent with Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4). See 73 FR at 74779. The Commission also found that the proposal was consistent with Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5), Section 6(b)(8) of the Act, 15 U.S.C. 78f(b)(8), and Rule 603(a) of Regulation NMS, 17 CFR 242.603(a). *See* 73 FR at 74779. The Commission noted that the presence of competitive forces guided its analysis under both Section 6 of the Act and Rule 603 of Regulation NMS. *Id.*

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 242.603(a)(1).

[19] 17 CFR 242.603(a)(2). *See* 73 FR at 74782.

under Section 6 of the Act, and to findings under Rule 603.[20]

As noted above, use of the Service is voluntary, and the fee for the Service will be imposed equally on all purchasers. In addition, vendors and other exchanges currently make daily broker volume reports available. For example, the New York Stock Exchange LLC (''NYSE'') provides a broker volume report in a database format on a T+1 basis, which compiles the trading volume of member firms based on trades reported to NYSE.[21] The cost of receiving the Service is comparable to the cost for receiving the NYSE broker volume report.[22]

In formulating the terms of the Service, Nasdaq was thus subject to significant competitive forces—specifically, the availability to market participants of alternatives to purchasing the Service. Because the proposed Service here involves the distribution of non-core market data, and significant competitive forces are present, the Service is thus consistent with both Section 6(b)(4)[23] and Section 6(b)(5) of the Act,[24] and with Rule 603(a).[25] There is not a substantial countervailing basis that would render the proposal inconsistent with the Act or the rules thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NASDAQ–2007–006), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–6147 Filed 3–20–09; 8:45 am]

**BILLING CODE**

[20] *See* 73 FR at 74779.

[21] *See http://www.nyxdata.com/page/584* (listing of NYSE data products, including NYSE Broker Volume Database).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] 15 U.S.C. 78f(b)(5).

[25] 17 CFR 242.603(a).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[License No. 02/02–0535]**

### Argentum Capital Partners, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Argentum Capital Partners, LP, 60 Madison Avenue, Suite 701, New York, NY 10010, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2009)). Argentum Capital Partners, LP proposes to provide a bridge loan to M Cubed Technologies, Inc., 921 Main Street, Monroe, CT 06468. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Argentum Capital Partners II, LP, an Associate of Argentum Capital Partners, LP, owns more than ten percent of M Cubed Technologies, Inc.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

March 16, 2009.

**Harry Haskins,**

*Acting Associate Administrator for Investment.*

[FR Doc. E9–6189 Filed 3–20–09; 8:45 am]

**BILLING CODE**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(*OMB*) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, e-mail address: *OIRA_Submission@omb.eop.gov*.

*(SSA)* Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1332 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, e-mail address: *OPLM.RCO@ssa.gov*.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure that we consider your comments, we must receive them no later than May 22, 2009. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the e-mail address listed above.

**1. Surveys in Accordance With E.O. 12862 for the Social Security Administration—0960–0526**

Under the auspices of Executive Order 12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, Internet, and telephone surveys; mailed questionnaires; focus groups; and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications/new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and parties who work on behalf of SSA beneficiaries.

*Type of Request:* Revision of an OMB-approved information collection.

| Year in approval cycle | Number of respondents (burden for all activities within that year) | Frequency of response | Range of response times (minutes) | Burden (burden for all activities within that year; reported in hours) |
|---|---|---|---|---|
| Year 1 (June 2009–May 2010) | 1,400,001 | 1 | 5–90 | 123,000 |
| Year 2 (June 2010–May 2011) | 1,400,351 | 1 | 5–90 | 123,058 |
| Year 3 (June 2011–June 2012) | 1,400,001 | 1 | 5–90 | 123,000 |
| Total | 4,200,353 | | | 369,058 |

**2. Prohibition of Payment of SSI Benefits to Fugitive Felons and Parole/Probation Violators—20 CFR 416.708(o)–0960–0617**

*Section 1611(e)(4)* of the *Social Security Act* precludes eligibility for Supplemental Security Income (SSI) payments for certain fugitives and probation/parole violators. Regulations at 20 CFR 416.708(o) require individuals to report to SSA if they are fleeing to avoid prosecution for a crime, fleeing to avoid custody or confinement after conviction of a crime, or violating a condition of probation or parole. SSA will use the information reported to deny eligibility or suspend the recipient's SSI payments. The respondents are SSI applicants/recipients or representative payees of SSI recipients who are reporting the applicant's/recipient's status as a fugitive felon or probation/parole violator.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 1,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 1 minute.

*Estimated Annual Burden:* 17 hours.

**3. Medical or Psychological Review of Childhood Disability Evaluation Form (SSA–538)—20 CFR 416.1040, 416.1043, 416.1045, 416.924(g)–0960–0675**

SSA's regional review component uses Form SSA–536 to facilitate the medical or psychological consultant's review of the Childhood Disability Evaluation Form. The form records the reviewing consultant's assessment of the adjudicating component's evaluation. The consultant completes an SSA–536 for each Title XVI childhood disability he/she reviews. The respondents are consultants who review the adjudicating component's completion of the Childhood Disability Evaluation Form (SSA–538).

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 256.

*Frequency of Response:* 66.

*Average Burden per Response:* 12 minutes.

*Estimated Annual Burden:* 3,379 hours.

**4. Request for Workers' Compensation/Public Disability Benefit Information—20 CFR 404.408(e)–0960–0098**

SSA uses Form SSA–1709 to verify Worker's Compensation/Public Disability Benefits (WC/PDB). SSA uses the information to compute the correct reduction of disability insurance benefits. The claimant may be able to furnish adequate verification of the WC/PDB benefits by submitting a copy of his or her award notice, benefit check, etc. SSA considers the claimant the primary source of verification. If he or she provides the necessary evidence, we do not use the form. If the claimant cannot provide evidence, the other reliable source of this information is the entity giving the benefits, its agent (such as an insurance carrier), or an administering public agency. The respondents are Federal, State, and local agencies administering WC/PDB, insurance carriers, and public or private self-insured companies.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 120,000.

*Frequency of Response:* 1.

*Average Burden per Response:* 15 minutes.

*Estimated Annual Burden:* 30,000 hours.

**5. Request for Internet Services—Authentication; Automated Telephone Speech Technology—Knowledge-Based Authentication–20 CFR 401.45—0960–0596**

To verify identity, SSA requests individuals and third parties who seek personal information from SSA records, or register to participate in SSA's online business services, to provide certain identifying information. As an extra measure of protection, SSA asks requestors who use the Internet and telephone services to provide additional identifying information unique to those services so SSA can authenticate their identities before releasing personal information. The respondents are current beneficiaries who are requesting personal information from SSA and/or individuals or third parties who are registering for SSA's online business services.

*Type of Request:* Extension of an OMB-approved information collection.

| Forms | Number of respondents | Frequency of response | Average burden per response (minutes) | Burden hours |
|---|---|---|---|---|
| Internet Requestors | 3,357,503 | 1 | 1½ | 83,938 |
| Telephone Requestors | 24,171,867 | 1 | 1½ | 604,297 |
| Total | 27,529,370 | | | 688,235 |

Dated: March 18, 2009.

**John Biles,**

*Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.*

[FR Doc. E9–6323 Filed 3–20–09; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 6539]**

### 30-Day Notice of Proposed Information Collection: Request for Commodity Jurisdiction (CJ) Determination; OMB Control Number 1405–0163

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

*Title of Information Collection:* Request for Commodity Jurisdiction (CJ) Determination.

*OMB Control Number:* 1405–0163.

*Type of Request:* Extension of currently approved collection.

*Originating Office:* Bureau of Political Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.

*Form Number:* None.

*Respondents:* Business organizations.

*Estimated Number of Respondents:* 425 (total).

*Estimated Number of Responses:* 465 (per year).

*Average Hours per Response:* 10 hours.

*Total Estimated Burden:* 4,650 hours (per year).

*Frequency:* On Occasion.

*Obligation to Respond:* Voluntary.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from March 23, 2009.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

*E-mail: Kastrich@omb.eop.gov.* You must include the information collection title, and OMB control number in the subject line of your message.

*Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budge, 725 17th Street, NW., Washington, DC 20503.

*Fax:* 202–395–6974

You must include the information collection title in the subject line of your message/letter.

**FOR FURTHER INFORMATION CONTACT:** You may obtain additional information of the proposed information collection and supporting documents from Mary F. Sweeney, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2865, or via e-mail at *sweeneymf@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.

Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected.

Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:* The information will be used to evaluate whether or not a particular defense article or defense service is covered by the U.S. Munitions List; to change the U.S. Munitions List category designation; to remove a defense article from the U.S. Munitions List; or to reconsider a previous commodity jurisdiction determination.

*Methodology:* This information collection is an exchange of letters and may be sent to the Directorate of Defense Controls via mail.

Dated: March 17, 2009.

**Robert S. Kovac,**

*Acting Deputy Assistant, Secretary for Defense Trade, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. E9–6318 Filed 3–20–09; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF STATE

**[Public Notice 6553]**

### Amended Department of State Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement and To Initiate Consultation Under Section 106 of the National Historic Preservation Act for the Proposed Transcanada Keystone XL Pipeline

**AGENCY:** Department of State.

**ACTION:** Notice of Intent—Rescheduled Public Scoping Meetings in South Dakota and extension of comment period.

**SUMMARY:** The United States Department of State published a Notice of Intent in the **Federal Register** on January 28, 2009 (74 FR 5019), announcing its intent to prepare an environmental impact statement (EIS) for the proposed Keystone international pipeline project (the Keystone XL Project), which is designed to transport crude oil production from the Western Canadian Sedimentary Basin to existing markets in the Texas Gulf Coast area. The document contained a schedule for the public scoping meetings. Due to hazardous weather conditions, two of the scheduled public scoping meetings on February 26, 2009 in Faith and Buffalo, South Dakota were canceled. These two meetings have been rescheduled.

Dates and locations for the rescheduled public scoping meetings are:

**Faith, South Dakota**

*Meeting date:* Wednesday, April 8, 12–2 p.m.

*Location:* Faith, SD

*Venue:* Community Legion Hall, Main Street, Faith, SD 57626.

**Buffalo, South Dakota**

*Meeting date:* Wednesday, April 8, 7–9 p.m.

*Location:* Buffalo, SD

*Venue:* Harding County Memorial Recreation Center, 204 Hodge Street, Buffalo, SD 57720.

The public scoping period has been extended until April 15, 2009. The Department of State will consider all comments received or postmarked by April 15, 2009 in defining the scope of the EIS. Written, electronic, and oral comments will be given equal weight by the Department of State in this process.

**ADDRESSES:** Written comments or suggestions on the scope of the EIS should be addressed to: Elizabeth

Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520. Comments may be submitted electronically to *xlpipelineproject@state.gov.* Public comments will be posted on the Web site identified below.

**FOR FURTHER INFORMATION CONTACT:** For information on the proposed project or to receive a copy of the draft EIS when it is issued, contact Elizabeth Orlando at the address listed in the **ADDRESSES** section of this notice by electronic or regular mail as listed above, or by telephone (202) 647–4284 or by fax at (202) 647–5947.

Project details and environmental information on the Keystone XL Project application for a Presidential Permit, including associated maps downloadable from a Web site that has been established for this purpose: *http://www.keystonepipeline-XL.state.gov.* This Web site will accept public comments for the record.

Information on the Department of State Presidential Permit process can also be found at the above Internet address. The MLA and FLPMA application submitted to BLM will be on file at its office in Billings, Montana.

A TransCanada hosted project Web site is also available at *http://www.transcanada.com/keystone/kxl.html.* The Keystone XL Project toll-free number is 1–866–717–7473 (United States and Canada).

Dated: March 17, 2009.

**Daniel Fantozzi,**

*Director, Office of Environmental Policy, Office of International Oceans, Environmental and Scientific Affairs, Department of State.*

[FR Doc. E9–6276 Filed 3–20–09; 8:45 am]

**BILLING CODE 4710–07–P**

## DEPARTMENT OF STATE

**[Public Notice 6554]**

### Preparations for Holocaust Era Assets Conference—Town Hall Follow-up Meetings on Looted Art, Immovable Property and Holocaust Compensation Agreements

The Special Envoy for Holocaust Issues at the Department of State is seeking information from interested individuals or organizations regarding the planned Conference on Holocaust Era Assets which will take place June 26–30, 2009 in Prague.

Hosted by the Government of the Czech Republic, the conference will address certain unresolved Holocaust asset issues, particularly Looted Art and Immovable Property. The conference schedule will also include a review of the Holocaust compensation agreements with Germany, Austria and France, and the work of the International Commission for Holocaust Insurance Claims (ICHEIC).

The Department will host meetings at the Department of State (Harry S. Truman Building) on April 15 and 16 to hear the views of individuals, non-governmental agencies and firms on these issues. The sessions on looted art and immovable property will be a follow-up to the March 2 meetings on those subjects.

Those who wish to provide information to the State Department regarding those issues are invited to register and attend one or more of the following two-hour sessions:

—April 15 at 9:45 a.m.: Holocaust Agreements on Compensation—a Stocktaking
—April 16 at 9:45 a.m.: Looted Art
—April 16 at 1:45 p.m.: Immovable Property

Anyone wishing to attend any of these events should register separately for each by 5 p.m. April 10. There are space limitations. To register, send an e-mail no later than April 10 to Ms. Jones-Johnson (*Jones-JohnsonCD@state.gov*) with the following information:

Full Name:

Date of Birth:

Driver's License Number, including State of Issuance, or

Alternate Government-Issued Picture ID:

Organization represented (if any), and its Address, & Phone Number:

Home Address (only if attending as an individual):

Name of Event(s) to be attended:

Those who register are urged to arrive at the Department at least 15 minutes before the starting time for each event to allow time for security screening. Upon arrival, show security personnel a valid government-issued identification: for example, a U.S. state driver's license or a passport. The official address of the State Department is 2201 C Street, NW., Washington, DC. For these events, however, participants must use the ''23rd Street Entrance'' on the West Side of the State Department's Harry S. Truman Building, located on 23rd Street between C Street and D Street NW., Washington, DC.

Written submissions are welcome and should be sent to Ms. Jones-Johnson at the e-mail address cited above.

**Ambassador J. Christian Kennedy,**

*Special Envoy for Holocaust Issues, Department of State.*

[FR Doc. E9–6319 Filed 3–20–09; 8:45 am]

**BILLING CODE 4710–23–P**

## DEPARTMENT OF STATE

**[Public Notice 6555]**

### Receipt of Request To Amend the Presidential Permit for an International Bridge on the U.S.-Mexico Border Near McAllen, TX, and Reynosa, Tamaulipas, Mexico

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** The Department of State hereby gives notice that, on March 16, 2009, it received from the chairman of the Anzalduas Bridge Board, acting on behalf of the mayors of McAllen, Hidalgo, and Mission, Texas, a request to amend the Presidential permit that the Department issued in 1999 for the Anzalduas international bridge on the U.S.-Mexico border near McAllen, Texas and Reynosa, Tamaulipas, Mexico. The permittee proposes the removal of article 17 of the permit. Article 17 states that ''[t]he permittee shall limit the initial hours of operation of the Anzalduas International Crossing to twelve hours per day, seven days per week for vehicular traffic.''

According to the Bridge Board's letter, the Department should amend the permit to remove article 17 so that the Department of Homeland Security's Bureau of Customs and Border Protection (CBP), working with the Anzalduas Bridge Board and Mexican customs authorities, can set the hours of operation of the bridge in accordance with demand and available resources. The letter says that limiting the operations of the bridge to only twelve hours per day is impractical and insufficient, and notes that other international bridges along the international border with Mexico operate 18 or 24 hours per day. The request suggests that operational requirements should be set at the local level, rather than in the Presidential permit itself.

The Department's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended, and Article 1 of the 1999 permit, which states that the permit ''may be amended by the Secretary of State or the Secretary's delegate at will or upon proper application therefor.* * *'' As provided in E.O. 11423, the Department is circulating this application to relevant federal and state agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether the proposed amendment of this

Presidential permit would be in the U.S. national interest.

**DATES:** Interested members of the public are invited to submit written comments regarding this application on or before April 22, 2009 to Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov,* or by mail at WHA/MEX—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Darrach, U.S.-Mexico Border Affairs Coordinator, via e-mail at *WHA-BorderAffairs@state.gov;* by phone at 202–647–9894; or by mail at WHA/MEX—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit/.*

Dated: March 16, 2009.

**Alex Lee,**

*Director, Office of Mexican Affairs, Department of State.*

[FR Doc. E9–6324 Filed 3–20–09; 8:45 am]

**BILLING CODE 4710–29–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Waterbury-Oxford Airport, Oxford, CT; FAA Approval of Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Connecticut Department of Transportation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On November 6, 2008, the FAA determined that the noise exposure maps submitted by the Connecticut Department of Transportation under Part 150 were in compliance with applicable requirements. On January 14, 2009, the Manager, Airports Division, New England Region, approved the Waterbury-Oxford Airport noise compatibility program. All 12 of the proposed program elements were approved.

**DATES:** *Effective Date:* The effective date of the FAA's approval of the Waterbury-Oxford Airport noise compatibility program is January 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryon Rakoff, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (781) 238–7610.

Documents reflecting this FAA action may be obtained from the same individual.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the Waterbury-Oxford Airport noise compatibility program, effective January 14, 2009.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Connecticut Department of Transportation submitted to the FAA, on October 9, 2008, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 2004 to October 2008. The Waterbury-Oxford Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 6, 2008. Notice of this determination was published in the **Federal Register** on December 1, 2008.

The Waterbury-Oxford Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2012. The Connecticut Department of Transportation requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act.

The FAA began its review of the program on November 6, 2008, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of

new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 12 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Manager, Airports Division, New England Region effective January 14, 2009.

All 12 of the proposed program elements were approved. The 12 program elements include noise abatement departure flight tracks, noise abatement departure profile, preferential runway use, coordination of proposed zoning changes, fair disclosure of real estate transactions, noise related subdivision regulatory review, voluntary residential property acquisition, voluntary sound insulation, establishment of a Noise Abatement Committee, development of a Web site for public outreach, publication of operational noise abatement measures in pilot guides, and provision for updates to the noise compatibility program measures and noise contours.

FAA's determinations are set forth in detail in a Record of Approval signed by the Manager, Airports Division, New England Region on January 14, 2009. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Waterbury-Oxford Airport, Oxford, CT.

Issued in Burlington, Massachusetts, on January 14, 2009.

**LaVerne F. Reid,**

*Manager, Airports Division, New England Region.*

[FR Doc. E9–6171 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on United States Highway 290 in Texas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, United States Highway 290 (US 290), east of Austin, beginning at U.S. 183 and heading east to SH 130 in Travis County in the State of Texas. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 21, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, 300 E. 8th Street, Rm. 826, Austin, Texas 78701; telephone: (512) 536–5950; e-mail: *salvador.deocampo@fhwa.dot.gov*. The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. You may also contact Ms. Dianna Noble, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701; telephone: (512) 416–2734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: United States Highway 290 (US 290), east of Austin, beginning at U.S. 183 and heading east to SH 130 in Travis County in the State of Texas. The project will be an approximately 5.0 mile long, six-lane tollway with grade separations at all intersecting roadways (*i.e.*, a fully access-controlled facility) with full length frontage roads. The proposed highway will follow the existing U.S. 290 alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, dated February 2008, in the FHWA Finding of No Significant Impact (FONSI) issued on March 9, 2009, and in other documents in the FHWA project records. The EA, FONSI, and other documents in the FHWA project records file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: March 10, 2009.

**Salvador Deocampo,**

*District Engineer, Austin, Texas.*

[FR Doc. E9–6157 Filed 3–20–09; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 17, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before April 22, 2009 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1687.
*Type of Review:* Extension.
*Title:* REG–110311–98 (Final) Corporate Tax Shelter Registration.
*Description:* The regulations finalize the rules relating to the filing of certain taxpayers of a disclosure statement with their Federal tax returns under IRC Sec. 6111(a), the rules relating to the registration of confidential corporate tax shelter under section 6011(d), and the rules relating to the list maintenance requirements under section 6112.
*Respondents:* Businesses or other for-profits.
*Estimated Total Burden Hours:* 1 hours.

*OMB Number:* 1545–1018.
*Type of Review:* Extension.
*Title:* FI–27–89 (Temporary and Final) Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; FI–61–91 (Final) Allocation of Allocable Investment.
*Description:* The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.
*Respondents:* Businesses or other for-profits.
*Estimated Total Burden Hours:* 978 hours.

*OMB Number:* 1545–1514.
*Type of Review:* Extension.
*Title:* REG–209040–88 (NPRM) Qualified Electing Fund Elections.
*Description:* The regulations permit certain shareholders to make a special section 1295 election with respect to certain preferred shares of a PFIC. Taxpayers must indicate the election on a Form 8621 and attach a statement containing certain information and representations. Form 8621 must be filed annually. The shareholder also must obtain, and retain a copy of, a statement from the corporation as to its status as a PFIC.
*Respondents:* Individual or households.
*Estimated Total Burden Hours:* 600 hours.

*OMB Number:* 1545–0430.
*Type of Review:* Revision.
*Form:* 4810.
*Title:* Request for Prompt Assessment under Internal Revenue Code Section 6501(d).
*Description:* Form 4810 is used to request a prompt assessment under IRC Section 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.
*Respondents:* Businesses or other for-profits.
*Estimated Total Burden Hours:* 24,800 hours.

*OMB Number:* 1545–1290.
*Type of Review:* Extension.
*Title:* FI–81–86 (Final) Bad Debt Reserves of Banks.
*Description:* Section 585(c) of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. The information required by section 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with section 585(c).
*Respondents:* Businesses or other for-profits.
*Estimated Total Burden Hours:* 625 hours.

*OMB Number:* 1545–1960.
*Type of Review:* Extension.
*Form:* 3949-A.
*Title:* Information Referral.
*Description:* This application is voluntary and the information requested helps us determine if there has been a violation of Income Tax Law. We need the taxpayer identification numbers—Social Security Number (SSN) or Employer Identification Number (EIN) in order to fully process your application. Failure to provide this information may lead to suspension of processing this application.
*Respondents:* Individuals or households.
*Estimated Total Burden Hours:* 53,750 hours.

*Clearance Officer:* R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Celina Elphage,**
*Treasury PRA Clearance Officer.*
[FR Doc. E9–6188 Filed 3–20–09; 8:45 am]
**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 17, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before April 22, 2009 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number* 1545–1954.

*Type of Review:* Extension.

*Form:* 13704.

*Title:* Health Coverage Tax Credit Registration Update Form.

*Description:* Internal Revenue Code Sections 35 and 7527 enacted by Public Law 107–210 (see attachment) require the Internal Revenue Service to provide payments of the HCTC to eligible individuals beginning August 1, 2003. The IRS will use the Registration Update Form to ensure, that the processes and communications for delivering these payments help taxpayers determine if they are eligible for the credit and understand what they need to do to continue to receive it.

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 1,100 hours.

*Clearance Officer:* R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Celina Elphage,**
*Treasury PRA Clearance Officer.*
[FR Doc. E9–6191 Filed 3–20–09; 8:45 am]
**BILLING CODE 4830–01–P**

Federal Register

Monday,
March 23, 2009

# Part II

# Commodity Futures Trading Commission

**17 CFR Parts 15, 16, 17 et al.**

**Significant Price Discovery Contracts on Exempt Commercial Markets; Final Rule**

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Parts 15, 16, 17, 18, 19, 21, 36, 40

**RIN 3038–AC76**

## Significant Price Discovery Contracts on Exempt Commercial Markets

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final Rules.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is promulgating final rules to implement those provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] relating to exempt commercial markets (''ECMs'') on which significant price discovery contracts (''SPDCs'') are traded or executed. In addition to promulgating regulations mandated by the Reauthorization Act, the Commission also is amending existing regulations applicable to registered entities in order to clarify that such regulations are now applicable to ECMs with SPDCs.

**DATES:** *Effective Date:* April 22, 2009.

**FOR FURTHER INFORMATION CONTACT:** Susan Nathan, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Overview*

The Commodity Futures Modernization Act of 2000 (''CFMA'') amended the Commodity Exchange Act (''CEA'' or the ''Act'') [2] to replace the Act's ''one-size-fits-all'' supervisory framework for futures trading with a multi-tiered approach to oversight of derivatives markets. The CFMA applies different levels of oversight to markets based primarily on the nature of the underlying commodity being traded, the participants who are trading, and the manner in which trading is conducted. In general, the more sophisticated the traders or commercial participants, or the less susceptible a commodity is to manipulation or other market or trading abuses, the less regulatory oversight is required under the CFMA. In addition to creating three new categories of trading facility,[3] the CFMA created a number of exemptions and exclusions from regulation for certain swaps and other derivative products traded either bilaterally or on electronic trading facilities-including an exemption for transactions in exempt commodities traded on electronic trading facilities, also known as exempt commercial markets (''ECMs'').[4]

Since the adoption of the CFMA, ECMs have evolved such that some no longer are simple trading platforms with low trading volumes relative to DCMs. Also over time, these facilities began to offer ''look-alike'' contracts that are linked to the settlement prices of their exchange-traded counterparts, and in at least one case these look-alike contracts began to garner significant volumes. More recently, several active ECMs began to offer the option of centralized clearing for their contracts—an option which became widely utilized by their customers to manage counterparty risk. This evolution, particularly the linkage of ECM contract settlement prices to DCM futures contract settlement prices, began to raise questions about whether ECM trading activity could impact trading on DCMs and whether the CFTC had adequate authority to address that impact and protect markets from manipulation and abuse.

The Commission responded to these changing markets in a variety of ways. Its Office of the Chief Economist (''OCE'') conducted a study of the relationship between the natural gas contracts that trade on the New York Mercantile Exchange (''NYMEX''), a DCM, and the InterContinental Exchange (''ICE''), an ECM. Concurrently, the Commission's Division of Market Oversight issued a series of special calls [5] for information related to ICE's cleared natural gas swap contracts that are cash-settled based on the settlement price of the NYMEX physical delivery natural gas contract. Following the OCE study and the special calls, the Commission held a public hearing in September 2007 to further explore a number of issues, including the adequacy of the CFMA's regulatory approach; the similarities and differences between ECMs and DCMs; the associated regulatory risks of each market category; the types of regulatory changes that might be appropriate to address identified risks; and the impact that regulatory or legislative changes might have on the U.S. futures industry and the global competitiveness of the U.S. financial industry. Based on information developed as a result of these efforts, the Commission published its October 2007 ''Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets'' (''ECM Report''). The ECM Report, which was provided to the Commission's Congressional oversight committees, recommended, among other things, that the CEA be amended to grant the CFTC additional authority over ECM contracts serving a significant price discovery function and that certain self-regulatory responsibilities be assigned to ECMs offering such contracts.

The Reauthorization Act's provisions regarding ECMs were based largely on the Commission's recommendations for improving oversight of ECMs whose contracts perform a significant price discovery function. The legislation significantly expanded the CFTC's regulatory authority over ECMs by adding a new section 2(h)(7) to the CEA establishing criteria for the Commission to consider in determining whether a particular ECM contract performs a significant price discovery function and providing for greater regulation of SPDCs traded on ECMs. In addition to extending the CFTC's regulatory oversight to the trading of SPDCs, the Reauthorization Act requires ECMs to adopt position limit and accountability level provisions for SPDCs; authorizes the Commission to require the reporting of large trader positions in SPDCs; and establishes core principles governing ECMs with SPDCs. The core principles applicable to ECMs with SPDCs are derived from selected DCM core principles and designation criteria set forth in the CEA, and Congress intended that they be construed in a like manner.[6]

[1] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

[2] 7 U.S.C. 1 *et seq.*

[3] Designated Contract Markets (''DCMs'') are open to all participants and may offer all types of commodities; Derivatives Transaction Execution Facilities (''DTEFs'') generally are open only to sophisticated participants and are limited as to the types of commodities that may be traded; and Exempt Boards of Trade (''EBOTs'') may trade only excluded commodities and are open only to eligible contract participants and are subject to no regulatory oversight, exempt from most provisions of the CEA and not registered with or designated by the CFTC.

[4] The CFMA established the ECM exemption in section 2(h)(3) of the CEA, 7 U.S.C. 2(h)(3).

[5] Section 2(h)(5)(B)(iii) of the Act, 7 U.S.C. 2(h)(5)(B)(iii), requires that an ECM relying on the exemption provided in section 2(h)(3) must, upon a special call by the Commission, provide such information related to its business as the Commission may determine appropriate to enforce the antifraud provisions of the Act, to evaluate a systemic market event, or to obtain information requested by a Federal financial regulatory authority in connection with its regulatory or supervisory responsibilities.

[6] Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 110–627, 110 Cong., 2d Sess. at 985 (2008) (''Conference Committee Report''). The core principles and designation

The legislation directed the Commission to issue rules implementing the provisions of new section 2(h)(7) and to include in such rules the conditions under which an ECM will have the responsibility to notify the Commission that an agreement, contract or transaction conducted in reliance on section 2(h)(3) of the Act may perform a significant price discovery function. The Reauthorization Act mandated that the ''significant price discovery standards'' rules be proposed not later than 180 days after the date of enactment of the Reauthorization Act, and that the Commission issue final rules not later than 270 days after the date of implementation of that Act.[7]

Consistent with Congress' directive, the Commission on December 12, 2008 issued a notice of proposed rulemaking (''NPRM'' or ''proposing release'') to substantially amend rule 36.3 [8] of the Commission's rules applicable to ECMs to implement the broadened regulatory authority conferred by section 2(h)(7) of the CEA over ECMs with SPDCs. In addition, the proposed rules implicated parts 16 through 21 (market, transaction and large trader reporting rules) and part 40 (provisions common to contract markets, derivatives transaction execution facilities and derivatives clearing organizations). In promulgating these final rules, the Commission recognizes that these are rapidly evolving markets. We are mindful that, as we carry out Congressional directives in the present context, we continue to maintain careful scrutiny of the marketplace with regard to new products and trading platforms in the future. As markets evolve, we acknowledge our obligation to continue to adapt our regulatory oversight to protect consumers and ensure the integrity of the core risk management and price discovery functions of our markets.

*B. The Proposed Rules*

1. Part 36: Exempt Markets—Rules Applicable to ECMs

The Commission proposed to amend rule 36.3(b) to: (1) Specify the information submission requirements, both initially and on an ongoing basis, for all ECMs and also for ECMs with respect to agreements, contracts or transactions that have not been determined to perform a significant price discovery function; and (2) to enumerate separately the enhanced information submission obligations for ECMs with SPDCs. Consistent with the Reauthorization Act's directive that the Commission's rulemaking address specific statutory criteria for identifying a SPDC and the conditions under which an ECM will be responsible for notifying the Commission of a possible SPDC, proposed rule 36.3(c) addressed (1) The criteria on which the Commission will rely in making a determination that an agreement, contract or transaction performs a significant price discovery function; (2) the factors that will trigger an ECM's obligation to notify the Commission of a possible SPDC; (3) the procedures the Commission will follow in reaching its determination whether a contract is a SPDC; and (4) the procedures, standards and timetables by which an ECM with a SPDC must demonstrate compliance with the core principles. Because the criteria mandated by Congress for determining the existence of a SPDC do not lend themselves to bright-line rules or formulas, proposed Appendix A to Part 36 explains how the Commission anticipates applying the criteria, on a case-by-case basis, to the facts and circumstances under consideration.

Consistent with the Reauthorization Act, the CFTC's proposed rules required ECMs with SPDCs to establish a self-regulatory regime with respect to those contracts. Those responsibilities generally are set forth in nine core principles, largely derived from counterpart provisions for DCMs, including core principles that require the ECM to implement an acceptable trade monitoring program; to develop an audit trail in order to detect and deter market abuses; to adopt position limitations or position accountability levels for speculators in SPDCs; to develop and implement procedures for the exercise of emergency authority; to make public daily trading information; to develop a program to monitor compliance with the ECM's rules; to establish rules to minimize conflicts of interest in the decision-making process of the ECM; and to avoid taking any actions or adopting any rules that result in any unreasonable restraints of trade or impose any material anticompetitive burden on trading on the ECM. Proposed Appendix B to Part 36 offers guidance and non-exclusive safe harbors for compliance with the core principles. In proposing this guidance, the Commission made every effort to construe the ECM core principles in a like manner as it construes the DCM core principles.

Parts 15–21: Market, Transaction and Large Trader Reporting Rules

Collectively, the Commission's market, transaction, and large trader reporting rules (''reporting rules'') effectuate the Commission's market and financial surveillance programs. The market surveillance program analyzes market data to detect and prevent market manipulation and disruptions and to enforce speculative position limits. The financial surveillance program uses market data to measure the financial and systemic risks that large contract positions may pose to Commission registrants and clearing organizations. The Reauthorization Act authorized the Commission to establish a comprehensive transaction and position reporting system for SPDCs when it defined ECMs with SPDCs as registered entities and made certain provisions of the Act directly applicable to SPDCs.[9] In addition to proposing technical and conforming amendments to parts 15 through 21 of its rules, the Commission sought in the proposed rules to extend to SPDCs the reporting rules that currently apply to DCMs and DTEFs by defining clearing member and clearing organization and amending the definition of reporting market in Commission rule 15.00 to apply to positions in, and the trading and clearing of, SPDCs.[10]

Specifically, the NPRM proposed that ECMs be required to provide clearing member reports for SPDCs pursuant to rule16.00. Under proposed rule 16.01, ECMs, like DCMs, would be required to

criteria for DCMs are contained in section 5 of the CEA, 7 U.S.C. 7.

[7] Public Law 110–246, sec. 13204(b)(1).

[8] Part 36 of the Commission's rules contains the provisions that apply to exempt markets regardless of whether the markets are a significant source for price discovery. Rule 36.3 imposes a number of requirements on ECMs, including required notification of intent to rely on the exemption in section 2(h)(3) of the Act; initial and ongoing information submission requirements; prohibited representations; required price discovery notification; and price dissemination requirements.

[9] Specifically, section 4a of the CEA permits the Commission to set, approve exchange-set, and enforce speculative position limits. 7 U.S.C. 6a. Section 4c(b) of the Act, 7 U.S.C. 6c(b), gives the Commission plenary authority to establish rules pursuant to which the terms and conditions on which commodity options transactions may be conducted and provides the basis for the Commission's authority to establish a large trader reporting system for transactions on ECMs that involve commodity options. Section 4g of the Act imposes reporting and recordkeeping obligations on registered persons and requires them to file reports on positions executed on any board of trade and in any SPDC traded or executed on an ECM. 7 U.S.C. 6g. Finally, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on DCMs, DTEFs or ECMs with respect to SPDCs equal or exceed Commission-set levels. 7 U.S.C. 6i.

[10] Consistent with ECM Core Principle IV's directive that ECMs take into account contracts that are treated by DCOs as fungible with a SPDC when establishing position limits or accountability levels for SPDCs, in this section the term SPDC will include any contracts that are fungible and cleared by DCOs together with SPDCs.

submit to the Commission and publicly disseminate option deltas and aggregated trading data on a daily basis.[11] ECM clearing members that clear SPDCs would, regardless of their registration status with the Commission or their status as domestic or foreign persons, be required to file reports for large SPDC positions when the positions meet or exceed the contract reporting levels of Commission rule 15.03(b). In addition, the NPRM proposed to require clearing members to identify the owners of reportable SPDC positions on Form 102.[12] Under the proposed rules, SPDC traders likewise would be subject to the special call provisions of the Commission's part 18 rules for reportable positions. Furthermore, the Commission proposed that clearing members clearing SPDCs, SPDC traders, and ECMs listing SPDCs would each be subject to the special call provisions of the part 21 rules.[13]

In order to communicate effectively with foreign clearing members and foreign traders and to properly administer the proposed special call provisions of parts 17, 18 and 21 of the Commission's rules, the Commission also proposed to amend the designation of agent provisions of rule 15.05 to require ECMs that list SPDCs to act as the agent of foreign clearing members and foreign traders for the purpose of accepting service or delivery of any communication, including special calls, issued by the Commission to a foreign clearing member or trader. The Commission also proposed new rule 16.02 to require all reporting markets, including ECMs listing SPDCs, to report on a daily basis trade data and related order information for each transaction that is executed on the market,[14] and to specify the information to be included in such reports.[15] In this regard, while the Commission proposed amendments to its part 17 rules dealing with reportable positions, it did not extend those proposals to SPDC transactions that are not cleared for the simple reason that no clearing members are involved in clearing such transactions. For purposes of enforcing SPDC position limits and monitoring large SPDC positions, the Commission anticipated using proposed rule 16.02 to access transaction information and trader identification to enforce position limits and monitor large positions for market and financial surveillance purposes.

Part 40: Provisions Common to Registered Entities

The Reauthorization Act amended the definition of ''registered entity'' in section 1a(29) of the CEA to include ECMs with SPDCs. Because certain provisions in part 40 of the Commission's rules apply to registered entities—and, accordingly, to ECMs with SPDCs—the Commission proposed to amend part 40 to specify the provisions which would be applicable to all registered entities.[16] The Commission emphasized in its NPRM that although not all provisions of part 40 will be applicable to ECMs with SPDCs, even sections that are not being amended in this rulemaking may be *de facto* amended by virtue of the fact that the term ''registered entity'' now includes ECMs with SPDCs.

### *C. Overview of Comments Received*[17]

*General.* The Commission received a total of eleven comments from a range of commenters, including a government agency,[18] several trade associations,[19] two ECMs,[20] an interdealer broker in over-the-counter (''OTC'') energy markets,[21] and a DCM.[22] Most commenters expressed support for the proposed rules and several particularly commended the Commission's adherence to the letter and spirit of the Reauthorization Act. Several commenters offered specific recommendations for clarification or modification of certain provisions. These comments will be addressed more fully below. The Commission notes that some commenters requested that particular rules and core principle guidance proposed for ECMs be modified to mirror analogous provisions for DCMs. In this regard, the Commission reminds interested parties that the Reauthorization Act did not mandate identical rules for ECMs and DCMs, and the Commission has attempted to craft rules tailored to the special concerns raised by SPDCs. In that same vein, interested parties should bear in mind that Commission acceptable practices for all core principles do not denote requirements under the Act; rather, they offer safe harbors. Registered entities always have the option of crafting alternate means of complying with core principles than those set forth in the Commission's acceptable practices.

*Core Principle IV.* Several commenters expressed substantive concerns with respect to the Commission's proposed guidance and acceptable practices for compliance with Core Principle IV (Position Limitations or Accountability). Specifically, these commenters objected to the Commission's proposal that ECM market surveillance programs account

[11] The NPRM also proposed to uniformly apply the public dissemination requirement of Commission rule 16.01(e) to DCMs, DTEFs, and ECMs with SPDCs.

[12] The Commission's Division of Market Oversight (''DMO'') increasingly has been charged with administering the procedural requirements of the reporting rules. Accordingly, the Commission proposed to shift the delegation of the Commission's authority to determine the format of reports and the manner of reporting under parts 15 to 21 of the Commission's rules from the Executive Director to the Director of DMO.

[13] Part 21 of the Commission's rules establishes the Commission's ability to request information on persons that exercise trading control over commodity futures and options accounts along with additional account-related information for positions that may or may not be reportable under Commission rule 15.03(b). The final rules amend paragraphs (i)(1) and (i)(2) of rule 21.02 to ensure that any special call to an intermediary for information that classifies a trader as commercial or noncommercial, and the positions of the trader as speculative, spread positions, or positions held to hedge commercial risks, can be made with respect to both commodity futures and commodity options contracts. 17 CFR 21.02)(i).

[14] For some time, DCMs consistently have provided transaction level data on request by the Commission pursuant to rule 38.5(a). Proposed rule 16.02 would make such submissions mandatory.

[15] Such reports would include time and sales data, reference files and other information as the Commission or its designee may request; upon request, this information could be accompanied by data that identifies or facilitates the identification of each trader for each transaction or order included in a submitted report. The Commission noted in the NPRM that recent acquisitions of technology have enabled the agency to more effectively integrate trade data and related orders into its trade practice, market, and financial surveillance programs. Accordingly, new rule 16.02 would make the submission of such information mandatory.

[16] In particular, the proposed amendments to part 40 made rules 40.1, 40.2 and 40.5–40.8 and Appendix D specifically applicable to ECMs with SPDCs.

[17] In this NPRM, comment letters (''CL'') are referenced by the letter's author and/or file number and page. These letters are available through the Commission's Internet Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2008/08-012.html.*

[18] The Federal Energy Regulatory Commission (''FERC'') (CL 05) responded to the CFTC's request for comments but did not comment on the particulars of the proposed rules.

[19] American Feed Industry Association (''AFIA'') (CL 04) (representing animal feed interests); International Swaps and Derivatives Association, Inc. (''ISDA'') (CL 06) (representing participants in the privately negotiated derivatives industry); American Public Gas Association (''APGA'') (CL 07) (the national association for publicly-owned natural gas distribution systems); Society of Independent Gasoline Marketers of America (''SIGMA'') (CL 08) (a national trade association representing independent chain retailers and marketers of motor fuel); Air Transport Association of America, Inc. (''ATA'') (CL 09) (airline trade association); Managed Funds Association (''MFA'') (CL 10) (representing the global alternative investment community).

[20] HoustonStreet Exchange (CL 01); InterContinental Exchange, Inc. (''ICE'') (CL 03).

[21] OTC Global Holdings, Inc. (CL 11) OTC Global Holdings has submitted notification to the Commission of its intent to operate a market pursuant to the exemption found in section 2(h)(3) of the Act.

[22] CME Group (CL 02).

for uncleared transactions through volume accountability levels (based on a measure of net uncleared trading calculated by netting each trader's long and short uncleared transactions against the same counterparty). As more fully discussed below, the Commission believes the issues and recommendations raised by these commenters merit further attention and study. The Commission is mindful, however, that the time constraints imposed by the Reauthorization Act for issuing final rules implementing section 2(h)(7) do not permit the level of study necessary to properly address and resolve these issues.[23] Moreover, even if the Commission was prepared immediately to adopt some or all of the suggested changes, they reflect a substantial departure from the proposed guidance that might warrant re-proposal under the Administrative Procedure Act.[24]

For these reasons, the Commission, in an abundance of caution, has determined not to make final its Core Principle IV proposed guidance and acceptable practices relating to uncleared trades pending a full and complete evaluation of the issues raised in these comments. Accordingly, upon publication of this notice of final rulemaking, the Commission intends to immediately examine these issues and to issue a notice of proposed rulemaking that specifically addresses appropriate guidance and acceptable practices for uncleared trades on ECMs.

Like all core principles, Core Principle IV is statutory, and the Commission's decision not to provide particular guidance or safe harbors with respect to ECM uncleared trades at this time does not diminish an ECM's obligation to comply with the core principle itself. In that regard, the Commission reminds interested parties that section 2(h)(7)(C)(ii) of the CEA gives an electronic trading facility explicit discretion to take into account differences between cleared and uncleared SPDCs in applying the position limits and accountability core principle.[25] Likewise, the Commission will take these differences into account when reviewing an ECM's implementation of a core principle, as directed by section 2(h)(7)(D)(i).

## II. The Final Rules

### *A. Part 36—Exempt Markets*

Part 36 of the Commission's rules governs both exempt boards of trade and ECMs, regardless of whether any individual contract traded thereon is a significant source for price discovery. As described *infra,* Rule 36.3 more particularly imposes a number of requirements and restrictions on ECMs, including notification of the ECM's intent to rely on the section 2(h)(3) exemption; initial and ongoing information submission requirements; prohibited representations; price discovery notification; and price dissemination requirements. The Commission is adopting as proposed the provisions of Rule 36.3(b) that separately specify the information submission requirements, both initially and on an ongoing basis, for all ECMs and for ECMs with respect to agreements, contracts or transactions that have not been determined to perform a significant price discovery function.

The Commission is adopting as proposed the substance of that provision's enhanced reporting requirements for ECMs with SPDCs. However, the final rules will correct an error in numbering in rule 36.3(b)(2). As proposed, rule 36.3(b)(2)(i) provided that ECMs, with respect to contracts that have not been determined to be SPDCs, must identify to the CFTC those contracts that averaged five trades per day or more over the most recent calendar quarter, and for each such contract, either: pursuant to subparagraph (A), submit a weekly report to the CFTC showing specific information; or, pursuant to subparagraph (B)(1), provide the Commission with electronic access sufficient to allow it to compile the same information. The rule then also required in subparagraph (B)(2) through (B)(4) that the ECM maintain and provide the CFTC with other records.[26] These last three requirements were incorrectly numbered. Because they apply regardless of whether the ECM has elected the weekly reporting path of rule 36.3(b)(2)(i)(A) or to provide access to the CFTC pursuant to rule 36.3(b)(2)(i)(B), these requirements properly are numbered as 36.3(b)(2)(ii)–(iv) rather than as 36.3(b)(2)(i)(B)(2)–(4).[27]

Proposed rule 36.3(c) and Appendix A to Part 36 set forth the procedures and guidance, respectively, which the Commission will use in determining whether an ECM agreement, contract or transaction is a SPDC. The Commission is adopting, substantially as proposed, Appendix A and its general guidance as to how the Commission expects flexibly to apply the four criteria specified in section 2(h)(7) of the CEA for determining a SPDC—price linkage, arbitrage, material price reference and material liquidity. Although much of rule 36.3(c) and its SPDC-determination procedures are being adopted as proposed, some provisions have been modified in response to comments and some have been modified to reflect technical and clarifying changes.

The Commission has made a technical correction to proposed new rule 36.3(c)(1)(i). This rule is intended to track the statutory language added to the CEA by the Reauthorization Act as section 2(h)(7)(B)(i), which provides that in determining a SPDC, the Commission shall consider, as appropriate,

> PRICE LINKAGE—The extent to which the agreement, contract, or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market or a derivatives transaction execution facility, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.

As proposed, section 36.3(c)(1)(i) inadvertently dropped a portion of the statutory language. The final rules have been corrected to reflect the complete statutory provision.

As proposed, rule 36.3(c)(3) provides that the Commission will issue an order determining whether a contract is a SPDC after consideration of all relevant information, including any ''data, views and arguments'' submitted to the Commission in response to **Federal Register** notification of the Commission's intent to so evaluate the contract. The proposed rule did not include a timeframe for issuance of such an order. CME Group suggests that the public interests underlying the regulatory oversight requirements for

[23] Congress has directed that the Commission issue proposed rules implementing section 2(h)(7) of the CEA not later than 180 days after the date of enactment of the Reauthorization Act (June 18, 2008), and that the Commission issue final rules no later than 270 days after the date of enactment. Public Law 110–246 at section 13204.

[24] 5 U.S.C. 553.

[25] *See also* Conference Committee Report at 985–86.

[26] Subparagraph (B)(2) required that the ECM maintain a record of allegations and complaints; subparagraph (B)(3) direct the ECM to provide the CFTC with a copy of the record of each complaint relating to violations of the CEA; pursuant to subparagraph (B)(4) the ECM must provide the Commission with a quarterly list of transactions executed in reliance on the section 2(h)(3) exemption and indicate the terms and conditions, average daily trading volume, and most recent open interest figures for each such transaction.

[27] To complete this technical correction, proposed rule 36.3(b)(2)(i)(B)(1) is properly numbered as 36.3(b)(2)(i)(B) in the final rules.

SPDCs dictate that such determinations be issued within a reasonable timeframe following the close of the comment period for the **Federal Register** notification.[28] The Commission is committed to the prompt and thorough processing of SPDC determinations and agrees, as CME Group suggests, that absent special circumstances, its order generally should issue within 60 days of the closing of the comment period. We are aware, however, that the term ''special circumstances'' may take its meaning from the particular context, including but not limited to the volume of work before the agency and the complexity of the submission under review, and we are reluctant to define those circumstances by rule. The Commission instead has modified rule 36.3(c)(3) to specify that the Commission shall promptly consider relevant information and shall issue an order explaining its determination within a reasonable period of time after the close of the comment period.[29]

Proposed rule 36.3(c)(4) established the timetables for compliance with the core principles by ECMs that have been determined to have a SPDC, providing a 90-day grace period for an ECM's initial SPDC and a 15-day grace period for subsequently-identified SPDCs traded on the same ECM. CME Group suggests that the passage of the Reauthorization Act put ECMs on notice that one or more of their contracts may become a SPDC at some future date; in its view, a 45-day grace period should be sufficient for all ECMs. ATA also views a 90-day grace period as excessive in light of ECMs' sophistication and suggests that ECMs can demonstrate compliance with the core principles in 60 days. With due regard for the market integrity interests associated with the core principles, we disagree that all ECMs will be able, in every circumstance, to demonstrate compliance with all the core principles within 45 or 60 days. While larger, established ECMs may be prepared to develop core principle compliance strategies in anticipation of a SPDC determination, the grace period must also permit ECMs that are less well-established sufficient time to develop and implement programs responsive to the core principles. Accordingly, the Commission has adopted as final the 90-day grace period for initial compliance with the core principles.

Although ISDA found the 90-day time frame reasonable, noting that it allows market participants to make necessary changes to their trading system to ensure compliance with the core principles,[30] it objected to the 15-day grace period for subsequently-identified SPDCs and urged the Commission to extend the timeframe in recognition of the additional obligations compliance imposes and the likely system changes required of ECMs.[31] ICE noted that both the 90-day and 15-day grace periods generally allow sufficient time for an ECM to comply with the core principles, but warned that 15 calendar days may not be sufficient time for clearing firms that outsource large trader reporting to meet the reporting requirements. The Commission has considered these suggestions and believes that 30 calendar days should be sufficient to ensure that clearing firms can meet the reporting requirements and avoid market disruptions. Rule 36.3(c)(4) has been modified accordingly to grant a 30-day period for ECMs to come into core principle compliance for their subsequent SPDCs. In addition to this change, the Commission has determined to clarify rule 36.3(c)(4) by changing the second sentence of this provision [32] to read ''* * * one of the electronic trading facility's agreements, contracts or transactions performs a significant price discovery function* * *''

In order to clarify its intent and eliminate a redundancy in paragraph (B)(4) of Appendix A, the Commission is amending Appendix A to part 36 as follows: Paragraph (B)(4) is deleted in its entirety as repetitive of paragraph (B)(3). In paragraph (B)(3), the language beginning with ''In combination with this volume level'' will become new paragraph (B)(4).

### *B. Substantive Compliance With Core Principle IV: Guidance and Acceptable Practices*

Although comments addressing the nine ECM SPDC core principles generally expressed satisfaction with the Commission's proposed guidance and acceptable practices, the Commission's guidance for substantive compliance with Core Principle IV—particularly with respect to speculative position limits and the treatment of uncleared contracts—was a cause for concern among several commenters. Their comments are summarized below.

*1. The Commission's authority with respect to uncleared trades.* In its comment letter, ISDA questioned the Commission's authority under the Reauthorization Act to address limits for uncleared SPDC transactions in its Core Principle IV acceptable practices.[33] In support, ISDA cites Core Principle IV's direction that ECMs take into account positions in other ''agreements, contracts, and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible'' with a SPDC when determining appropriate position limitations or accountability for the SPDC.[34] The Commission believes that Congress did not so limit the Commission's authority with respect to uncleared SPDC transactions; on the contrary, both the statutory language and the legislative history make plain that Congress intended for new CEA section 2(h)(7) to apply to all SPDCs, whether cleared or uncleared. The Conference Committee report emphasizes that the legislation gives electronic trading facilities ''the explicit discretion to take into account differences between cleared and uncleared SPDCs in applying the position limits or accountability core principle.'' [35] And CEA section 2(h)(7)(D) directs the Commission to ''take into consideration the differences'' between cleared and uncleared trades in reviewing an ECM's implementation of the core principles. Under principles of statutory construction, Congress must be presumed to have said what it meant.[36] The Commission believes that the ECM SPDC Core Principle IV clause cited by ISDA in support of its argument stands for a different proposition altogether. Specifically, the clause pertains to

[28] CME Group CL 02 at 7–8.

[29] The ATA urged the Commission to revise proposed rule 36.3(c)(3) ''to provide 14 calendar days notice, not 30, of its intention to designate a contract as an SPDC.'' CL 09 at 5. The Commission wishes to clarify that rule 36.3(c)(3) establishes a 30-day notice and comment period following the Commission's notice of its intention to undertake a determination whether a particular contract is a SPDC. ATA further urges the Commission to specify that it will issue a final determination no later than 14 days from the end of the comment period. As discussed *supra,* while the Commission is committed to reviewing potential SPDCs as expeditiously as possible, in our view 14 days is inadequate to review and issue a determination on any SPDC and in most cases would preclude an adequate evaluation of complex matters.

[30] ISDA CL 06 at 3.

[31] *Id.* ISDA's comment did not recommend a specific time period.

[32] As proposed, the relevant phrase reads as follows: ''* * * the electronic trading facility's agreement, contract or transaction performs a significant price discovery function* * *'' *See* 73 FR 75888 at 75911.

[33] ISDA CL 06 at 2.

[34] *Id.*

[35] Conference Committee Report at 985–86; Public Law 110–246 at 13201.

[36] Where the plain language of a statute is clear, courts generally will presume that Congress meant precisely what it said absent a showing that ''as a matter of historical fact, Congress did not mean what it appears to have said, or that, as a matter of logic and statutory structure, it almost surely could not have meant it.'' *Engine Mfrs. Ass'n* v. *EPA,* 88 F.3d 1075, 1089 (D.C. Cir. 1996), quoted *in National Public Radio, Inc. et al.* v. *FCC,* 254 F.3d 226, 230 (D.C. Cir. 2001).

transactions in ''other agreements, contracts and transactions.'' Accordingly, Congress directed ECMs to include certain non-SPDC transactions when applying position limitations and/or accountability levels to a SPDC. So, for example, if another non-SPDC ECM contract or even a contract executed off of a trading facility pursuant to CEA Section 2(h)(1) is fungible and cleared together with a SPDC, the subject ECM should take those non-SPDC positions ''into account'' when administering the SPDC's position limit or accountability regime.

*2. Grace period for open positions.* As proposed, the acceptable practices for Core Principle IV permitted a grace period of 90 calendar days from the ECM's implementation of speculative position limit rules for traders to comply with those rules unless a hedge exemption is granted by the ECM. MFA has recommended that the Commission, rather than creating a new grace period applicable only to SPDCs, should rely on the existing standards of section 4a(b)(2) of the CEA[37] and the standards applied to exchange-set speculative position limits under rule 150.5(f).[38] The Commission believes that this recommendation is premised on a misunderstanding of the statutory and regulatory structures governing exchange-set speculative position limits. As MFA notes, section 4a(b)(2) applies to Commission-set speculation limits, not exchange-set limits.[39]

Furthermore, Rule 150.5(f) no longer has direct application to DCM-set position limits. The statutory authority governing DCM-set limits is found in CEA section 5(d)(5)— DCM Core Principle 5.[40] That core principle does not contain any aspect of the exemptive language found in either CEA section 4a or Rule 150.5(f). Moreover, it should be noted that the part 38 rules explicitly exempt agreements, contracts or transactions traded on a DCM from all Commission rules other than those specifically referenced in Rule 38.2. That provision did not retain Rule 150.5(f).[41] Further, although the acceptable practices for Core Principle 5 (which are found in Appendix B to part 38) contain many of rule 150.5's provisions, they do not specify the rule 150.5(f) good faith exemption. Accordingly, the part 150 rules essentially constitute guidance for DCMs administering position limit regimes, Commission staff in overseeing such regimes has not required that position limits include an exemption for positions acquired in good faith.

The Reauthorization Act established Core Principle IV as part of new CEA section 2(h)(7) to require the establishment of position limitations or accountability levels for SPDCs listed on ECMs. As with DCM Core Principle 5, ECM Core Principle IV does not contain the exemptive provision for positions established in good faith—nor do its acceptable practices rely for authority on section 4a of the CEA. For this reason, the Commission was not obliged to adopt such a good faith exemption.[42] In the Commission's view, the primary goal for an ECM with a SPDC should be to ensure that large positions not be disruptive to the market. Indeed, a sudden decrease in a position to meet an ECM's newly-adopted position limit could itself be disruptive. The Commission's proposed acceptable practice was crafted to permit market participants to make any necessary adjustments to their positions in an orderly fashion, thus reducing market disruptions and avoiding, as much as possible, an unfair impact on position holders. For the reasons discussed in these sections, the Commission has determined to adopt the acceptable practice as proposed (except with respect to uncleared trades, as discussed *infra*), and reminds interested parties that acceptable practices serve as a safe harbor and do not represent the only means of compliance with the core principles.

3. Position Accountability

MFA also encourages the Commission to bring its Core Principle IV acceptable practices with respect to position accountability into closer alignment with its acceptable practices for DCMs. Although perfect symmetry between the DCM and ECM core principles and acceptable practices was not mandated by the Reauthorization Act and is not a primary goal of this rulemaking, it is the Commission's view that its expectations for DCMs and ECMs in this regard are not significantly different. MFA argues that ''DCMs are not mandated to conduct an inquiry in response to every breach of a position accountability level. Rather, DCMs have the discretion to determine whether to open an inquiry in particular cases.'' [43] So, too, do ECMs under the Core Principle IV acceptable practices.[44] Unlike position limits, accountability levels are not limitations on position sizes, as traders are permitted to take positions in excess of the established accountability levels. ECMs are obliged to monitor trading in their markets and to discourage manipulative activity in the spot month as well as in back months; the purpose of accountability levels is to provide the ECM with additional information and authority to address positions that threaten to create disorderly trading or market abuses. For positions that exceed a position accountability level, appropriate action by the ECM may be dictated by a number of factors, including characteristics of the market and the size of the position relative to the market. For smaller positions that exceed the accountability level, the ECM may find that placing such positions on a ''close watch'' is appropriate. For larger positions, depending on the potential threat to the market, it may be appropriate for the ECM to request that the trader not further increase (or even reduce) a position. Market liquidity also should be considered when monitoring traders with positions above the accountability level; an ECM may find it appropriate to more aggressively limit positions in markets that are relatively illiquid. In any event, ECMs are reminded that the acceptable practices serve as safe harbors; alternative methods to monitor trading may be sufficient.

Also in connection with the ECM's monitoring of positions, the Commission has considered MFA's concern that the term ''investigation'' may connote a level of wrongdoing which, in turn, might inadvertently render a commodity pool ineligible to receive investor funds[45] or otherwise have an adverse effect on a trader's business. Although the Commission believes such a misimpression is unlikely, we have modified the acceptable practice to replace the word ''investigation'' with ''inquiry.''

With regard to establishing position accountability levels in non-spot months and all months combined, MFA questioned why ECMs are given specific guidance—that is, the ''10% of open

[37] 7 U.S.C. 6a(b)(2).

[38] MFA CL 10 at 6.

[39] *Id.*

[40] ''(5) Position Limitations or Accountability.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.'' 7 U.S.C. 7(d)(5).

[41] 17 CFR 38.2.

[42] In part for the reasons discussed in this section, the Commission expects in the near future to revisit and clarify Core Principle 5 for DCMs.

[43] MFA CL 10 at 4.

[44] MFA points to the directive in the Core Principle IV acceptable practices that an ECM ''should initiate'' an inquiry once a trader exceeds a position accountability level as an indication that action is mandated in every case. The Commission does not view this language as a mandate; as noted above, acceptable practices serve as safe harbors and do not represent the only means of compliance with the core principles.

[45] MFA CL 10 at 4.

interest'' standard—while DCMs are free to determine their own methodology.[46] Again, the Commission wishes to emphasize that its guidance for ECMs need not follow precisely the guidance it has offered—or not offered—for DCMs. The Commission believes it is sound practice for DCMs and ECMs to adopt non-spot month and all-months-combined position accountability levels or position limits and believes the specific guidance offered in this acceptable practice will be beneficial to ECMs wishing to take advantage of the safe harbor. Moreover, the Commission intends shortly to revisit DCM Core Principle 5 with a view to providing more specific guidance with respect to non-spot month and all-months-combined position accountability levels. Finally, the Commission wishes to remind interested parties that the ''10% of open interest'' standard for determining position accountability levels applies to unique SPDCs (i.e., cleared ECM contracts that are determined to be SPDCs based on material price reference grounds, rather than on the basis of economic equivalence[47] with another contract through a price linkage or arbitrage relationship). The acceptable practices for non-unique, economically-equivalent SPDCs provide that the ECM may adopt the accountability levels adopted by the DCM for the underlying contract.[48] As noted, the Commission expects to further consider the treatment of uncleared trades and anticipates proposing rule amendments as well as guidance and acceptable practices in the near future.

*Speculative Position Limits: Accountability Levels for Uncleared Trades.*

Both ISDA[49] and ICE[50] opined that requiring ECMs to adopt the same speculative position limits as an ''unaffiliated'' DCM would be anticompetitive since the DCM would have the authority to dictate the ECM's position limits even where an ECM is the dominant, more liquid market. CME Group and APGA suggest that the Commission should propose comprehensive, industry-wide speculative position limits that would apply to both cleared and uncleared transactions.[51] Similarly, MFA suggested that SPDCs should be incorporated into the existing regulatory framework because a separate category for uncleared trades could impede a trader's ability to reflect the true net economic exposure of a position and could chill legitimate economic activity.[52]

APGA supports the use of spot month speculative position limits as an effective tool for addressing contracts on commodities—such as natural gas—with constrained deliverable supplies.[53] It urges, however, that the Commission modify its proposed guidance such that an ECM must account for positions that may be held on another registered entity in economically-related SPDCs in setting such limits. Without such a revision, APGA believes that traders will be able to amass a far larger speculative position in the spot month by dividing its position among several markets or market segments for SPDCs.[54] Accordingly APGA urges that the volume accountability level for uncleared contracts should be included in calculating the size of a trader's position for speculative position limits purposes. APGA expresses similar concerns with respect to the Commission's proposal in the Core Principle IV guidance, and similarly suggests the establishment of separate accountability levels for cleared and uncleared trades and a separate volume accountability level in the spot month.[55] CME Group agrees that the proposed guidance should be reconsidered, and pointed out that the disparate standards provided by the acceptable practices make it possible for a trader to maintain double the position permitted for an economically equivalent contract on a DCM. CME Group believes that there should be one position limit and one associated set of accountability levels for non-spot contracts that apply across all activities for a SPDC, including cleared and uncleared trades.[56]

As noted above, these and other recommendations related to the proposed guidance and acceptable practices for Core Principle IV with respect to uncleared trades raise complex issues which, in the Commission's view, warrant further serious consideration before a decision can be made whether, and to what extent, they should be implemented. For this reason, the Commission has determined not to make final those aspects of the Core Principle IV guidance and acceptable practices relating to uncleared trades pending additional study of these comments and consultation with the commenters and others, culminating in a subsequent rulemaking proposing guidance and acceptable practices applicable to uncleared trades. As part of this process, and in the course of formulating that proposed guidance, the Commission will consider the issues raised in the comments received in connection with the instant rulemaking.

### *C. Market, Transaction and Large Trader Reporting Rules*

*Reporting Rules.* With the three substantive exceptions noted below, the

[46] *Id.* at 4–5.

[47] With regard to ICE and ISDA's concern that economic equivalence is subjective (ICE CL 03 at 5; ISDA CL 06 at 2–3); the Commission believes the concept of economic equivalence is relatively straightforward. Essentially, the concept is designed to capture SPDCs that replicate or serve as a close substitute for a corresponding DCM, DTEF or second ECM SPDC contract. In this regard, any SPDC that is cash settled based on another contract's settlement price will be considered economically equivalent, assuming sufficient volume. In addition, SPDCs that can be used to arbitrage price discrepancies may be considered economically equivalent to DCM contracts. For arbitragable contracts to be considered economically equivalent, both the prices and the contract terms would have to be highly correlated. As part of its determination whether a particular contract is an SPDC, the Commission will indicate whether it considers the SPDC economically equivalent to another contract.

[48] ICE and ISDA warned that requiring an ECM to adopt a DCM's position limits for its economically-equivalent SPDCs may have anticompetitive implications for trading on an ECM (ICE CL 03 at 6; ISDA CL 06 at 3): a DCM could set an artificially low position limit for its own contract in order to squeeze out an ECM. The Commission does not believe this is a likely consequence of its acceptable practice. First, assuming that the DCM contract is the dominant market, setting the spot-month limit at an extraordinarily low level would limit trading in its own contract, which would be self-defeating. Secondly, the instant procedures are acceptable practices that provide a safe harbor; they are not rules or requirements, and they do not comprise all possible means of satisfying Core Principle IV. If an ECM believes that a DCM is engaging in anticompetitive behavior (which is itself the subject of a core principle for both ECMs and DCMs), it should notify the Commission and should propose alternative position limits and/or accountability levels that are reasonable and based on economic analysis.

[49] ISDA CL 06 at 3.

[50] ICE CL 03 at 5–6.

[51] CME Group CL 02 at 6; APGA CL 07 at 3–4.

[52] MFA CL 10 at 6. AFIA requests that as part of the final rule the Commission exercise its authority to remove the exemption for position limits that has been given to Index Speculator Funds. CL 04 at 2–3. The Commission appreciates AFIA's concern but notes that such an action is beyond the scope of the instant rulemaking.

[53] APGA CL 07 at 2–3. APGA also suggested that the Commission set federal speculative limits for exempt commodities and that such limits should be applied to a given trader's aggregate position in economically-equivalent contracts across all registered entities. While innovative and worthy of further consideration in the future, the Commission believes these recommendations are beyond the scope of the instant rulemaking.

[54] APGA CL 07 at 2–3.

[55] *Id.* at 5–6. APGA argues that the separate volume accountability category potentially would enable speculative traders to amass a larger position before prompting an inquiry by the ECM. More critically, where there is a separate volume accountability level in the spot-month, APGA stated that a trader can readily avoid a spot month speculative position limit by holding a combination of cleared and uncleared positions, even on the same market.

[56] CME Group CL 02 at 6.

Commission is promulgating the reporting rules as proposed.[57] Five commenters addressed the proposed reporting rules. ATA expresses support for the extension of the reporting rules to SPDCs—specifically, ATA endorses the application of the reporting requirements to ECM clearing members that clear SPDCs, regardless of their registration status with the Commission or their status as foreign or domestic persons.[58] ATA additionally expressed support for the use of transaction and trader identification data that would be collected under new rule 16.02 to monitor large SPDC positions. Four commenters expressed general concerns or recommended the adoption of additional or alternative amendments to the reporting rules.

CME Group, for example, observes that while the acceptable practices for Core Principle IV advise ECMs to establish an effective program for enforcement of SPDC position limits that should include a large trader reporting system to monitor and enforce daily compliance with position limit rules, Appendix B to Part 36 does not establish similar acceptable practices that tie large trader reporting requirements to the daily monitoring of volume accountability levels for uncleared SPDCs.[59] As noted above, the Commission intends expeditiously to propose rules and acceptable practices that will focus on position limit and accountability rules for uncleared SPDCs. The Commission intends to address CME Group's concern at that time.

HoustonStreet, an ECM, opined that voice brokers must be subject to the same reporting requirements as ECMs to ensure a level playing field in the OTC energy markets and to prevent market participants from avoiding transparency and disclosure obligations.[60] The Commission does not have authority under the CEA to directly extend the reporting rules to voice-brokered transactions which are not entered into in reliance on a section 2(h)(3) exemption and are not otherwise fungible with SPDCs for clearing purposes. Although the Commission does have the authority to require the reporting of all OTC and cash market positions (including voice-brokered transactions) under section 4i of the Act when traders' positions in contracts executed on or subject to the rules of a registered entity exceeds fixed thresholds, such an extension of the reporting rules is beyond the scope of this rulemaking.[61]

ISDA comments that the reporting rules' references to clearing members ''carrying'' large positions may be inappropriate in the context of transactions that are executed on ECMs, which by definition are principal-to-principal markets that do not permit some forms of intermediation.[62] With respect to ECMs, the Commission reiterates that the large trader reporting requirements of part 17 place the burden of routine position reporting on clearing members that clear positions for market participants or clear proprietary transactions. The term ''carry'' is used in the reporting rules to refer to and encompass both positions that are cleared for market positions and those that are cleared for the benefit of proprietary accounts. In either instance, the reporting rules view the clearing member to be carrying positions that, when in excess of the levels delineated in rule 15.03, would be reportable as part of a special account under part 17 of the Commission's rules. The continued use of the term ''carry'' in the reporting rules is consistent with the nature of ECM transactions. In coming to this determination, the Commission understands that clearing members that clear transactions for ECM market participants, although not executing SPDC or SPDC-fungible transactions on behalf of market participants, are in part providing clearing intermediation and taking on certain responsibilities that may be associated with executing brokers. In addition, the reporting rules generally need a working vocabulary that is flexible enough to cover transactions that are executed on disparate market structures and subject to different clearing methods. Because the reporting rules heretofore have not been applied to ECM transactions, the Commission will be mindful of the potential for ambiguities in the application of the rules to SPDCs and SPDC-fungible transactions, will monitor for the specific concerns raised by ISDA, and will implement appropriate amendments should they be required.

APGA raises a number of concerns and offered several recommendations. APGA noted that as proposed, the reporting rules would not routinely provide information on a SPDC trader's large uncleared positions and thus would leave a gap in the Commission's ability to collect necessary trader and market data. APGA initially notes that the transaction reporting requirements of new rule 16.02, which the Commission intends to use in part for market surveillance purposes, may not significantly improve the Commission's surveillance capability because of the possible inability to link the transaction-based information collected under the rule with a particular trader.[63] The language of new rule 16.02 requires all reporting markets, including ECMs with SPDCs, to report trade data and related order information for each transaction executed on the market, and upon request to accompany such data with information that identifies or facilitates the identification of each trader for each reported transaction. Since rule 16.02 only extends the identification requirement to markets that independently maintain such data, APGA is concerned that unless ECMs are explicitly required to maintain identifying information, the Commission will be unable to obtain the data it needs to construct an accurate picture of a trader's large positions in SPDCs.

Section 2(h)(5)(B)(ii)(I) of the Act requires all ECMs to maintain current records that include the name and address of each participant that is authorized to enter into transactions on the facility in reliance on section 2(h)(3) of the Act. In addition, final rule 36.3(b)(1) mandates that ECMs demonstrate that they require each authorized market participant to be an eligible commercial entity and that all contracts will be entered into solely on a principal-to-principal basis. The rule also requires that ECMs have in place a program to routinely monitor participants' compliance with these requirements. The Commission believes that the nature of the section 2(h)(3) qualified exemption itself, along with the above-mentioned statutory and regulatory requirements, mandates that ECMs know the identity of each trader for each transaction effected by such trader on or subject to the rules of the electronic trading facility regardless of whether such transactions are subject to centralized clearing or settled bilaterally by the executing traders. New rule 16.02 applies to all reporting markets, including DCMs. DCMs do not, as a matter of routine practice, collect detailed trader identifying data.[64]

[57] 17 CFR parts 15 through 21.

[58] ATA CL 09 at 8.

[59] CME Group CL 02 at 5.

[60] HoustonStreet, CL 01 at 1.

[61] A routine trader reporting requirement, including the routine reporting of OTC positions, is not a current requirement for any contract traded on or subject to the rules of a DCM.

[62] ISDA CL 06 at 3–4.

[63] APGA CL 07 at 7–8.

[64] Unlike SPDCs traded on ECMs, however, all contracts on DCMs are funneled through clearing members that are subject to the large trader reporting rules. Therefore, the Commission need

Continued

Accordingly, rule 16.02 has been drafted to take into consideration current DCM practice while permitting the Commission to collect detailed trader identification data—which ECMs are required to maintain—from ECMs that are reporting markets.

APGA also argues that even if the Commission did collect identifying data under rule 16.02 from ECMs that are reporting markets, it still would be unable to determine a particular trader's ability to impact market prices without routinely obtaining information with respect to uncleared contracts that are economically related to SPDCs but effectuated off of a registered entity. Accordingly, APGA urges the Commission to use its authority under section 4i of the Act to require that large traders routinely report such transactions.[65] Alternatively, APGA recommends that the Commission at a minimum adopt a formal policy of aggressively using its special call authority under rule 18.05 to request information with respect to such uncleared transactions. APGA describes this policy as one that could require staff to issue special calls for information regarding uncleared positions for all traders that hold positions that are below speculative position limits but which are large enough to be significant.[66]

As discussed above in connection with HoustonStreet's comment letter, the Commission does have the authority, under section 4i of the CEA and the special call provisions of part 18 of its rules, to require traders that hold reportable SPDC positions to report their OTC (cleared and uncleared) and cash market positions. An extension of routine reporting requirements to such positions is, however, beyond the scope of this rulemaking and at odds with a long-established large trader reporting system that places the initial burden of reporting on intermediaries that are typically regulated and well-versed in complying with routine reporting requirements. Any routine reporting requirement imposed on traders as a class would represent a substantial departure from the Commission's current reporting system and would necessitate careful study and consideration prior to a final determination.

Lastly, APGA recommends that for the purpose of regulatory clarity the Commission's special call authority under rule 18.05 be amended to refer directly to traders that hold or control reportable futures or option SPDC positions on ECMs operating under sections 2(h)(3) through 2(h)(5) of the Act.[67] The language of rule 18.05 applies directly to traders with reportable positions. A reportable position, in turn, is defined in rule 15.00 to include commodity futures and options positions on reporting markets—including, with respect to a contract that the Commission determines to be a SPDC—that exceeds the reporting levels established by Commission rule 15.03. Accordingly, the Commission believes that the plain language of rule 18.05, as proposed, is directly applicable to traders that hold or control reportable futures or options SPDC positions on ECMs operating pursuant to sections 2(h)(3) through 2(h)(5) of the Act.

*Changes to the Final Rules.* For the purpose of regulatory clarity and to address generally the concerns raised by the commenters with respect to the scope of the reporting rules, the Commission is defining the terms futures and options contract solely for the purpose of the reporting rules as contracts executed on or subject to the rules of a reporting market, and all agreements, contracts and transactions that are treated by DCOs as fungible with such contracts.[68] The new definition impacts all of the operative provisions of parts 15 through 21 and reinforces and clarifies the applicability of the reporting rules, as proposed and adopted, to ECMs that list SPDCs, to SPDCs and to transactions that are treated as fungible with SPDCs by DCOs.

Rule 16.02 as adopted substitutes for the phrase ''for each transaction executed on the reporting market,'' the phrase ''for each futures or options contract.'' The Commission recognizes that certain transactions that are treated as fungible with SPDCs by DCOs may not clearly be executed on a reporting market, and this change is intended to address that point. In addition, final rule 15.05, which independently defines futures and options transactions, differs from the proposed rule in that it includes a conforming amendment to account for defining the terms futures and options contract in final rule 15.00. Lastly, the final definition of reportable position in rule 15.00 and final rule 19.00 differ from the proposed definitions in that they include nonsubstantive editorial amendments.

## III. Related Matters

### *A. Cost Benefit Analysis*

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted rules outweigh their costs. Rather, section 15(a) requires the Commission to consider the costs and benefits of the subject rules. Section 15(a) further specifies that the costs and benefits of the rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary and appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The final rules implement the Reauthorization Act by establishing an enhanced level of oversight of ECMs and ECM market participants. As a result, in certain cases, it is more appropriate to attribute the compliance costs imposed by the proposed rules to requirements that directly arise from the provisions of the Reauthorization Act.

Under the final rules, all DCMs, DTEFs (unless the Commission determines otherwise) and ECMs with SPDCs are required to provide daily transaction and related data reports to the Commission under rule 16.02. The costs associated with the daily transaction and related data reporting requirements of final rule 16.02, however, are ameliorated by the fact that DCMs have voluntarily provided transactional data to the Commission on a daily basis since the mid-1980s. The Commission estimates that DCMs would account for the substantial majority of the markets that likely would be required to file such reports under final rule 16.02.

The final rules extend the reporting requirements of parts 15 to 21 of the Commission's rules to ECMs with SPDCs and to transactions in SPDCs and SPDC-fungible contracts. The

not rely on new rule 16.02 to conduct DCM market surveillance.

[65] APGA CL 07 at 10.

[66] *Id.* at 9–10.

[67] *Id.*

[68] As noted in text, the Commission is utilizing these definitions solely to clarify the scope of its reporting rules. It does not intend these definitions to have any bearing on determining the boundaries of futures and options transactions over which it has jurisdiction under the CEA.

requirements of the adopted rules are substantial, involve the submission of daily reports, and impose burdens on market participants that clear and trade SPDCs and SPDC-fungible contracts. More specifically, the adopted rules require ECMs with SPDCs to provide clearing member reports for SPDCs and SPDC-fungible contracts to the Commission pursuant to CFTC rule 16.00. Final rule 16.01 requires ECMs to submit to the Commission and publicly disseminate option deltas and aggregated trading data on a daily basis for such transactions. Pursuant to rule 17.00, ECM clearing members that clear SPDCs and SPDC-fungible contracts are required to file reports with the Commission for large positions when such positions meet or exceed the contract reporting levels of rule 15.03. Under rule 17.01, clearing members also must identify the owners of reportable positions on Form 102. SPDC traders likewise are subject to the special call provisions of final part 18 of the Commission's rules for reportable positions, and clearing members, SPDC traders, and ECMs listing SPDCs are each subject to the special call provisions of final part 21 of the Commission's rules.

The costs associated with the requirements of the reporting rules should be reduced in part by the substantial overlap between the persons that already are subject to the reporting rules and the persons that are subject to the reporting rules pursuant to the Commission's final rules. For example, there is substantial overlap between traders of the natural gas contract on ICE and traders of the same contract on NYMEX. With respect to clearing members of ICE, for example, such persons often are clearing members or affiliates of clearing members of NYMEX.

The benefits of extending the reporting rules to SPDCs and SPDC-fungible contracts are substantial. As an initial matter, it is important to note that a significant focus of the Reauthorization Act concerned amending the CEA with the specific intent of giving the CFTC authority to extend its reporting rules to SPDC markets and market participants. To the extent that contracts listed on ECMs serve a significant price discovery function, the regulatory value of enhanced oversight, through the application of the reporting rules to such contracts, is elevated. The Commission analyzes the information funneled to it by the requirements of the reporting rules to conduct financial, market and trade practice surveillance. Without such information, the ability of the Commission to discharge its regulatory responsibilities—including the responsibilities to prevent market manipulations and commodity price distortions and ensure the financial integrity of the listed derivatives marketplace—would be compromised.

The bulk of the costs that are imposed by the requirements of final rule 36.3 relate to significant and increased submission of information requirements. For example, under final rule 36.3(b)(1), all ECMs are required to file certain basic information (including contract terms and conditions) with, and to make certain demonstrations related to compliance with the terms of the CEA section 2(h)(3) exemption to, the Commission. Final rule 36.3(b)(2) requires ECMs to submit transactional information on a weekly basis to the Commission for certain traded contracts that are not SPDCs and would not be subject to the terms of final rule 16.02. Likewise, final rule 36.3(c)(4) imposes a substantial cost on ECMs with SPDCs as a result of the information that such markets are required to submit to the Commission.

In enacting the Reauthorization Act, Congress directed the Commission to take an active role in determining whether contracts listed by ECMs qualify as SPDCs. Accordingly, the Commission has adopted enhanced informational requirements for ECMs with respect to contracts that have not been identified as SPDCs specifically for the purpose of acquiring the information that it needs to discharge this newly-mandated responsibility. In addition, the substantial information submission and demonstration requirements that are imposed on ECMs with SPDCs have been adopted because ECMs with SPDCs, by statute, acquire certain of the self-regulatory responsibilities of fully regulated DCMs. The submission requirements associated with final rule 36.3(c)(4) are therefore tailored to enable the Commission to ensure that ECMs with SPDCs, as entities with the elevated status of a registered entity under the Act, are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. As with the final reporting rules, the primary benefit to the public of final rule 36.3 is that its requirements enable the Commission to discharge its statutory responsibility for monitoring for the presence of SPDCs and extending its oversight to the trading of SPDCs.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. As noted in the proposing release, the requirements related to the proposed amendments fall mainly on registered entities, exchanges, futures commission merchants, clearing members, foreign brokers and large traders. The Commission previously has determined that exchanges, futures commission merchants and large traders are not ''small entities'' for purposes of the RFA.[69] Similarly, clearing members, foreign brokers and traders would be subject to the final rules only if clearing, carrying or holding large positions. Accordingly, the Acting Chairman, on behalf of the Commission, certified in the NPRM pursuant to 5 U.S.C. 605(b) that the actions to be taken herein will not have a significant economic impact on a substantial number of small entities.[70]

*C. Paperwork Reduction Act*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Final rule 16.02, the Commission's reporting rules, and certain provisions of final rule 36.3 result in information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[71] The Commission submitted the proposing release along with supporting documentation to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve, and with respect to rules 36.3 and 16.02 assign a new control number for, the collections of information covered by the proposing release. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the proposing release, are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above.[72] Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of

[69] 47 FR 18618 (April 30, 1982).

[70] 73 FR 75888 at 75900.

[71] 44 U.S.C. 3501–3520.

[72] 73 FR 75888 at 75903.

the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission received no comment on its burden estimates or on any other aspect of the information collection requirements contained in its proposing release.

The title for the collection of information under rule 36.3 is ''Regulation 36.3—Exempt Commercial Market Submission Requirements.'' OMB has approved and assigned OMB control number 3038–0060 to this collection of information. The requirements of Commission rule 36.3 were covered previously by OMB control number 3038–0054 which applied to both EBOTs and ECMs. As a result of the Reauthorization Act, EBOTs and ECMs must comply with additional, divergent regulatory requirements. Accordingly, the Commission sought a new and separate control number for ECMs operating in compliance with the requirements of rule 36.3. As a result of OMB's approval of a control number specifically for ECMs, the Commission intends to submit the necessary documentation to OMB to enable it to apply OMB control number 3038–0054 exclusively to EBOTs.

The final amendments to parts 15 to 21 of the Commission's rules affect two existing collections of information titled ''Large Trader Reports'' (OMB control number 3038–0009) and ''Futures Volume, Open Interest, Price, Deliveries, and Exchanges of Futures'' (OMB control number 3038–0012). OMB has approved the amendments made to these two collections of information.

Finally, the title for the collection of information of new rule 16.02 is ''Regulation 16.02—Daily Trade and Supporting Data Reports.'' OMB has approved assigned OMB control number 3038–0061 to this collection of information.

**List of Subjects**

*17 CFR Part 15*

Brokers, Commodity futures, Reporting and recordkeeping requirements

*17 CFR Part 16*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 17*

Brokers, Commodity futures, Reporting and recordkeeping requirements

*17 CFR Part 18*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 19*

Commodity futures, Cottons, Grains, Reporting and recordkeeping requirements.

*17 CFR Part 21*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 36*

Commodity futures, Commodity Futures Trading Commission

*17 CFR Part 40*

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, as amended by the Reauthorization Act of 2008, Title XIII of Public Law 110–246, 122 Stat. 1624 (2008), and in particular sections 2, 5, 6, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, the Commodity Futures Trading Commission hereby amends 17 CFR parts 15, 16, 17, 18, 19, 21, 36 and 40 as follows:

## PART 15—REPORTS—GENERAL PROVISIONS

■ 1. The authority citation for part 15 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

■ 2. Section 15.00 is revised to read as follows:

### § 15.00 Definitions of terms used in parts 15 to 21 of this chapter.

As used in parts 15 to 21 of this chapter:

(a) *Cash or Spot,* when used in connection with any commodity, means the actual commodity as distinguished from a futures or options contract in such commodity.

(b) *Clearing member* means any person who is a member of, or enjoys the privilege of clearing trades in his own name through, the clearing organization of a designated contract market, registered derivatives transaction execution facility, or registered entity under section 1a(29) of the Act.

(c) *Clearing organization* means the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions, or for effecting settlements of contracts for future delivery or commodity option transactions, for and between members of any designated contract market, registered derivatives transaction execution facility or registered entity under section 1a(29) of the Act.

(d) *Compatible data processing media* means data processing media approved by the Commission or its designee.

(e) *Customer means* ''customer'' (as defined in § 1.3(k) of this chapter) and ''options customer'' (as defined in § 1.3(jj) of this chapter).

(f) *Customer trading program* means any system of trading offered, sponsored, promoted, managed or in any other way supported by, or affiliated with, a futures commission merchant, an introducing broker, a commodity trading advisor, a commodity pool operator, or other trader, or any of its officers, partners or employees, and which by agreement, recommendations, advice or otherwise, directly or indirectly controls trading done and positions held by any other person. The term includes, but is not limited to, arrangements where a program participant enters into an expressed or implied agreement not obtained from other customers and makes a minimum deposit in excess of that required of other customers for the purpose of receiving specific advice or recommendations which are not made available to other customers. The term includes any program which is of the character of, or is commonly known to the trade as, a managed account, guided account, discretionary account, commodity pool or partnership account.

(g) *Discretionary account* means a commodity futures or commodity option trading account for which buying or selling orders can be placed or originated, or for which transactions can be effected, under a general authorization and without the specific consent of the customer, whether the general authorization for such orders or transactions is pursuant to a written agreement, power of attorney, or otherwise.

(h) *Exclusively self-cleared contract* means a cleared contract for which no persons, other than a reporting market and its clearing organization, are permitted to accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade.

(i) *Foreign clearing member* means a ''clearing member'' (as defined by

paragraph (b) of this section) who resides or is domiciled outside of the United States, its territories or possessions.

(j) *Foreign trader* means any trader (as defined in paragraph (s) of this section) who resides or is domiciled outside of the United States, its territories or possessions.

(k) *Futures, futures contract, future delivery or contract for future delivery,* means any contract for the purchase or sale of any commodity for future delivery that is executed on or subject to the rules of a reporting market, including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts.

(l) *Guided account program* means any customer trading program which limits trading to the purchase or sale of a particular contract for future delivery of a commodity or a particular commodity option that is advised or recommended to the participant in the program.

(m) *Managed account program* means a customer trading program which includes two or more discretionary accounts traded pursuant to a common plan, advice or recommendations.

(n) *Open contracts means* ''open contracts'' (as defined in § 1.3(t) of this chapter) and commodity option positions held by any person on or subject to the rules of a board of trade which have not expired, been exercised, or offset.

(o) *Option, options, option contract, or options contract,* unless specifically provided otherwise, means any contract for the purchase or sale of a commodity option that is executed on or subject to the rules of a reporting market, including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts.

(p) *Reportable position* means:

(1) For reports specified in parts 17, 18 and § 19.00(a)(2) and (a)(3) of this chapter any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in § 15.03 of this part in either:

(i) Any one futures of any commodity on any one reporting market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market; or

(ii) Long or short put or call options that exercise into the same future of any commodity, or long or short put or call options for options on physicals that have identical expirations and exercise into the same physical, on any one reporting market.

(2) For the purposes of reports specified in § 19.00(a)(1) of this chapter, any combined futures and futures-equivalent option open contract position as defined in part 150 of this chapter in any one month or in all months combined, either net long or net short in any commodity on any one reporting market, excluding futures positions against which notices of delivery have been stopped by a trader or issued by the clearing organization of a reporting market, which at the close of the market on the last business day of the week exceeds the net quantity limit in spot, single or in all-months fixed in § 150.2 of this chapter for the particular commodity and reporting market.

(q) *Reporting market* means a designated contract market, registered entity under section 1a(29) of the Act, and unless determined otherwise by the Commission with respect to the facility or a specific contract listed by the facility, a registered derivatives transaction execution facility.

(r) *Special account* means any commodity futures or option account in which there is a reportable position.

(s) *Trader* means a person who, for his own account or for an account which he controls, makes transactions in commodity futures or options, or has such transactions made.

■ 3. Section 15.01 is amended by revising paragraph (a) to read as follows:

**§ 15.01 Persons required to report.**

* * * * *

(a) Reporting markets—as specified in parts 16, 17, and 21 of this chapter.

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■ 4. Section 15.05 is amended by revising the heading and paragraph (a); and by adding paragraph (i) to read as follows:

**§ 15.05 Designation of agent for foreign persons.**

(a) For purposes of this section, the term ''futures contract'' means any contract for the purchase or sale of any commodity for future delivery, or a contract identified under section 36.3(b)(1)(i) as traded in reliance on the exemption in section 2(h)(3) of the Act, traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term ''option contract'' means any contract for the purchase or sale of a commodity option, or as applicable, any other instrument subject to the Act pursuant to section 5a(g) of the Act, traded or executed on or subject to the rules of any designated contract market or registered derivatives transaction execution facility, or for the purposes of paragraph (i) of this section, a reporting market (including all agreements, contracts and transactions that are treated by a clearing organization as fungible with such contracts); the term ''customer'' means any person for whose benefit a foreign broker makes or causes to be made any futures contract or option contract; and the term ''communication'' means any summons, complaint, order, subpoena, special call, request for information, or notice, as well as any other written document or correspondence.

* * * * *

(i) Any reporting market that is a registered entity under section 1a(29)(E) of the Act that permits a foreign clearing member or foreign trader to clear or effect contracts, agreements or transactions on the trading facility or its clearing organization, shall be deemed to be the agent of the foreign clearing member or foreign trader with respect to any such contracts, agreements or transactions cleared or executed by the foreign clearing member or the foreign trader. Service or delivery of any communication issued by or on behalf of the Commission to the reporting market shall constitute valid and effective service upon the foreign clearing member or foreign trader. The reporting market which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a foreign clearing member or foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign clearing member or foreign trader.

(1) It shall be unlawful for any such reporting market to permit a foreign clearing member or a foreign trader to clear or effect contracts, agreements or transactions on the facility or its clearing organization unless the reporting market prior thereto informs the foreign clearing member or foreign trader of the requirements of this section.

(2) The requirements of paragraphs (i) and (i)(1) of this section shall not apply to any contracts, transactions or agreements if the foreign clearing member or foreign trader has duly executed and maintains in effect a

written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the reporting market prior to effecting or clearing any contract, agreement or transaction on the trading facility or its clearing organization. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign clearing member or foreign trader for the purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign clearing member or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the reporting market prior to permitting the foreign clearing member or the foreign trader to clear or effect any transactions in futures or option contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

(3) A foreign clearing member or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the reporting market knows or should know that the agreement has expired, been terminated, or is no longer in effect, the reporting market shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the reporting market, the foreign clearing member and the foreign trader shall be subject to the provisions of paragraphs (i) and (i)(1) of this section.

* * * * *

■ 5. Section 15.06 is added to read as follows:

**§ 15.06 Delegations.**

(a) The Commission hereby delegates, until the Commission orders otherwise, the authority to approve data processing media, as referenced in § 15.00(d), for data submissions to the Director of the Division of Market Oversight, to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Director may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(b) [Reserved]

## PART 16—REPORTS BY REPORTING MARKETS

■ 6. The authority citation for part 16 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 6a, 6c, 6g, 6i, 7, 7a and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

■ 7. Section 16.01 is amended by revising paragraph (e) to read as follows:

**§ 16.01 Trading volume, open contracts, prices, and critical dates.**

* * * * *

(e) *Publication of recorded information.* (1) Reporting markets shall make the information in paragraph (a) of this section readily available to the news media and the general public without charge, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains. The information in paragraphs (a)(4) through (a)(6) of this section shall be made readily available in a format that presents the information together.

(2) Reporting markets shall make the information in paragraphs (b)(1) and (b)(2) of this section readily available to the news media and the general public, and the information in paragraph (b)(3) of this section readily available to the general public, in a format that readily enables the consideration of such data, no later than the business day following the day to which the information pertains.

* * * * *

■ 8. Section 16.02 is added to read as follows:

**§ 16.02 Daily trade and supporting data reports.**

Reporting markets shall provide trade and supporting data reports to the Commission on a daily basis. Such reports shall include transaction-level trade data and related order information for each futures or options contract. Reports shall also include time and sales data, reference files and other information as the Commission or its designee may require. All reports must be submitted at the time, and in the manner and format, and with the specific content specified by the Commission or its designee. Upon request, such information shall be accompanied by data that identifies or facilitates the identification of each trader for each transaction or order included in a submitted trade and supporting data report if the reporting market maintains such data.

■ 9. Section 16.07 is amended by revising the heading and introductory text; and by adding paragraph (c) to read as follows:

**§ 16.07 Delegation of authority to the Director of the Division of Market Oversight.**

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a), (b) and (c) of this section to the Director of the Division of Market Oversight, to be exercised by such Director or by such other employee or employees of such Director as may be designated from time to time by the Director. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

* * * * *

(c) Pursuant to § 16.02, the authority to determine the specific content of any daily trade and supporting data report, request that such reports be accompanied by data that identifies or facilitates the identification of each trader for each transaction or order included in a submitted trade and supporting data report, and establish the time for the submission of and the manner and format of such reports.

## PART 17—REPORTS BY REPORTING MARKETS, FUTURES COMMISSION MERCHANTS, CLEARING MEMBERS, AND FOREIGN BROKERS

■ 10. The authority citation for part 17 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 6a, 6c, 6d, 6f, 6g, 6i, 7, 7a and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110–246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

■ 11. Revise the heading of part 17 as set forth above.

■ 12. Section 17.00 is amended by the heading of paragraph (a) and paragraphs (a)(1), (b)(1), and (f); and by adding and reserving paragraph (c) to read as follows:

**§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.**

(a) *Special accounts—reportable futures and options positions, delivery notices, and exchanges of futures.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission

for each business day with respect to all special accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant or clearing member on a fully-disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made in accordance with the format and coding provisions set forth in paragraph (g) of this section. The report shall show each futures position, separately for each reporting market and for each future, and each put and call options position separately for each reporting market, expiration and strike price en each special account as of the close of market on the day covered by the report and, in addition, the quantity of exchanges of futures for commodities or for derivatives positions and the number of delivery notices issued for each such account by the clearing organization of a reporting market and the number stopped by the account. The report shall also show all positions in all contract months and option expirations of that same commodity on the same reporting market for which the special account is reportable.

* * * * *

(b) * * *

(1) *Accounts of eligible entities*—Accounts of eligible entities as defined in § 150.1 of this chapter that are traded by an independent account controller shall, together with other accounts traded by the independent account controller or in which the independent controller has a financial interest, be considered a single account.

* * * * *

(c) [Reserved]

* * * * *

(f) *Omnibus accounts.* If the total open long positions or the total open short positions for any future of a commodity carried in an omnibus account is a reportable position, the omnibus account is in Special Account status and shall be reported by the futures commission merchant or foreign broker carrying the account in accordance with paragraph (a) of this section.

* * * * *

■ 13. Section 17.03 is amended by revising the heading, the introductory text, and paragraphs (a) and (b) to read as follows:

**§ 17.03 Delegation of authority to the Director of the Division of Market Oversight.**

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in the paragraphs below to the Director of the Division of Market Oversight to be exercised by such Director or by such other employee or employees of such Director as designated from time to time by the Director. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(a) Pursuant to § 17.00(a) and (h), the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under paragraphs (a) and (h) of § 17.00 on series '01 forms or using some other format upon a determination that such person is unable to report the information using the format, coding structure or electronic data transmission procedures otherwise required.

(b) Pursuant to § 17.02, the authority to instruct or approve the time at which the information required under §§ 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in §§ 17.01(g) and 17.02.

* * * * *

■ 14. Section 17.04 is amended by revising the heading, paragraph (a), and paragraph (b)(1)(ii) to read as follows:

**§ 17.04 Reporting omnibus accounts to reporting firms.**

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant, clearing member or foreign broker shall report to that futures commission merchant, clearing member or foreign broker the total open long positions and the total open short positions in each future of a commodity and, for commodity options transactions, the total open long put options, the total open short put options, the total open long call options, and the total open short call options for each commodity options expiration date and each strike price in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant, clearing member or foreign broker with whom the omnibus account is established to comply with the regulations of this part and the reporting requirements established by the reporting markets.

(b) * * *

(1) * * *

(ii) The account is an omnibus account of another futures commission merchant, clearing member or foreign broker; or

* * * * *

## PART 18—REPORTS BY TRADERS

■ 15. The authority citation for part 18 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 4, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008); 5 U.S.C. 552 and 552(b), unless otherwise noted.

■ 16. Section 18.01 is revised to read as follows:

**§ 18.01 Interest in or control of several accounts.**

If any trader holds, has a financial interest in or controls positions in more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such positions and accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and, unless instructed otherwise in the special call to report under § 18.00 for the purpose of reporting.

■ 17. Section 18.04 is amended by revising paragraphs (a)(7) and (b)(3)(i) to read as follows:

**§ 18.04 Statement of reporting trader.**

* * * * *

(a) * * *

(7) The names and locations of all futures commission merchants, clearing members, introducing brokers, and foreign brokers through whom accounts owned or controlled by the reporting trader are carried or introduced at the time of filing a Form 40, if such accounts are carried through more than one futures commission merchant, clearing member or foreign broker or carried through more than one office of the same futures commission merchant, clearing member or foreign broker, or introduced by more than one introducing broker clearing accounts through the same futures commission merchant, and the name of the reporting trader's account executive at each firm or office of the firm.

* * * * *

(b) * * *

(3) * * *

(i) Commercial activity associated with use of the option or futures market (such as and including production, merchandising or processing of a cash commodity, asset or liability risk management by depository institutions, or security portfolio risk management).

* * * * *

■ 18. Section 18.05 is amended by revising paragraphs (a)(2), (a)(3), and (a)(4) to read as follows:

**§ 18.05 Maintenance of books and records.**

(a) * * *

(2) Over the counter or pursuant to sections 2(d), 2(g) or 2(h)(1)–(2) of the Act or part 35 of this chapter;

(3) On exempt commercial markets operating pursuant to sections 2(h)(3)–(5) of the Act;

(4) On exempt boards of trade operating pursuant to section 5d of the Act; and

* * * * *

## PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

■ 19. The authority citation for part 19 is revised to read as follows:

**Authority:** 7 U.S.C. 6g(a), 6i, and 12a(5), as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008), unless otherwise noted.

■ 20. Section 19.00 is amended by revising paragraph (a) to read as follows:

**§ 19.00 General provisions.**

(a) *Who must file series '04 reports.* The following persons are required to file series '04 reports:

(1) All persons holding or controlling futures and option positions that are reportable pursuant to § 15.00(p)(2) of this chapter and any part of which constitute bona fide hedging positions as defined in § 1.3(z) of this chapter;

(2) Merchants and dealers of cotton holding or controlling positions for futures delivery in cotton that are reportable pursuant to § 15.00(p)(1)(i) of this chapter, or

(3) All persons holding or controlling positions for future delivery that are reportable pursuant to § 15.00(p)(1) of this chapter who have received a special call for series '04 reports from the Commission or its designee. Filings in response to a special call shall be made within one business day of receipt of the special call unless otherwise specified in the call. For the purposes of this paragraph, the Commission hereby delegates to the Director of the Division of Market Oversight, or to such other person designated by the Director, authority to issue calls for series '04 reports.

* * * * *

■ 21. Section 19.01 is amended by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

**§ 19.01 Reports on stocks and fixed price purchases and sales pertaining to futures positions in wheat, corn, oats, soybeans, soybean oil, soybean meal or cotton.**

* * * * *

(b) *Time and place of filing reports*—Except for reports filed in response to special calls made under § 19.00(a)(3), each report shall be made monthly, as of the close of business on the last Friday of the month, and filed at the appropriate Commission office specified in paragraph (b)(1) or (2) of this section not later than the second business day following the date of the report in the case of the 304 report and not later than the third business day following the date of the report in the case of the 204 report. Reports may be transmitted by facsimile or, alternatively, information on the form may be reported to the appropriate Commission office by telephone and the report mailed to the same office, not later than midnight of its due date.

(1) CFTC Form 204 reports with respect to transactions in wheat, corn, oats, soybeans, soybean meal and soybean oil should be sent to the Commission's office in Chicago, IL, unless otherwise specifically authorized by the Commission or its designee.

* * * * *

## PART 21—SPECIAL CALLS

■ 22. The authority citation for part 21 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008); 5 U.S.C. 552 and 552(b), unless otherwise noted.

■ 23. Section 21.01 is revised to read as follows:

**§ 21.01 Special calls for information on controlled accounts from futures commission merchants, clearing members and introducing brokers.**

Upon call by the Commission, each futures commission merchant, clearing member and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in commodity futures or commodity options on any reporting market.

■ 24. Section 21.02 is amended by revising the heading, introductory text, and paragraphs (f) and (i) to read as follows:

**§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, clearing members, members of reporting markets, introducing brokers, and foreign brokers.**

Upon special call by the Commission for information relating to futures or option positions held or introduced on the dates specified in the call, each futures commission merchant, clearing member, member of a reporting market, introducing broker, or foreign broker, and, in addition, for option information, each reporting market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant or clearing member, as may be specified in the call:

* * * * *

(f) The number of open futures or option positions introduced or carried in each account, as specified in the call;

* * * * *

(i) As applicable, the following identifying information:

(1) Whether a trader who holds commodity futures or option positions is classified as a commercial or as a noncommercial trader for each commodity futures or option contract;

(2) Whether the open commodity futures or option contracts are classified as speculative, spreading (straddling), or hedging; and

(3) Whether any of the accounts in question are omnibus accounts and, if so, whether the originator of the omnibus account is another futures commission merchant, clearing member or foreign broker.

* * * * *

■ 25. Section 21.03 is amended as follows:

■ A. By revising the heading and paragraphs (a), (b), (c) and (d);

■ B. By revising paragraph (e) introductory text and paragraphs (e)(1) introductory text, (e)(1)(iv) and (e)(1)(v); and

■ C. By revising paragraphs (f), (g) and (h) to read as follows:

**§ 21.03 Selected special calls-duties of foreign brokers, domestic and foreign traders, futures commission merchants, clearing members, introducing brokers, and reporting markets.**

(a) For purposes of this section, the term ''accounts of a futures commission merchant, clearing member or foreign broker'' means all open contracts and transactions in futures and options on the records of the futures commission merchant, clearing member or foreign

broker; the term ''beneficial interest'' means having or sharing in any rights, obligations or financial interest in any futures or options account; the term ''customer'' means any futures commission merchant, clearing member, introducing broker, foreign broker, or trader for whom a futures commission merchant, clearing member or reporting market that is a registered entity under section 1a(29) of the Act makes or causes to be made a futures or options contract. Paragraphs (e), (g) and (h) of this section shall not apply to any futures commission merchant, clearing member or customer whose books and records are open at all times to inspection in the United States by any representative of the Commission.

(b) It shall be unlawful for a futures commission merchant to open a futures or options account or to effect transactions in futures or options contracts for an existing account, or for an introducing broker to introduce such an account, for any customer for whom the futures commission merchant or introducing broker is required to provide the explanation provided for in § 15.05(c) of this chapter, or for a reporting market that is a registered entity under section 1a(29)(E) of the Act, to cause to open an account in a contract traded in reliance on the exemption in section 2(h)(3) of the Act or to cause to be effected transactions in a contract traded in reliance on the exemption in section 2(h)(3) of the Act for an existing account for any person that is a foreign clearing member or foreign trader, until the futures commission merchant, introducing broker, clearing member, or reporting market has explained fully to the customer, in any manner that such persons deem appropriate, the provisions of this section.

(c) Upon a determination by the Commission that information concerning accounts may be relevant information in enabling the Commission to determine whether the threat of a market manipulation, corner, squeeze, or other market disorder exists on any reporting market, the Commission may issue a call for information from a futures commission merchant, clearing member, introducing broker or customer pursuant to the provisions of this section.

(d) In the event the call is issued to a foreign broker, foreign clearing member or foreign trader, its agent, designated pursuant to § 15.05 of this chapter, shall, if directed, promptly transmit calls made by the Commission pursuant to this section by electronic mail or a similarly expeditious means of communication.

(e) The futures commission merchant, clearing member, introducing broker, or customer to whom the special call is issued must provide to the Commission the information specified below for the commodity, reporting market and delivery months or option expiration dates named in the call. Such information shall be filed at the place and within the time specified by the Commission.

(1) For each account of a futures commission merchant, clearing member, introducing broker, or foreign broker, including those accounts in the name of the futures commission merchant, clearing member or foreign broker, on the dates specified in the call issued pursuant to this section, such persons shall provide the Commission with the following information:

* * * * *

(iv) Whether the account is carried for and in the name of another futures commission merchant, clearing member, introducing broker, or foreign broker; and

(v) For the accounts which are not carried for and in the name of another futures commission merchant, clearing member, introducing broker, or foreign broker, the name and address of any other person who controls the trading of the account, and the name and address of any person who has a ten percent or more beneficial interest in the account.

* * * * *

(f) If the Commission has reason to believe that any person has not responded as required to a call made pursuant to this section, the Commission in writing may inform the reporting market specified in the call and that reporting market shall prohibit the execution of, and no futures commission merchant, clearing member, introducing broker, or foreign broker shall effect a transaction in connection with trades on the reporting market and in the months or expiration dates specified in the call for or on behalf of the futures commission merchant or customer named in the call, unless such trades offset existing open contracts of such futures commission merchant or customer.

(g) Any person named in a special call that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (f) of this section shall have the opportunity for a prompt hearing after the Commission acts. That person may immediately present in writing to the Commission for its consideration any comments or arguments concerning the Commission's action and may present for Commission consideration any documentary or other evidence that person deems appropriate. Upon request, the Commission may, in its discretion, determine that an oral hearing be conducted to permit the further presentation of information and views concerning any matters by any or all such persons. The oral hearing may be held before the Commission or any person designated by the Commission, which person shall cause all evidence to be reduced to writing and forthwith transmit the same and a recommended decision to the Commission. The Commission's directive under paragraph (f) of this section shall remain in effect unless and until modified or withdrawn by the Commission.

(h) If, during the course of or after the Commission acts pursuant to paragraph (f) of this section, the Commission determines that it is appropriate to undertake a proceeding pursuant to section 6(c) of the Act, the Commission shall issue a complaint in accordance with the requirements of section 6(c), and, upon further determination by the Commission that the conditions described in paragraph (c) of this section still exist, a hearing pursuant to section 6(c) of the Act shall commence no later than five business days after service of the complaint. In the event the person served with the complaint under section 6(c) of the Act has, prior to the commencement of the hearing under section 6(c) of the Act, sought a hearing pursuant to paragraph (g) of this section and the Commission has determined to accord him such a hearing, the two hearings shall be conducted simultaneously. Nothing in this section shall preclude the Commission from taking other appropriate action under the Act or the Commission's regulations thereunder, including action under section 6(c) of the Act, regardless of whether the conditions described in paragraph (c) of this section still exist, and no ruling issued in the course of a hearing pursuant to paragraph (g) or this paragraph shall constitute an estoppel against the Commission in any other action.

* * * * *

■ 26. Section 21.04 is revised to read as follows:

**§ 21.04 Delegation of authority to the Director of the Division of Market Oversight.**

The Commission hereby delegates, until the Commission orders otherwise, the special call authority set forth in §§ 21.01 and 21.02 to the Director of the Division of Market Oversight to be exercised by such Director or by such other employee or employees of such Director as designated from time to time

by the Director. The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Director.

## PART 36—EXEMPT MARKETS

■ 27. The authority citation for part 36 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 2(h)(7), 6, 6c and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

■ 28. Section 36.3 is amended by revising paragraph (b) to read as follows:

### § 36.3 Exempt commercial markets.

* * * * *

(b) *Required information.*

(1) *All electronic trading facilities.* A facility operating in reliance on the exemption in section 2(h)(3) of the Act, initially and on an on-going basis, must:

(i) Provide the Commission with the terms and conditions, as defined in § 40.1(i) of this chapter and product descriptions for each agreement, contract or transaction listed by the facility in reliance on the exemption set forth in section 2(h)(3) of the Act, as well as trading conventions, mechanisms and practices;

(ii) Provide the Commission with information explaining how the facility meets the definition of ''trading facility'' contained in section 1a(33) of the Act and provide the Commission with access to the electronic trading facility's trading protocols, in a format specified by the Commission;

(iii) Demonstrate to the Commission that the facility requires, and will require, with respect to all current and future agreements, contracts and transactions, that each participant agrees to comply with all applicable laws; that the authorized participants are ''eligible commercial entities'' as defined in section 1a(11) of the Act; that all agreements, contracts and transactions are and will be entered into solely on a principal-to-principal basis; and that the facility has in place a program to routinely monitor participants' compliance with these requirements;

(iv) At the request of the Commission, provide any other information that the Commission, in its discretion, deems relevant to its determination whether an agreement, contract, or transaction performs a significant price discovery function; and

(v) File with the Commission annually, no later than the end of each calendar year, a completed copy of CFTC Form 205—Exempt Commercial Market Annual Certification. The information submitted in Form 205 shall include:

(A) A statement indicating whether the electronic trading facility continues to operate under the exemption; and

(B) A certification that affirms the accuracy of and/or updates the information contained in the previous Notification of Operation as an Exempt Commercial Market.

(2) *Electronic trading facilities trading or executing agreements, contracts or transactions other than significant price discovery contracts.* In addition to the requirements of paragraph (b)(1) of this section, a facility operating in reliance on the exemption in section 2(h)(3) of the Act, with respect to agreements, contracts or transactions that have not been determined to perform significant price discovery function, initially and on an on-going basis, must:

(i) Identify to the Commission those agreements, contracts and transactions conducted on the electronic trading facility with respect to which it intends, in good faith, to rely on the exemption in section 2(h)(3) of the Act, and which averaged five trades per day or more over the most recent calendar quarter; and, with respect to such agreements, contracts and transactions, either:

(A) Submit to the Commission, in a form and manner acceptable to the Commission, a report for each business day. Each such report shall be electronically transmitted weekly, within such time period as is acceptable to the Commission after the end of the week to which the data applies, and shall show for each such agreement, contract or transaction executed the following information:

(*1*) The underlying commodity, the delivery or price-basing location specified in the agreement, contract or transaction maturity date, whether it is a financially settled or physically delivered instrument, and the date of execution, time of execution, price, and quantity;

(*2*) Total daily volume and, if cleared, open interest;

(*3*) For an option instrument, in addition to the foregoing information, the type of option (*i.e.*, call or put) and strike prices; and

(*4*) Such other information as the Commission may determine; or

(B) Provide to the Commission, in a form and manner acceptable to the Commission, electronic access to those transactions conducted on the electronic trading facility in reliance on the exemption in section 2(h)(3) of the Act, and meeting the average five trades per day or more threshold test of this section, which would allow the Commission to compile the information described in paragraph (b)(2)(i)(A) of this section and create a permanent record thereof.

(ii) Maintain a record of allegations or complaints received by the electronic trading facility concerning instances of suspected fraud or manipulation in trading activity conducted in reliance on the exemption set forth in section 2(h)(3) of the Act. The record shall contain the name of the complainant, if provided, date of the complaint, market instrument, substance of the allegations, and name of the person at the electronic trading facility who received the complaint;

(iii) Provide to the Commission, in the form and manner prescribed by the Commission, a copy of the record of each complaint received pursuant to paragraph (b)(2)(ii) of this section that alleges, or relates to, facts that would constitute a violation of the Act or Commission regulations. Such copy shall be provided to the Commission no later than 30 calendar days after the complaint is received. Provided, however, that in the case of a complaint alleging, or relating to, facts that would constitute an ongoing fraud or market manipulation under the Act or Commission rules, such copy shall be provided to the Commission within three business days after the complaint is received; and

(iv) Provide to the Commission on a quarterly basis, within 15 calendar days of the close of each quarter, a list of each agreement, contract or transaction executed on the electronic trading facility in reliance on the exemption set forth in section 2(h)(3) of the Act and indicate for each such agreement, contract or transaction the contract terms and conditions, the contract's average daily trading volume, and the most recent open interest figures.

(3) *Electronic trading facilities trading or executing significant price discovery contracts.* In addition to the requirements of paragraph (b)(1) of this section, if the Commission determines that a facility operating in reliance on the exemption in section 2(h)(3) of the Act trades or executes an agreement, contract or transaction that performs a significant price discovery function, the facility must, with respect to any significant price discovery contract, publish and provide to the Commission the information required by § 16.01 of this chapter.

(4) *Delegation of authority.* The Commission hereby delegates, until the

Commission orders otherwise, the authority to determine the form and manner of submitting the required information under paragraphs (b)(1) through (3) of this section, to the Director of the Division of Market Oversight and such members of the Commission's staff as the Director may designate. The Director may submit to the Commission for its consideration any matter that has been delegated by this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(5) *Special calls.* (i) All information required upon special call of the Commission under section 2(h)(5)(B)(iii) of the Act shall be transmitted at the time and to the office of the Commission as may be specified in the call.

(ii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls as set forth in section 2(h)(5)(B)(iii) of the Act to the Directors of the Divisions of Market Oversight, the Division of Clearing and Intermediary Oversight, and the Division of Enforcement to be exercised by each such Director or by such other employee or employees as the Director may designate. The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(6) *Subpoenas to foreign persons.* A foreign person whose access to an electronic trading facility is limited or denied at the direction of the Commission based on the Commission's belief that the foreign person has failed timely to comply with a subpoena as provided under section 2(h)(5)(C)(ii) of the Act shall have an opportunity for a prompt hearing under the procedures provided in § 21.03(b) and (h) of this chapter.

(7) *Prohibited representation.* An electronic trading facility relying upon the exemption in section 2(h)(3) of the Act, with respect to agreements, contracts or transactions that are not significant price discovery contracts, shall not represent to any person that it is registered with, designated, recognized, licensed or approved by the Commission.

* * * * *

■ 29. Section 36.3 is amended by revising paragraph (c) to read as follows:

**§ 36.3 Exempt commercial markets.**

* * * * *

(c) *Significant price discovery contracts*—(1) *Criteria for significant price discovery determination.* The Commission may determine, in its discretion, that an electronic trading facility operating a market in reliance on the exemption in section 2(h)(3) of the Act performs a significant price discovery function for transactions in the cash market for a commodity underlying any agreement, contract or transaction executed or traded on the facility. In making such a determination, the Commission shall consider, as appropriate:

(i) *Price linkage.* The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market or a derivatives transaction execution facility, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position;

(ii) *Arbitrage.* The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market or derivatives transaction execution facility, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis;

(iii) *Material price reference.* The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility;

(iv) *Material liquidity.* The extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act;

(v) *Other material factors* [Reserved].

(2) *Notification of possible significant price discovery contract conditions.* An electronic trading facility operating in reliance on section 2(h)(3) of the Act shall promptly notify the Commission, and such notification shall be accompanied by supporting information or data concerning any contract that:

(i) Averaged five trades per day or more over the most recent calendar quarter; and

(ii) (A) For which the exchange sells its price information regarding the contract to market participants or industry publications; or

(B) Whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another agreement, contract or transaction.

(3) *Procedure for significant price discovery determination.* Before making a final price discovery determination under this paragraph, the Commission shall publish notice in the **Federal Register** that it intends to undertake a determination with respect to whether a particular agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the electronic trading facility and other interested persons. Any such written data, views and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of publication of notice in the **Federal Register** or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission shall, within a reasonable period of time after the close of the comment period, issue an order explaining its determination whether the agreement, contract or transaction executed or traded by the electronic trading facility performs a significant price discovery function under the criteria specified in paragraph (c)(1)(i) through (v) of this section.

(4) *Compliance with core principles.* Following the issuance of an order by the Commission that the electronic trading facility executes or trades an agreement, contract or transaction that performs a significant price discovery function, the electronic trading facility must demonstrate, with respect to that agreement, contract or transaction, compliance with the Core Principles under section 2(h)(7)(C) of the Act and the applicable provisions of this part. If the Commission's order represents the first time it has determined that one of the electronic trading facility's agreements, contracts or transactions performs a significant price discovery function, the facility must submit a

written demonstration of compliance with the Core Principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the electronic trading facility has an additional agreement, contract or transaction that performs a significant price discovery function, the facility must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of the Commission's order. Attention is directed to Appendix B of this part for guidance on and acceptable practices for complying with the Core Principles. Submissions demonstrating how the electronic trading facility complies with the Core Principles with respect to its significant price discovery contract must be filed with the Secretary of the Commission at its Washington, DC headquarters. Submissions must include the following:

(i) A written certification that the significant price discovery contract(s) complies with the Act and regulations thereunder;

(ii) A copy of the electronic trading facility's rules (as defined in § 40.1 of this chapter) and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants. Subsequent rule changes must be certified by the electronic trading facility pursuant to section 5c(c) of the Act and § 40.6 of this chapter. The electronic trading facility also may request Commission approval of any rule changes pursuant to section 5c(c) of the Act and § 40.5 of this chapter;

(iii) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and contingency or disaster recovery plans;

(iv) A copy of any documents pertaining to or describing the electronic trading system's legal status and governance structure, including governance fitness information;

(v) An executed or executable copy of any agreements or contracts entered into or to be entered into by the electronic trading facility, including partnership or limited liability company, third-party regulatory service, or member or user agreements, that enable or empower the electronic trading facility to comply with a Core Principle;

(vi) A copy of any manual or other document describing, with specificity, the manner in which the trading facility will conduct trade practice, market and financial surveillance;

(vii) To the extent that any of the items in paragraphs (c)(4)(ii) through (vi) of this section raise issues that are novel, or for which compliance with a Core Principle is not self-evident, an explanation of how that item satisfies the applicable Core Principle or Principles.

The electronic trading facility must identify with particularity information in the submission that will be subject to a request for confidential treatment pursuant to § 145.09 of this chapter. The electronic trading facility must follow the procedures specified in § 40.8 of this chapter with respect to any information in its submission for which confidential treatment is requested.

(5) *Determination of compliance with core principles.* The Commission shall take into consideration differences between cleared and uncleared significant price discovery contracts when reviewing the implementation of the Core Principles by an electronic trading facility. The electronic facility also has reasonable discretion in accounting for differences between cleared and uncleared significant price discovery contracts when establishing the manner in which it complies with the Core Principles.

(6) *Information relating to compliance with core principles.* Upon request by the Commission, an electronic trading facility trading a significant price discovery contract shall file with the Commission a written demonstration, containing such supporting data, information and documents, in the form and manner and within such time as the Commission may specify, that the electronic trading facility is in compliance with one or more Core Principles as specified in the request, or that is otherwise requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(7) *Enforceability.* An agreement, contract or transaction entered into on or pursuant to the rules of an electronic trading facility trading or executing a significant price discovery contract shall not be void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(i) A violation by the electronic trading facility of the provisions of section 2(h) of the Act or this part; or

(ii) Any Commission proceeding to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement or require an electronic trading facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

(8) *Procedures for vacating a determination of a significant price discovery function*—(i) *By the electronic trading facility.* An electronic trading facility that executes or trades an agreement, contract or transaction that the Commission has determined performs a significant price discovery function under paragraph (c)(3) of this section may petition the Commission to vacate that determination. The petition shall demonstrate that the agreement, contract or transaction no longer performs a significant price discovery function under the criteria specified in paragraph (c)(1), and has not done so for at least the prior 12 months. An electronic trading facility shall not petition for a vacation of a significant price discovery determination more frequently than once every 12 months for any individual contract.

(ii) *By the Commission.* The Commission may, on its own initiative, begin vacation proceedings if it believes that an agreement, contract or transaction has not performed a significant price discovery function for at least the prior 12 months.

(iii) *Procedure.* Before making a final determination whether an agreement, contract or transaction has ceased to perform a significant price discovery function, the Commission shall publish notice in the **Federal Register** that it intends to undertake such a determination and to receive written data, views and arguments relevant to its determination from the electronic trading facility and other interested persons. Written submissions shall be filed with the Secretary of the Commission in the form and manner specified by the Commission, within 30 calendar days of publication of notice in the **Federal Register** or within such other time specified by the Commission. After consideration of all relevant information, the Commission shall issue an order explaining its determination whether the agreement, contract or transaction has ceased to perform a significant price discovery function and, if so, vacating its prior order. If such an order issues, and the Commission subsequently determines, on its own initiative or after notification by the electronic trading facility, that the agreement, contract or transaction that was subject to the vacation order again performs a significant price discovery function, the electronic trading facility must comply with the Core Principles within 30 calendar days of the date of the Commission's order.

(iv) *Automatic vacation of significant price discovery determination.* Regardless of whether a proceeding to vacate has been initiated, any significant price discovery contract that has no open interest and in which no trading has occurred for a period of 12 complete and consecutive calendar months shall, without further proceedings, no longer be considered to be a significant price discovery contract.

■ 30. Section 36.3 is amended by adding new paragraph (d) to read as follows:

(d) *Commission Review.* The Commission shall, at least annually, evaluate as appropriate agreements, contracts or transactions conducted on an electronic trading facility in reliance on the exemption provided in section 2(h)(3) of the Act to determine whether they serve a significant price discovery function as described in § (d)(1) above.

■ 31. Add a new Appendix A to Part 36 to read as follows:

**Appendix A to Part 36—Guidance on Significant Price Discovery Contracts**

1. Section 2(h)(7) of the CEA specifies four factors that the Commission must consider, as appropriate, in making a determination that a contract is performing a significant price discovery function. The four factors prescribed by the statute are: Price Linkage; Arbitrage; Material Price Reference; and Material Liquidity.

2. Not all listed factors must be present to support a determination that a contract performs a significant price discovery function. Moreover, the statutory language neither prioritizes the factors nor specifies the degree to which a significant price discovery contract must conform to the various factors. Congress has indicated that it intends that the Commission should not make a determination that an agreement, contract or transaction performs a significant price discovery function on the basis of the Price Linkage factor unless the agreement, contract or transaction also has sufficient volume to impact other regulated contracts or to become an independent price reference or benchmark that is regularly utilized by the public. The Commission believes that the Arbitrage and Material Price Reference factors can be considered separately from each other. That is, the Commission could make a determination that a contract serves a significant price discovery function based on the presence of one of these factors and the absence of the other. The presence of any of these factors, however, would not necessarily be sufficient to establish the contract as a significant price discovery contract. The fourth factor, Liquidity, would be considered in conjunction with the arbitrage and linkage factors as a significant amount of liquidity presumably would be necessary for a contract to perform a significant price discovery function in conjunction with these factors.

3. These factors do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, this guidance is intended to illustrate which factors, or combinations of factors, the Commission will look to when determining that a contract is performing a significant price discovery function, and under what circumstances the presence of a particular factor or factors would be sufficient to support such a determination.

*(A) MATERIAL LIQUIDITY—The extent to which the volume of agreements, contracts or transactions in the commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act.*

1. Liquidity is a broad concept that captures the ability to transact immediately with little or no price concession. Traditionally, objective measures of trading such as volume or open interest have been used as measures of liquidity. So, for example, a market in which trades occur multiple times per minute at prices that differ by only fractions of a cent normally would be considered highly liquid, since presumably a trader could quickly execute a trade at a price that was approximately the same as the price for other recently executed trades. Other factors also will affect the characterization of liquidity, such as whether a large trade—*e.g.*, 100 contracts versus 1 contract—could be executed without a significant price concession. For example, having to wait a day to sell 1000 bushels of corn may be considered an illiquid market while waiting a day to sell a home may be considered quite liquid. Thus, quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another.

2. The Commission believes that material liquidity alternatively can be identified by the impact liquidity exhibits through observed prices. In markets where material liquidity exists, a more or less continuous stream of prices can be observed and the prices should be similar. For example, if the trading of a contract occurs on average five times a day, there will be on average five observed prices for the contract per day. If the market is liquid in terms of traders having to make little in the way of price concessions to execute these trades, the prices of this contract should be similar to those observed for similar or related contracts traded in liquid markets elsewhere. Thus, in making determinations that contracts have material liquidity, the Commission will look to transaction prices, both in terms of how often prices are observed and the extent to which observed prices tend to correlate with other contemporaneous prices.

3. The Commission anticipates that material liquidity will frequently be a consideration in evaluating whether a contract is a significant price discovery contract; however, there may be circumstances in which other factors so dominate the conclusion that a contract is serving a significant price discovery function that a finding of material liquidity in the contract would not be necessary. Circumstances in which this might arise are discussed with respect to the assessment of other factors below.

4. Finally, material liquidity itself would not be sufficient to make a determination that a contract is a significant price discovery contract, but combined with other factors it can serve as a guidepost indicating which contracts are functioning as significant price discovery contracts. As further discussed below, material liquidity, as reflected through the prices of linked or arbitraged contracts, will be a primary consideration in determining whether such contracts are significant price discovery contracts.

*(B) PRICE LINKAGE—The extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market or a derivatives transaction execution facility, or a significant price discovery contract traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.*

1. A price-linked contract is a contract that relies on a contract traded on another trading facility to settle, value or otherwise offset the price-linked contract. The link may involve a one-to-one linkage, in that the value of the linked contract is based on a single contract's price, or it may involve multiple contracts. An example of a multiple contract linkage might be where the settlement price is calculated as an index of prices obtained from a basket of contracts traded on other exchanges.

2. For a linked contract, the mere fact that a contract is linked to another contract will not be sufficient to support a determination that a contract performs a significant price discovery function. To assess whether such a determination is warranted, the Commission will examine the relationship between transaction prices of the linked contract and the prices of the referenced contract(s). The Commission believes that where material liquidity exists, prices for the linked contract would be observed to be substantially the same as or move substantially in conjunction with the prices of the referenced contract(s). Where such price characteristics are observed on an ongoing basis, the Commission would expect to determine that the linked contract is a significant price discovery contract.

3. As an example, where the Commission has observed price linkage, it will next consider whether transactions were occurring on a daily basis for the linked contract in material volumes. (Conversely, where volume has increased noticeably in a particular contract, the Commission would look for linkage) The ultimate level of volume that would be considered material for purposes of deeming a contract a significant price discovery contract will likely differ from one contract to another depending on the characteristics of the underlying commodity and the overall size of the physical market in which it is traded. At a minimum, however, the Commission will consider a linked contract which has volume

equal to 5% of the volume of trading in the contract to which it is linked to have sufficient volume potentially to be deemed a significant price discovery contract.

4. In combination with this volume level, the Commission will also examine the relationship between prices of the linked contract and the contract to which it is linked to determine whether a contract is serving a significant price discovery function. As a threshold, the Commission will consider a 2.5 percent price range for 95 percent of contemporaneously determined closing, settlement, or other daily prices over the most recent quarter to be sufficiently close for a linked contract potentially to be deemed a significant price discovery contract. For example, if, over the most recent quarter, it was found that 95 percent of the closing, settlement, or other daily prices of the contract, which have been calculated using transaction prices, were within 2.5 percent of the contemporaneously determined closing, settlement, or other daily prices of a contract to which it was linked, the Commission potentially would consider the contract to perform a significant price discovery function.

*(C) ARBITRAGE CONTRACTS—The extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated contract market or derivatives transaction execution facility, or a significant price discovery contract or contracts trading on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.*

1. Arbitrage contracts are those contracts that can be combined with other contracts to exploit expected economic relationships in anticipation of a profit. In assessing whether a contract can be incorporated into an arbitrage strategy, the Commission will weigh the terms and conditions of a contract in comparison to contracts that potentially could be used in an arbitrage strategy; will consult with industry or other sources regarding a contract's viability in an arbitrage strategy; and will rely on direct observation confirming the use of a contract in arbitrage strategies.

2. As with linked contracts, the mere fact that a contract could be employed in an arbitrage strategy will not be sufficient to make a determination that a contract is a significant price discovery contract. In addition, the level of liquidity will be considered. To assess whether designation as a significant price discovery contract is warranted, the Commission will examine the relationship between transaction prices of an arbitrage contract and the prices of the contract(s) to which it is related. The Commission believes that where material liquidity exists, prices for the arbitrage contract would be observed to move substantially in conjunction with the prices of the related contract(s) to which it is economically linked. Where such price characteristics are observed on an ongoing basis, it is likely that the linked contract performs a significant price discovery function.

3. The Commission will apply the same threshold liquidity and price relationship standards for arbitrage contracts as it does for linked contracts. That is, the Commission will view the average of five trades per day or more threshold as the level of activity that would potentially meet the material volume criterion. With respect to prices, the Commission will consider an arbitrage contract potentially to be a significant price discovery contract if, over the most recent quarter, greater than 95 percent of the closing or settlement prices of the contract, which have been calculated using transaction prices, fall within 2.5 percent of the closing or settlement price of the contract or contracts to which it could be arbitraged.

*(D) MATERIAL PRICE REFERENCE—The extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.*

1. The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and, therefore, serving a significant price discovery function. The primary source of direct evidence is that cash market bids, offers or transactions are directly based on, or quoted at a differential to, the prices generated on the market on a frequent and recurring basis. The Commission expects that normally only contracts with material liquidity will be referenced by the cash market; however, the Commission notes that it may be possible for a contract to have very low liquidity and yet still be used as a price reference. In such cases, the simple fact that participants in the underlying cash market broadly have elected to use the contract price as a price reference would be a strong indicator that the contract is a significant price discovery contract.

2. In evaluating a contract's price discovery role as a directly referenced price source, the Commission will perform an analysis to determine whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. The Commission will also consider whether cash market entities are quoting cash prices based on a section 2(h)(3) contract on a frequent and recurring basis.

3. The second source of evidence is that the price of the contract is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. As with contract prices that are directly incorporated into cash market prices, the Commission assumes that industry publications choose to publish prices because of the value they transfer to industry participants for the purpose of formulating prices in the cash market.

4. In applying this criterion, consideration will be given to whether prices established by a section 2(h)(3) contract are reported in a widely distributed industry publication. In making this determination, the Commission will consider the reputation of the publication within the industry, how frequently it is published, and whether the information contained in the publication is routinely consulted by industry participants in pricing cash market transactions.

5. Under a Material Price Reference analysis, the Commission expects that material liquidity in the contract likely will be the primary motivation for a publisher to publish particular prices. In other words, the fact that the price of a contract is being used as a reference by industry participants suggests, *prima facie*, that the contract performs a significant price discovery function. But the Commission recognizes that trading levels could nonetheless be low for the contract while still serving a significant price discovery function and that evidence of routine publication and consultation by industry participants may be sufficient to establish the contract as a significant price discovery contract. On the other hand, while cash market participants may regularly refer to published prices of a particular contract when establishing cash market prices, it may be the case that the contract itself is a niche market for a specialized grade of the commodity or for delivery at a minor geographic location. In such cases, the Commission will look to such measures as trading volume, open interest, and the significance of the underlying cash market to make a determination that a contract is functioning as a significant price discovery contract. If an examination of trading in the contract were to reveal that true price discovery was occurring in other more broadly defined contracts and that this contract was itself simply reflective of those broader contracts, it is less likely the Commission will deem the contract a significant price discovery contract.

6. Because price referencing normally occurs out of the view of the electronic trading facility, the Commission may have difficulty ascertaining the extent to which cash market participants actually reference or consult a contract's price when transacting. The Commission expects, however, that as a contract begins to be relied upon to set a reference price, market participants will be increasingly willing to purchase price information. To the extent, then, that an electronic trading facility begins to sell its price information regarding a contract to market participants or industry publications, the contract will meet a threshold standard to indicate that the contract potentially is a significant price discovery contract.

■ 32. Add a new Appendix B to Part 36 to read as follows:

## Appendix B to Part 36—Guidance on, and Acceptable Practices in, Compliance With Core Principles

1. This Appendix provides guidance on complying with the core principles under section 2(h)(7)(C) of the Act and this part, both initially and on an ongoing basis. The guidance is provided in paragraph (a) following each core principle and can be used to demonstrate to the Commission core principle compliance under § 36.3(c)(4). The guidance for each core principle is illustrative only of the types of matters an electronic trading facility may address, as applicable, and is not intended to be used as a mandatory checklist. Addressing the issues and questions set forth in this guidance will help the Commission in its consideration of whether the electronic trading facility is in compliance with the core principles. A submission pursuant to § 36.3(c)(4) should include an explanation or other form of documentation demonstrating that the electronic trading facility complies with the core principles.

2. Acceptable practices meeting selected requirements of the core principles are set forth in paragraph (b) following each core principle. Electronic trading facilities on which significant price discovery contracts are traded or executed that follow the specific practices outlined under paragraph (b) for any core principle in this appendix will meet the selected requirements of the applicable core principle. Paragraph (b) is for illustrative purposes only, and does not state the exclusive means for satisfying a core principle.

*CORE PRINCIPLE I OF SECTION 2(h)(7)(C)—CONTRACTS NOT READILY SUSCEPTIBLE TO MANIPULATION. The electronic trading facility shall list only significant price discovery contracts that are not readily susceptible to manipulation.*

(a) *Guidance.* Upon determination by the Commission that a contract listed for trading on an electronic trading facility is a significant price discovery contract, the electronic trading facility must self-certify the terms and conditions of the significant price discovery contract under § 36.3(c)(4) within 90 calendar days of the date of the Commission's order, if the contract is the electronic trading facility's first significant price discovery contract; or 30 days from the date of the Commission's order if the contract is not the electronic trading facility's first significant price discovery contract. Once the Commission determines that a contract performs a significant price discovery function, subsequent rule changes must be self-certified to the Commission by the electronic trading facility pursuant to § 40.6 or submitted to the Commission for review and approval pursuant to § 40.5.

(b) *Acceptable practices.* Guideline No. 1, 17 CFR part 40, Appendix A may be used as guidance in meeting this core principle for significant price discovery contracts.

*CORE PRINCIPLE II OF SECTION 2(h)(7)(C)—MONITORING OF TRADING. The electronic trading facility shall monitor trading in significant price discovery contracts to prevent market manipulation, price distortion, and disruptions of the delivery of cash-settlement process through market surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.*

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded or executed should, with respect to those contracts, demonstrate a capacity to prevent market manipulation and have trading and participation rules to detect and deter abuses. The facility should seek to prevent market manipulation and other trading abuses through a dedicated regulatory department or by delegation of that function to an appropriate third party. An electronic trading facility also should have the authority to intervene as necessary to maintain an orderly market.

(b) *Acceptable practices*—(1) *An acceptable trade monitoring program.* An acceptable trade monitoring program should facilitate, on both a routine and non-routine basis, arrangements and resources to detect and deter abuses through direct surveillance of each significant price discovery contract. Direct surveillance of each significant price discovery contract will generally involve the collection of various market data, including information on participants' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices. For contracts with a substantial number of participants, an effective surveillance program should employ a much more comprehensive large trader reporting system.

(2) *Authority to collect information and documents.* The electronic trading facility should have the authority to collect information and documents in order to reconstruct trading for appropriate market analysis. Appropriate market analysis should enable the electronic trading facility to assess whether each significant price discovery contract is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through market channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply—and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but non-deliverable, kinds of the commodity. For cash-settled contracts, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the contract will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) *Ability to assess participants' market activity and power.* To assess participants' activity and potential power in a market, electronic trading facilities, with respect to significant price discovery contracts, at a minimum should have routine access to the positions and trading of its participants and, if applicable, should provide for such access through its agreements with its third-party provider of clearing services.

*CORE PRINCIPLE III OF SECTION 2(h)(7)(C)—ABILITY TO OBTAIN INFORMATION. The electronic trading facility shall establish and enforce rules that allow the electronic trading facility to obtain any necessary information to perform any of the functions described in this subparagraph, provide the information to the Commission upon request, and have the capacity to carry out such international information-sharing agreements as the Commission may require.*

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded or executed should, with respect to those contracts, have the ability and authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by participants. This includes having arrangements and resources for recording full data entry and trade details and safely storing audit trail data. An electronic trading facility should have systems sufficient to enable it to use the information for purposes of assisting in the prevention of participant and market abuses through reconstruction of trading and providing evidence of any violations of the electronic trading facility's rules.

(b) *Acceptable practices*—(1) The goal of an audit trail is to detect and deter market abuse. An effective contract audit trail should capture and retain sufficient trade-related information to permit electronic trading facility staff to detect trading abuses and to reconstruct all transactions within a reasonable period of time. An audit trail should include specialized electronic surveillance programs that identify potentially abusive trades and trade patterns. An acceptable audit trail must be able to track an order from time of entry into the trading system through its fill. The electronic trading facility must create and maintain an electronic transaction history database that contains information with respect to transactions executed on each significant price discovery contract.

(2) An acceptable audit trail should include the following: original source documents, transaction history, electronic analysis capability, and safe storage capability. An acceptable audit trail system would satisfy the following practices.

(i) *Original source documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded. For each order (whether filled, unfilled or cancelled, each of which should be retained or electronically captured), such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry.

(ii) *Transaction history.* A transaction history consists of an electronic history of each transaction, including (a) all the data that are input into the trade entry or matching system for the transaction to match and clear; (b) timing and sequencing data adequate to reconstruct trading; and (c) the identification of each account to which fills are allocated.

(iii) *Electronic analysis capability.* An electronic analysis capability that permits

sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to market abuse.

(iv) *Safe storage capability.* Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in the form and manner specified by the Commission or, where no acceptable manner of retention is specified, in accordance with the recordkeeping standards of Commission rule 1.31.

(3) Arrangements and resources for the disclosure of the obtained information and documents to the Commission upon request. To satisfy section 2(h)(7)(C)(III)(bb), the electronic trading facility should maintain records of all information and documents related to each significant price discovery contract in a form and manner acceptable to the Commission. Where no acceptable manner of maintenance is specified, records should be maintained in accordance with the recordkeeping standards of Commission rule 1.31.

(4) The capacity to carry out appropriate information-sharing agreements as the Commission may require. Appropriate information-sharing agreements could be established with other markets or the Commission can act in conjunction with the electronic trading facility to carry out such information sharing.

*CORE PRINCIPLE IV OF SECTION 2(h)(7)(C)—POSITION LIMITATIONS OR ACCOUNTABILITY. The electronic trading facility shall adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts, taking into account positions in other agreements, contracts and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contracts to reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month.*

(a) *Guidance.* [Reserved]

*(b) Acceptable practices for uncleared trades [Reserved]*

(c) *Acceptable practices for cleared trades*—(1) *Introduction.* In order to diminish potential problems arising from excessively large speculative positions, and to facilitate orderly liquidation of expiring contracts, an electronic trading facility relying on the exemption in section 2(h)(3) should adopt rules that set position limits or accountability levels on traders' cleared positions in significant price discovery contracts. These position limit rules specifically may exempt bona fide hedging; permit other exemptions; or set limits differently by market, delivery month or time period. For the purpose of evaluating a significant price discovery contract's speculative-limit program for cleared positions, the Commission will consider the specified position limits or accountability levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified limits or levels, and procedures for dealing with violations.

(2) *Accounting for cleared trades*—(i) Speculative-limit levels typically should be set in terms of a trader's combined position involving cleared trades in a significant price discovery contract, plus positions in agreements, contracts and transactions that are treated by a derivatives clearing organization, whether registered or not registered, as fungible with such significant price discovery contract. (This circumstance typically exists where an exempt commercial market lists a particular contract for trading but also allows for positions in that contract to be cleared together with positions established through bilateral or off-exchange transactions, such as block trades, in the same contract. Essentially, both the on-facility and off-facility transactions are considered fungible with each other.) In this connection, the electronic trading facility should make arrangements to ensure that it is able to ascertain accurate position data for the market. (ii) For significant price discovery contracts that are traded on a cleared basis, the electronic trading facility should apply position limits to cleared transactions in the contract.

(3) *Limitations on spot-month positions.* Spot-month limits should be adopted for significant price discovery contracts to minimize the susceptibility of the market to manipulation or price distortions, including squeezes and corners or other abusive trading practices.

(i) *Contracts economically equivalent to an existing contract.* An electronic trading facility that lists a significant price discovery contract that is economically-equivalent to another significant price discovery contract or to a contract traded on a designated contract market or derivatives transaction execution facility should set the spot-month limit for its significant price discovery contract at the same level as that specified for the economically-equivalent contract.

(ii) *Contracts that are not economically equivalent to an existing contract.* There may not be an economically-equivalent significant price discovery contract or economically-equivalent contract traded on a designated contract market or derivatives transaction execution facility. In this case, the spot-month speculative position limit should be established in the following manner. The spot-month limit for a physical delivery market should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. The spot-month limit for a physical-delivery market is appropriately set at no more than 25 percent of the estimated deliverable supply. In the case where a significant price discovery contract has a cash settlement provision, the spot-month limit should be set at a level that minimizes the potential for price manipulation or distortion in the significant price discovery contract itself; in related futures and options contracts traded on a designated contract market or derivatives transaction execution facility; in other significant price discovery contracts; in other fungible agreements, contracts and transactions; and in the underlying commodity.

(4) *Position accountability for non-spot-month positions.* The electronic trading facility should establish for its significant price discovery contracts non-spot individual month position accountability levels and all-months-combined position accountability levels. An electronic trading facility may establish non-spot individual month position limits and all-months-combined position limits for its significant price discovery contracts in lieu of position accountability levels.

(i) *Definition.* Position accountability provisions provide a means for an exchange to monitor traders' positions that may threaten orderly trading. An acceptable accountability provision sets target accountability threshold levels that may be exceeded, but once a trader breaches such accountability levels, the electronic trading facility should initiate an inquiry to determine whether the individual's trading activity is justified and is not intended to manipulate the market. As part of its investigation, the electronic trading facility may inquire about the trader's rationale for holding a position in excess of the accountability levels. An acceptable accountability provision should provide the electronic trading facility with the authority to order the trader not to further increase positions. If a trader fails to comply with a request for information about positions held, provides information that does not sufficiently justify the position, or continues to increase contract positions after a request not to do so is issued by the facility, then the accountability provision should enable the electronic trading facility to require the trader to reduce positions.

(ii) *Contracts economically equivalent to an existing contract.* When an electronic trading facility lists a significant price discovery contract that is economically equivalent to another significant price discovery contract or to a contract traded on a designated contract market or derivatives transaction execution facility, the electronic trading facility should set the non-spot individual month position accountability level and all-months-combined position accountability level for its significant price discovery contract at the same levels, or lower, as those specified for the economically-equivalent contract.

(iii) *Contracts that are not economically equivalent to an existing contract.* For significant price discovery contracts that are not economically equivalent to an existing contract, the trading facility shall adopt non-spot individual month and all-months-combined position accountability levels that are no greater than 10 percent of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year. For electronic trading facilities that choose to adopt non-spot individual month and all-months-combined position limits in lieu of position accountability levels for their significant price discovery contracts, the limits should be set in the same manner as the accountability levels.

(iv) *Contracts economically equivalent to an existing contract with position limits.* If a significant price discovery contract is economically equivalent to another significant price discovery contract or to a contract traded on a designated contract

market or derivatives transaction execution facility that has adopted non-spot or all-months-combined position limits, the electronic trading facility should set non-spot month position limits and all-months-combined position limits for its significant price discovery contract at the same (or lower) levels as those specified for the economically-equivalent contract.

(5) *Account aggregation.* An electronic trading facility should have aggregation rules for significant price discovery contracts that apply to accounts under common control, those with common ownership, *i.e.*, where there is a ten percent or greater financial interest, and those traded according to an express or implied agreement. Such aggregation rules should apply to cleared transactions with respect to applicable speculative position limits. An electronic trading facility will be permitted to set more stringent aggregation policies. An electronic trading facility may grant exemptions to its price discovery contracts' position limits for bona fide hedging (as defined in § 1.3(z) of this chapter) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) *Implementation deadlines.* An electronic trading facility with a significant price discovery contract is required to comply with Core Principle IV as set forth in section 2(h)(7)C) of the Act within 90 calendar days of the date of the Commission's order determining that the contract performs a significant price discovery function if such contract is the electronic trading facility's first significant price discovery contract, or within 30 days of the date of the Commission's order if such contract is not the electronic trading facility's first significant price discovery contract. For the purpose of applying limits on speculative positions in newly-determined significant price discovery contracts, the Commission will permit a grace period following issuance of its order for traders with cleared positions in such contracts to become compliant with applicable position limit rules. Traders who hold cleared positions on a net basis in the electronic trading facility's significant price discovery contract must be at or below the specified position limit level no later than 90 calendar days from the date of the electronic trading facility's implementation of position limit rules, unless a hedge exemption is granted by the electronic trading facility. This grace period applies to both initial and subsequent price discovery contracts. Electronic trading facilities should notify traders of this requirement promptly upon implementation of such rules.

(7) *Enforcement provisions.* The electronic trading facility should have appropriate procedures in place to monitor its position limit and accountability provisions and to address violations.

(i) An electronic trading facility with significant price discovery contracts should use an automated means of detecting traders' violations of speculative limits or exemptions, particularly if the significant price discovery contracts have large numbers of traders. An electronic trading facility should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication. An automated system also should be used to determine whether a trader has exceeded applicable non-spot individual month position accountability levels and all-months-combined position accountability levels.

(ii) An electronic trading facility should establish a program for effective enforcement of position limits for significant price discovery contracts. Electronic trading facilities should use a large trader reporting system to monitor and enforce daily compliance with position limit rules. The Commission notes that an electronic trading facility may allow traders to periodically apply to the electronic trading facility for an exemption and, if appropriate, be granted a position level higher than the applicable speculative limit. The electronic trading facility should establish a program to monitor approved exemptions from the limits. The position levels granted under such hedge exemptions generally should be based upon the trader's commercial activity in related markets including, but not limited to, positions held in related futures and options contracts listed for trading on designated contract markets, fungible agreements, contracts and transactions, as determined by either a registered or unregistered derivatives clearing organization. Electronic trading facilities may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An electronic trading facility should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the electronic trading facility approve a specific maximum higher level.

(iii) An acceptable speculative limit program should have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The electronic trading facility policies should consider appropriate actions.

(8) *Violation of Commission rules.* A violation of position limits for significant price discovery contracts that have been self-certified by an electronic trading facility is also a violation of section 4a(e) of the Act.

*CORE PRINCIPLE V OF SECTION 2(h)(7)(C)—EMERGENCY AUTHORITY—The electronic trading facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate open positions in significant price discovery contracts and to suspend or curtail trading in a significant price discovery contract.*

(a) *Guidance.* An electronic trading facility on which significant price discovery contracts are traded should have clear procedures and guidelines for decision-making regarding emergency intervention in the market, including procedures and guidelines to avoid conflicts of interest while carrying out such decision-making. An electronic trading facility on which significant price discovery contracts are executed or traded should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. Procedures and guidelines should include notifying the Commission of the exercise of the electronic trading facility's regulatory emergency authority, explaining how conflicts of interest are minimized, and documenting the electronic trading facility's decision-making process and the reasons for using its emergency action authority. Information on steps taken under such procedures should be included in a submission of a certified rule and any related submissions for rule approval pursuant to part 40 of this chapter, when carried out pursuant to an electronic trading facility's emergency authority. To address perceived market threats, the electronic trading facility on which significant price discovery contracts are executed or traded should, among other things, be able to impose position limits in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from market participants or clearing members (for contracts that are cleared through a clearinghouse), order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the electronic trading facility, order the transfer of contracts and the margin for such contracts from one market participant to another, or alter the delivery terms or conditions or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

(b) *Acceptable practices.* [Reserved]

*CORE PRINCIPLE VI OF SECTION 2(h)(7)(C)—DAILY PUBLICATION OF TRADING INFORMATION. The electronic trading facility shall make public daily information on price, trading volume, and other trading data to the extent appropriate for significant price discovery contracts.*

(a) *Guidance.* An electronic trading facility, with respect to significant price discovery contracts, should provide to the public information regarding settlement prices, price range, volume, open interest, and other related market information for all applicable contracts as determined by the Commission on a fair, equitable and timely basis. Provision of information for any applicable contract can be through such means as provision of the information to a financial information service or by timely placement of the information on the electronic trading facility's public Web site.

(b) *Acceptable practices.* Compliance with § 16.01 of this chapter, which is mandatory, is an acceptable practice that satisfies the requirements of Core Principle VI.

*CORE PRINCIPLE VII OF SECTION 2(h)(7)(C)—COMPLIANCE WITH RULES. The electronic trading facility shall monitor and enforce compliance with the rules of the electronic trading facility, including the terms and conditions of any contracts to be traded and any limitations on access to the electronic trading facility.*

(a) *Guidance*—(1) An electronic trading facility on which significant price discovery contracts are executed or traded should have appropriate arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis, including the examination of books and records kept by its market participants. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected. Trade practice surveillance programs may be carried out by the electronic trading facility itself or through delegation or contracting-out to a third party. If the electronic trading facility on which significant price discovery contracts are executed or traded delegates or contracts-out the trade practice surveillance responsibility to a third party, such third party should have the capacity and authority to carry out such programs, and the electronic trading facility should retain appropriate supervisory authority over the third party.

(2) An electronic trading facility on which significant price discovery contracts are executed or traded should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend the activities of a market participant as well as the authority and ability to terminate the activities of a market participant pursuant to clear and fair standards. The electronic trading facility can satisfy this criterion for market participants by expelling or denying such person's future access upon a determination that such a person has violated the electronic trading facility's rules.

(b) *Acceptable practices.* An acceptable trade practice surveillance program generally would include:

(1) Maintenance of data reflecting the details of each transaction executed on the electronic trading facility;

(2) Electronic analysis of this data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to the electronic trading facility's attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend the activities of a market participant pursuant to clear and fair standards that are available to market participants. *See, e.g.*, 17 CFR part 8.

*CORE PRINCIPLE VIII OF SECTION 2(h)(7)(C)—CONFLICTS OF INTEREST. The electronic trading facility on which significant price discovery contracts are executed or traded shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the electronic trading facility and establish a process for resolving such conflicts of interest.*

(a) *Guidance.*

(1) The means to address conflicts of interest in the decision-making of an electronic trading facility on which significant price discovery contracts are executed or traded should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addition, the Commission believes that the electronic trading facility on which significant price discovery contracts are executed or traded should provide for appropriate limitations on the use or disclosure of material non-public information gained through the performance of official duties by board members, committee members and electronic trading facility employees or gained through an ownership interest in the electronic trading facility or its parent organization(s).

(2) All electronic trading facilities on which significant price discovery contracts are traded bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided in section 3 of the Act. Under Core Principle VIII, they are also required to minimize conflicts of interest in their decision-making processes. To comply with this core principle, electronic trading facilities on which significant price discovery contracts are traded should be particularly vigilant for such conflicts between and among any of their self-regulatory responsibilities, their commercial interests, and the several interests of their management, members, owners, market participants, other industry participants and other constituencies.

(b) *Acceptable practices.* [Reserved]

*CORE PRINCIPLE IX OF SECTION 2(h)(7)(C)—ANTITRUST CONSIDERATIONS. Unless necessary or appropriate to achieve the purposes of this Act, the electronic trading facility, with respect to any significant price discovery contracts, shall endeavor to avoid adopting any rules or taking any actions that result in any unreasonable restraints of trade or imposing any material anticompetitive burden on trading on the electronic trading facility.*

(a) *Guidance.* An electronic trading facility, with respect to a significant price discovery contract, may at any time request that the Commission consider under the provisions of section 15(b) of the Act any of the electronic trading facility's rules, which may be trading protocols or policies, operational rules, or terms or conditions of any significant price discovery contract. The Commission intends to apply section 15(b) of the Act to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.

(b) *Acceptable practices.* [Reserved]

## PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

■ 33. The authority citation for part 40 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110–246, 122 Stat. 1624 (June 18, 2008).

■ 34. Revise the heading of part 40 as set forth above.

### § 40.1 [Amended]

■ 35. Section 40.1 is amended as follows:

■ A. The term ''registered entity'' is removed and the term ''designated contract market, derivatives transaction execution facility or derivatives clearing organization'' is added in its place in paragraphs (b)(2), (b)(3), and (f)(2); and

■ B. The term ''contract market, derivatives transaction execution facility or derivatives clearing organization'' is removed and the term ''registered entity'' is added in its place in paragraph (h).

■ 36. Section 40.2 is amended as follows:

■ A. The term ''registered entity'' is removed and ''designated contract market, derivatives transaction execution facility or derivatives clearing organization'' is added in its place in paragraph (a) introductory text;

■ B. The term ''registered entity'' is removed and ''designated contract market or derivatives transaction execution facility'' is added in its place in paragraphs (a)(1) and (a)(3)(iv); and

■ C. Paragraph (b) is revised to read as follows:

### § 40.2 Listing and accepting products for trading or clearing by certification.

* * * * *

(b) A registered entity shall provide, if requested by Commission staff, additional evidence, information or data relating to whether any contract meets, initially or on a continuing basis, any of the requirements of the Act or Commission rules or policies thereunder which may be beneficial to the Commission in conducting a due diligence assessment of the product and the entity's compliance with these requirements.

* * * * *

### § 40.3 [Amended]

■ 37. Section 40.3 is amended by removing the term ''registered entity'' and adding in its place the term ''designated contract market or registered derivatives transaction execution facility'' in paragraphs (a)(1), (c)(1), (c)(2), and (e)(2).

### § 40.6 [Amended]

■ 38. Section 40.4 is amended by removing the term ''registered entity'' and adding in its place the term ''designated contract market'' in paragraph (b)(9)(ii).

■ 39. Section 40.6 is amended by revising paragraphs (a)(2), (c)(3)(ii)(G), and (c)(3)(ii)(H) to read as follows:

### § 40.6 Self-certification of rules.

(a) * * *

(2) The registered entity has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at *submissions@cftc.gov*, the relevant branch chief at the regional office having local jurisdiction over the registered entity, and, for filings submitted by a designated contract market, registered derivatives transaction execution facility, or electronic trading facility on which significant price discovery contracts are traded or executed, the Division of Market Oversight at *DMOSubmissions@cftc.gov*, and the Commission has received the submission at its headquarters by the open of business on the business day preceding implementation of the rule; *provided, however*, rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation; and

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading Months.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

* * * * *

**§ 40.7 [Amended]**

■ 40. Section 40.7 is amended by removing the term ''designated contract market, registered derivatives transaction execution facility or registered derivatives clearing organization'' and adding in its place the term ''registered entity'' in paragraph (b).

■ 41. Section 40.8 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (c), and adding new paragraph (b) to read as follows:

**§ 40.8 Availability of public information.**

(a) The following sections of all applications to become a designated contract market, derivatives execution transaction facility or designated clearing organization will be public: transmittal letter, proposed rules, the applicant's regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's governance structure, and any other part of the application not covered by a request for confidential treatment.

(b) The following submissions required by § 36.3(c)(4) of this chapter by an electronic trading facility on which significant price discovery contracts are traded or executed will be public: rulebook, the facility's regulatory compliance chart, documents establishing the facility's legal status, documents setting forth the facility's governance structure, and any other parts of the submissions not covered by a request for confidential treatment.

* * * * *

■ 42. Appendix D to part 40 is revised to read as follows:

## Appendix D to Part 40—Submission Cover Sheet and Instructions

A properly completed submission cover sheet must accompany all rule submissions submitted electronically by a registered entity to the Secretary of the Commodity Futures Trading Commission, at *submissions@cftc.gov* in a format specified by the Secretary of the Commission.

Each submission should include the following:

1. *Identifier Code (optional)*—If applicable, the exchange or clearing organization Identifier Code at the top of the cover sheet. Such codes are commonly generated by the exchanges or clearing organizations to provide an identifier that is unique to each filing (e.g., NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (e.g., CBOT).

4. *Filing as a*—Check the appropriate box for a designated contract market (DCM), derivatives clearing organization (DCO), derivatives transaction execution facility (DTEF), or electronic trading facility with a significant price discovery contract (ECM–SPDC).

5. *Type of Filing*—Indicate whether the filing is a rule amendment or new product and the applicable category under that heading.

6. *Rule Numbers*—For rule filings only, identify rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings only, enter a brief description of the new rule or rule amendment. This narrative should describe the substance of the submission with enough specificity to characterize all essential aspects of the filing.

8. *Other Requirements*—Comply with all filing requirements for the underlying proposed rule or rule amendment. The filing of the submission cover sheet does not obviate the responsibility to comply with any applicable filing requirement (e.g., rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views). Rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

Issued in Washington, DC, this 16th day of March, 2009, by the Commission.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. E9–6044 Filed 3–20–09; 8:45 am]

**BILLING CODE 6351–01–P**

Federal Register

Monday,
March 23, 2009

## Part III

# Department of Education

**Institute of Education Sciences; Overview Information; Education Research and Special Education Research Grant Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010; Notice**

## DEPARTMENT OF EDUCATION

### Institute of Education Sciences; Overview Information; Education Research and Special Education Research Grant Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.305A, 84.305B, 84.305C, 84.305D, 84.305E, 84.324A, 84.324B, and 84.324C.

*Summary:* The Director of the Institute of Education Sciences (Institute) announces the Institute's FY 2010 competitions for grants to support education research and special education research. The Director takes this action under the Education Sciences Reform Act of 2002, title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary and adult education.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The central purpose of the Institute's research grant programs is to provide parents, educators, students, researchers, policymakers, and the general public with reliable and valid information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its grant programs, the Institute provides support for programs of research in areas of demonstrated national need.

*Competitions in this Notice:* The Institute will conduct 11 research competitions in FY 2010 through two of its National Education Centers.

The National Center for Education Research (NCER) will hold seven competitions: two competitions for education research; one competition for education research training; one competition for education research and development centers; one competition for research on statistical and research methodology in education; and two competitions for evaluation of State and local education programs and policies.

The National Center for Special Education Research (NCSER) will hold four competitions: Two competitions for special education research, one competition for special education research training, and one competition for special education research and development centers.

**NCER Competitions**

*Education Research.* Under the two education research competitions, NCER will consider only applications that address one of the following education research topics:

- Reading and Writing
- Mathematics and Science Education
- Cognition and Student Learning
- Teacher Quality—Reading and Writing
- Teacher Quality—Mathematics and Science Education
- Social and Behavioral Context for Academic Learning
- Education Leadership
- Education Policy, Finance, and Systems
- Early Childhood Programs and Policies
- Middle and High School Reform
- Interventions for Struggling Adolescent and Adult Readers and Writers
- English Language Learners
- Postsecondary Education
- Education Technology

*Education Research Training.* Under the education research training competition, NCER will consider only applications for Postdoctoral Research Training.

*Education Research and Development Centers.* Under the education research and development centers competition, NCER will consider only applications that address one of the following education research topics:

- Scaling Up Effective Schools
- Mathematics Standards and Assessments
- Cognition and Mathematics Instruction

*Research on Statistical and Research Methodology in Education.* Under the research on statistical and research methodology in education competition, NCER will consider only applications that address research on statistical and research methodology in education.

*Evaluation of State and Local Education Programs and Policies.* Under the two evaluations of State and local education programs and policies competitions, NCER will consider only applications that address the evaluation of State and local education programs and policies.

**NCSER Competitions**

*Special Education Research.* Under the two special education research competitions, NCSER will consider only applications that address one of the following special education research topics:

- Early Intervention and Early Childhood Special Education
- Reading, Writing, and Language Development
- Mathematics and Science Education
- Social and Behavioral Outcomes to Support Learning
- Transition Outcomes for Special Education Secondary Students
- Cognition and Student Learning in Special Education
- Teacher Quality
- Related Services
- Special Education Systems, Finance, and Policies
- Autism Spectrum Disorders

*Special Education Research Training.* Under the special education research training competition, NCSER will consider only applications for Postdoctoral Research Training.

*Special Education Research and Development Centers.* Under the special education research and development centers competition, NCSER will consider only applications that address one of the following research topics:

- Improving Mathematics Instruction for Students with Mathematics Difficulties
- Assessment and Accountability

*Program Authority:* 20 U.S.C. 9501 *et seq.*

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. In addition, 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, 75.221, 75.222, and 75.230.

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

**II. Award Information**

*Type of Award:* Discretionary grants and cooperative agreements.

*Fiscal Information:* Although the Administration has not yet submitted a detailed budget request to Congress for FY 2010, the Institute is inviting applications for these competitions now so that it may give applicants adequate time to prepare their applications before the first round of competitions takes place this summer. If additional funds are requested by the Administration for research in areas not announced in this notice, the Department may announce additional topics for the second round of competitions in the Fall. The actual award of grants will depend on the availability of funds. The number of awards made under each competition will depend on the quality of the applications received for that

competition. The size of the awards will depend on the scope of the projects proposed.

**III. Eligibility Information**

1. *Eligible Applicants:* Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching.

**IV. Application and Submission Information**

1. *Request for Applications and Other Information:* Information regarding program and application requirements for the competitions will be contained in the NCER and NCSER Request for Applications (RFA) packages, which will be available at the following Web sites: *http://ies.ed.gov/funding/. http://www.ed.gov/about/offices/list/ies/programs.html.*

2. *RFA Packages Available:* The RFA packages for the education research, special education research, education research training, special education research training, education research and development centers, special education research and development centers, research on statistical and research methodology in education, and evaluation of State and local education programs and policies competitions will be available at the Web sites listed above on or before March 23, 2009. The dates on which the RFA packages for these competitions will be available are also indicated in the chart at the end of this notice.

Information regarding selection criteria, requirements concerning the content of an application, and review procedures for the competitions are in the RFA packages.

3. *Deadline for Transmittal of Applications:* The deadline dates for transmittal of applications invited under this notice are indicated in the chart at the end of this notice and in the RFA packages for the competitions.

4. *Submission Requirements:* Applications for grants under these competitions must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section V. 1. *Electronic Submission of Applications* in 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.

**V. Submission of Applications**

*1. Electronic Submission of Applications*

Applications for grants under the Education Research, Education Research Training, Education Research and Development Centers, Research on Statistical and Research Methodology in Education, and Evaluation of State and Local Education Programs and Policies competitions, CFDA Numbers 84.305A, 84.305B, 84.305C, 84.305D, and 84.305E, and for grants under the Special Education Research, Special Education Research Training, and Special Education Research and Development Centers competitions, CFDA Numbers 84.324A, 84.324B, and 84.324C must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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.*

You may access the electronic grant applications for the Education Research, Education Research Training, Education Research and Development Centers, Research on Statistical and Research Methodology in Education, Evaluation of State and Local Education Programs and Policies, Special Education Research, Special Education Research Training, and Special Education Research and Development Centers competitions at www.Grants.gov. You must search for the downloadable application package for each competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.324, not 84.324A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (*see www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor

Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- 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: Application for Federal Assistance (SF 424 Research & Related (R&R)) and the other R&R forms including, Project Performance Site Locations, Other Project Information, Senior/Key Person Profile, Research and Related Budget (Total Federal and Non-Federal), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format. If you upload a file type other than the file type specified in this paragraph or submit a password-protected file, the Institute may choose not to review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*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 the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; 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 prevent 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: Elizabeth Payer, U.S. Department of Education, 555 New Jersey Avenue, NW., room 602C, Washington, DC 20208. *FAX:* (202) 219–1466.

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

*2. 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: [Identify the CFDA number, including suffix letter, if any, for the competition under which you are submitting an application.]) 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.

*3. 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: *[Identify the CFDA number, including suffix letter, if any, for the competition under which you are submitting an application.]*) 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 10 of the SF 424 (R&R) 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 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.

## 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:* To evaluate the overall success of its education research program, the Institute annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. External panels of qualified scientists review the quality of new research applications, and the percentage of newly funded projects that receive an average panel score of excellent or higher is determined. A panel of experienced education practitioners and administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice. An external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined.

## VII. Agency Contact

*For Further Information Contact:* The contact person associated with a particular research competition is listed in the chart at the end of this notice and in the RFA package. The date on which applications will be available, the deadline for transmittal of applications, the estimated range of awards, and the project period are also listed in the chart and in the RFA package that will be posted at the following Web sites: *http://ies.ed.gov/funding/. http://www.ed.gov/about/offices/list/ies/programs.html*.

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the RFA package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the chart at the end 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. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official 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 18, 2009.

**Sue Betka,**

*Acting Director, Institute of Education Sciences.*

**BILLING CODE 4000–01–P**

## INSTITUTE OF EDUCATION SCIENCES

FY 2010 Grant Competitions to Support Education Research and Special Education Research

| CFDA NUMBER AND NAME | REQUEST FOR APPLICATIONS PACKAGE AVAILABLE | DEADLINE FOR TRANSMITTAL OF APPLICATIONS | ESTIMATED RANGE OF AWARDS* | PROJECT PERIOD | FOR FURTHER INFORMATION CONTACT |
|---|---|---|---|---|---|
| **National Center for Education Research (NCER)** | | | | | |
| **84.305A-1 Education Research**<br>▪ Reading and Writing<br>▪ Mathematics and Science Education<br>▪ Cognition and Student Learning<br>▪ Teacher Quality - Reading and Writing<br>▪ Teacher Quality - Mathematics and Science Education<br>▪ Social and Behavioral Context for Academic Learning<br>▪ Education Leadership<br>▪ Education Policy, Finance, and Systems<br>▪ Early Childhood Programs and Policies<br>▪ Middle and High School Reform<br>▪ Interventions for Struggling Adolescent and Adult Readers and Writers<br>▪ English Language Learners<br>▪ Postsecondary Education<br>▪ Education Technology | March 23, 2009 | June 25, 2009 | $100,000 to $1,200,000 | Up to 5 years | Katina Stapleton<br>Katina.Stapleton@ed.gov |
| **84.305A-2 Education Research**<br>▪ Reading and Writing<br>▪ Mathematics and Science Education<br>▪ Cognition and Student Learning<br>▪ Teacher Quality - Reading and Writing<br>▪ Teacher Quality - Mathematics and Science Education<br>▪ Social and Behavioral Context for Academic Learning<br>▪ Education Leadership<br>▪ Education Policy, Finance, and Systems<br>▪ Early Childhood Programs and Policies<br>▪ Middle and High School Reform<br>▪ Interventions for Struggling Adolescent and Adult Readers and Writers<br>▪ English Language Learners<br>▪ Postsecondary Education<br>▪ Education Technology | March 23, 2009 | October 1, 2009 | $100,000 to $1,200,000 | Up to 5 years | Katina Stapleton<br>Katina.Stapleton@ed.gov |
| **84.305B Education Research Training**<br>▪ Postdoctoral Research Training | March 23, 2009 | June 25, 2009 | $80, 000 to $131, 000 | Up to 5 years | Edward Metz<br>Edward.Metz@ed.gov |

## INSTITUTE OF EDUCATION SCIENCES

FY 2010 Grant Competitions to Support Education Research and Special Education Research

| CFDA NUMBER AND NAME | REQUEST FOR APPLICATIONS PACKAGE AVAILABLE | DEADLINE FOR TRANSMITTAL OF APPLICATIONS | ESTIMATED RANGE OF AWARDS* | PROJECT PERIOD | FOR FURTHER INFORMATION CONTACT |
|---|---|---|---|---|---|
| **84.305C Education Research and Development Centers**<br>▪ Scaling Up Effective Schools<br>▪ Mathematics Standards and Assessments<br>▪ Cognition and Mathematics Instruction | March 23, 2009 | October 1, 2009 | $1,000,000 to $2,000,000 | Up to 5 years | David Sweet<br>David.Sweet@ed.gov |
| **84.305D Research on Statistical and Research Methodology in Education** | March 23, 2009 | June 25, 2009 | $75,000 to $400,000 | Up to 3 years | Allen Ruby<br>Allen.Ruby@ed.gov |
| **84.305E-1 Evaluation of State and Local Education Programs and Policies** | March 23, 2009 | June 25, 2009 | $300,000 to $1,200,000 | Up to 5 years | Allen Ruby<br>Allen.Ruby@ed.gov |
| **84.305E-2 Evaluation of State and Local Education Programs and Policies** | March 23, 2009 | October 1, 2009 | $300,000 to $1,200,000 | Up to 5 years | Allen Ruby<br>Allen.Ruby@ed gov |
| **National Center for Special Education Research (NCSER)** | | | | | |
| **84.324A-1 Special Education Research**<br>▪ Early Intervention and Early Childhood Special Education<br>▪ Reading, Writing, and Language Development<br>▪ Mathematics and Science Education<br>▪ Social and Behavioral Outcomes to Support Learning<br>▪ Transition Outcomes for Special Education Secondary Students<br>▪ Cognition and Student Learning in Special Education<br>▪ Teacher Quality<br>▪ Related Services<br>▪ Special Education Systems, Finance, and Policies<br>▪ Autism Spectrum Disorders | March 23, 2009 | June 25, 2009 | $100,000 to $1,200,000 | Up to 5 years | Kristen Lauer<br>Kristen.Lauer@ed.gov |

## INSTITUTE OF EDUCATION SCIENCES

FY 2010 Grant Competitions to Support Education Research and Special Education Research

| CFDA NUMBER AND NAME | REQUEST FOR APPLICATIONS PACKAGE AVAILABLE | DEADLINE FOR TRANSMITTAL OF APPLICATIONS | ESTIMATED RANGE OF AWARDS* | PROJECT PERIOD | FOR FURTHER INFORMATION CONTACT |
|---|---|---|---|---|---|
| **84.324A-2 Special Education Research**<br>▪ Early Intervention and Early Childhood Special Education<br>▪ Reading, Writing, and Language Development<br>▪ Mathematics and Science Education<br>▪ Social and Behavioral Outcomes to Support Learning<br>▪ Transition Outcomes for Special Education Secondary Students<br>▪ Cognition and Student Learning in Special Education<br>▪ Teacher Quality<br>▪ Related Services<br>▪ Special Education Systems, Finance, and Policies<br>▪ Autism Spectrum Disorders | March 23, 2009 | October 1, 2009 | $100,000 to $1,200,000 | Up to 5 years | Kristen Lauer<br>Kristen.Lauer@ed.gov |
| **84.324B Special Education Research Training**<br>▪ Postdoctoral Research Training | March 23, 2009 | June 25, 2009 | $80,000 to $131, 000 | Up to 5 years | Jacquelyn Buckley<br>Jacquelyn.Buckley@ed.gov |
| **84.324C Special Education Research and Development Centers**<br>▪ Improving Mathematics Instruction for Students with Mathematics Difficulties<br>▪ Assessment and Accountability | March 23, 2009 | October 1, 2009 | $1,000,000 to $2,000,000 | Up to 5 years | Celia Rosenquist<br>Celia.Rosenquist@ed.gov |

*These estimates are annual amounts.

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

Note: If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1-800-877-8339.

[FR Doc. E9–6320 Filed 3–20–09; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Monday,
March 23, 2009

# Part IV

# Department of Transportation

## Federal Transit Administration

## Public Transportation on Indian Reservations Program; Tribal Transit Program Under the American Recovery and Reinvestment Act of 2009; Notice

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Public Transportation on Indian Reservations Program; Tribal Transit Program Under the American Recovery and Reinvestment Act of 2009

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of Funding Availability: Solicitation of Grant Applications for ARRA Tribal Transit Program Funds.

**SUMMARY:** This notice announces the availability of $17 million in funding provided by the American Recovery and Reinvestment Act (ARRA) for the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)), a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 3013 (c). This notice is a national solicitation for grant applicants to be selected on a competitive basis, and includes grant terms, conditions, and reporting requirements; application procedures; and the criteria that FTA will utilize to select ARRA TTP projects. ARRA TTP funding may be used only for capital expenditures. FTA will announce the availability of, and competition for, the FY 2009 (annual) TTP in a separate notice.

**DATES:** Applicants must submit completed applications by May 22, 2009. FTA will announce grant awards in the **Federal Register** when the competitive selection process is complete.

Applicants should be aware that materials sent through the U.S. Postal Service are subject to significant delays in delivery due to the security screening process. Use of courier or express delivery services is recommended.

**ADDRESSES:** FTA has posted a synopsis of this announcement on the government-wide electronic grants Web site at: *http://www.grants.gov.* Applicants may submit applications by either delivering five hard copies to FTA, 1200 New Jersey Avenue, SE., Washington, DC 20590, Attn: Lorna R. Wilson, or by sending via e-mail to *fta.tribalprogram@dot.gov.* FTA will not accept applications via facsimile. The APPLY functionality in Grants.Gov is not available for this announcement or other ARRA opportunities.

**FOR FURTHER INFORMATION CONTACT:** Contact the appropriate FTA Regional Tribal Liaison (Appendix B) for application-specific information. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



## I. Overview of This Notice

The ''American Recovery and Reinvestment Act, 2009'' (Pub. L. 111–5 or ''ARRA''), signed into law by President Barack Obama on February 17, 2009, provides appropriations and tax law changes totaling approximately $787 billion to support multi-pronged efforts to stimulate the economy. Appropriations in ARRA include $8.4 billion to preserve and create jobs and promote economic recovery through investment in public transportation.

Formula transit programs provided in ARRA were the subject of FTA's March 5, 2009, **Federal Register** notice. The March 5 notice further provided an overview of the ARRA's transit provisions and established the principles, policies, and procedures that would apply to all ARRA formula transit programs. Readers interested in how FTA intends to implement ARRA's formula transit program resources should refer to the March 5 notice for more information.

ARRA's Transit Capital Assistance program authorizes $6.9 billion in funding for capital expenses as defined by 49 U.S.C. 5302(a)(1). Most of this funding is appropriated by formula, and was apportioned by the March 5 notice. Ten percent of funding under the program was apportioned for grants under 49 U.S.C. section 5311 (Nonurbanized Area Formula Program). Of this amount, 2.5 percent has been set-aside for discretionary allocation through FTA's Public Transportation on Indian Reservations program (Tribal Transit program (TTP)), as established by Section 3013(c) of SAFETEA–LU. SAFETEA–LU's TTP authorizes direct grants ''under such terms and conditions as may be established by the Secretary'' to Indian tribes for any purpose eligible under FTA's Nonurbanized Area Formula Program, 49 U.S.C. 5311 (Section 5311 program). However, ARRA specifies that funds it appropriates are to be used only for capital expenditures. This means that only items defined as capital under 49 U.S.C. Chapter 53 are eligible activities under the ARRA TTP program.

The ARRA TTP program provides $17 million in capital funding intended to preserve or create jobs, contribute to cleaning our environment through green purchases, retrofitting existing facilities, making public transportation opportunities available to more people, and helping ease local fiscal problems.

This notice presents the eligibility, project selection process, and grant application process for TTP funds made available by the ARRA. Additional information on program grant and ARRA's unique—and extensive—reporting requirements will be made available in the notice of selection.

## II. Eligibility Information

### *A. Eligible Applicants*

Eligible applicants include federally-recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI). To be an eligible recipient, a tribe must have the requisite legal, financial and technical capabilities to receive and administer Federal funds under this program. A newly recognized tribe may submit a copy of the most up-to-date **Federal Register** notice published by DOI, BIA: Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs to establish eligibility.

*B. Eligible Projects*

Eligible recipients may use ARRA TTP funds for any capital expense as defined by 49 U.S.C. 5302(a)(1). Eligible capital projects include but are not limited to: Preventive maintenance; acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation (including engineering, designing, location surveying, mapping, and acquiring right-of-way) transit-related ITS; rehabilitating buses; remanufacturing a bus; overhauling rail rolling stock; leasing a facility or equipment for use in public transportation where more cost-effective than purchase or construction; public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to public transportation facilities, construction or renovation of intercity bus and rail stations and terminals, renovation and improvements of historic transportation facilities, where the improvement enhances the effectiveness of a public transportation project and is physically or functionally related to that public transportation project, or creates a new or enhanced coordination between public transportation and other transportation and provides a fair share of revenue to be used in public transportation; eligible crime prevention and security expenses; establishing a debt service reserve; and mobility management.

**III. Local Match**

Under the ARRA, the Federal share of a TTP grant is up to 100 percent of the net project cost of capital projects.

**IV. Terms and Conditions**

Section 3013 of SAFETEA–LU amended 49 U.S.C. section 5311(c) by authorizing funds for the TTP ''under such terms and conditions as may be established by the Secretary.'' Pursuant to this discretionary statutory authority in SAFETEA–LU, FTA published a **Federal Register** notice dated March 22, 2006 (71 FR 14618), ''Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1)): Notice of Public Meetings, Proposed Grant Program Provisions,'' and proposed certain statutory and regulatory terms and conditions that should apply to grants awarded under the TTP.

FTA received a substantial number of comments from Indian tribes and other groups concerning certain proposed terms and conditions for the TTP. FTA addressed these comments in a **Federal Register** notice dated August 15, 2006 (71 FR 46878) and established appropriate grant requirements for the TTP.

The terms and conditions established in the August 15, 2006, notice equally apply to ARRA TTP program funds, and are summarized below. In addition, ARRA specifies additional grant requirements that apply to its funding programs, including the ARRA TTP, which are also provided below.

*A. General Grant Requirements*

1. Common Grant Rule (49 CFR part 18), ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' This is a government-wide requirement that applies to all Federal assistance programs.

2. Civil Rights Act of 1964, as amended (42 U.S.C. 2000d). Unless Indian tribes are specifically exempted from civil rights statutes, compliance with civil rights statutes is required, including compliance with equity in service. However, Indian tribes will not be required to comply with FTA program-specific guidance for Title VI and Title VII.

3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act (ADA) requirements in 49 CFR parts 27, 37, and 38. Section 504 is a government-wide requirement that applies to all Federal programs, and the implementing regulations of the ADA apply to public transportation.

4. Drug and Alcohol Testing requirements (49 CFR part 655). FTA will apply this requirement because it addresses a national safety issue for operators of public transportation.

5. National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*). This is a government-wide requirement that applies to all Federal programs.

6. Charter Service and School Bus transportation requirements in 49 CFR parts 604 and 605. The definition of ''public transportation'' in 49 U.S.C. section 5302 specifically excludes school bus and charter service.

7. National Transit Database (NTD) Reporting requirement. Title 49 U.S.C. section 5335 requires NTD reporting for recipients of Section 5311 funds. The TTP is a Section 5311 program that will provide funds directly to Indian tribes. Therefore, this reporting requirement applies.

8. Bus Testing requirements (49 CFR part 665). To ensure that vehicles acquired under this program will meet adequate safety and operational standards, this requirement will apply.

9. Labor Protections (49 U.S.C. section 5333(b)). At the time of the August 15, 2006, notice, FTA indicated that labor protective arrangements would be required but that FTA would not implement this requirement until the Department of Labor (DOL) revised its procedures to provide a relevant arrangement for tribes. On October 1, 2008, DOL began using a revised special warranty for the Section 5311 program which is appropriate for use with TTP grants. All TTP grants (ARRA and annual) awarded after October 1, 2008, will be subject to the special warranty for labor protective arrangements under the Section 5311 program, which will be incorporated by reference in the grant agreement.

A comprehensive list and description for all of the statutory and regulatory terms and conditions that apply to the TTP are set forth in FTA's Master Agreement for the TTP available on FTA's Web site at: *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm*. Selected grantees are required to formally designate, by resolution or other formal tribal action, an authorized representative who will have the authority to execute grant agreements on behalf of the Indian tribe with FTA and who will also have the authority on behalf of the Indian tribe to execute FTA's Annual List of Certifications and Assurances and the Section 1511 certification for ARRA program described in Section V, A of this notice. The Annual List of Certifications and Assurances is attached in Appendix A for informational purposes only. The Certification and Assurances must be signed by a legal entity. FTA has provided information concerning Certifications and Assurances in Appendix A of this notice. Tribes are required to select categories 01 and 22 for the purpose of the TTP.

*B. ARRA-Specific Requirements*

1. A successful applicant for competitive ARRA TTP funding, must submit a separate ARRA grant application electronically to the appropriate FTA regional office through TEAM-Web.

2. Grantees may not commingle ARRA funds into a grant application that contains FTA funding authorized under SAFETEA–LU or any prior authorization. Furthermore, grantees cannot apply for funding allocated under separate ARRA programs in a single grant. In other words, if a Tribe is selected for funding under the annual TTP program and/or the State's annual Section 5311 apportionment and/or the State's ARRA Section 5311

apportionment, FTA will not combine the ARRA TTP funds in a grant award with any other source of funds the tribe may be receiving. The tribe may, however, use different sources of funds to support a single project at the local level, provided the tribe can track and report on the funds separately.

3. FTA will process ARRA grants promptly upon receipt of a completed application. ARRA funds must be obligated in a grant before September 30, 2010. If the tribe selected for funding has not received a grant by then, the funds will no longer be available to the tribe. A tribe selected for ARRA TTP funding must promptly submit a grant application to FTA and provide all information the region requests as necessary to obligate the funds in a grant award. In order to assure that project funds will begin to flow into the economy as quickly as possible, all ARRA grants should be for a project that the tribe expects to implement quickly. Grant application information must include milestones appropriate to the scale of the project to allow adequate oversight to monitor the progress of projects from the start through completion and closeout. [**Note:** Grantees will be expected to update activity milestones and financial status report on a quarterly basis for ARRA grants.]

4. Before FTA can award grants for discretionary projects and activities, notification of the award must be given to members of Congress, and in the case of awards greater than $500,000, to the House and Senate authorizing and appropriations committees at least three days before award.

5. Before executing an ARRA grant, the executing official must inform FTA via the TEAM system of the (1) purpose of the investment, and (2) the rationale for the investment. Grantees must select one or more of the following purposes before the grant can be executed:

a. To preserve and create jobs and promote economic recovery.

b. To assist those impacted by the recession.

c. To provide investments needed to increase economic efficiency by spurring technological advances.

d. To invest in infrastructure that will provide long-term economic benefits.

e. To stabilize State and local government budgets, in order to minimize reductions in essential services and counterproductive State and local tax increases.

In addition, grantees must also select one or more of the following rationale:

a. Project is ready to go (all applicable federal requirements are complete).

b. Use of Recovery funds for this project frees up other FTA/State/local resources for other purposes.

c. Project is high local/regional priority.

d. Project could not have been implemented without supplemental funding.

e. Funding accelerates completion and decreases over-all project costs.

f. Project provides equipment or facilities to increase transit ridership.

g. Project is a needed investment to bring assets to a state of good repair.

h. Project addresses immediate maintenance needs.

6. Other important issues that affect FTA grant processing activities are discussed below.

a. Special Conditions of Grant Award—Recipients applying for grants that contain ARRA funds must agree to the following grant conditions that will be included in the grant application.

1. Recipient of ARRA funds agrees to comply with reporting requirements and deadlines set out in section 1201(c) of Public Law 111–5.

2. Recipient of ARRA funds agrees to comply with reporting requirements and deadlines set out in section 1512 of Public Law 111–5.

3. Recipient of ARRA funds agrees that all data submitted to FTA in compliance with the requirements of Public Law 111–5 is accurate, objective, and of the highest integrity.

4. Recipient of ARRA funds acknowledges that receipt of ARRA funds is a ''one-time'' disbursement that does not create any future obligation by the FTA to advance similar funding amounts.

5. Recipient of ARRA funds agrees to display any program logos as may be required by FTA.

6. Recipient of ARRA funds agrees that it or its sub-recipients shall report any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

b. Buy America—The Buy America requirements under 49 U.S.C. 5323(j) that typically apply to projects accepting Federal assistance under the Federal Transit program authorized under Chapter 53 of title 49, United States Code, apply to all capital public transportation projects funded with amounts appropriated in the ARRA. Therefore, an applicant, in carrying out a procurement financed with Federal assistance authorized under the ARRA must comply with applicable Buy America requirements in 49 U.S.C. section 5323(j) and 49 CFR Part 661.

## V. Reporting Requirements and Certifications Applicable to Recipients of ARRA Funds

As a condition of award, grantees receiving ARRA funds will be required to report on grant activities on a routine basis. FTA grantees will be responsible for reporting up-to-date and accurate information in the milestone status report and financial status report on a quarterly basis, as well as additional data elements that are required to be reported in *http://www.recovery.gov.* Additionally, special certifications and grant conditions will also be required of ARRA grant recipients. FTA will issue specific guidance on reporting requirements in the near future for your information. The ARRA statutory reporting requirements and certifications are identified below:

### *A. Section 1511: Certifications*

For covered funds made available to State or local governments, including Tribes, for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, are required to certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification must include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and must be posted on a specified Web site. A State or local agency or tribe may not receive infrastructure investment funding from funds made available under ARRA unless this certification is made and posted. For ARRA TTP grants, this certification must be made by the Tribal official authorized to execute grant agreements and execute certifications and assurances, as noted in Section IV.A, above, before FTA can award a grant. The certifying official must also provide a list of projects selected to receive ARRA funds. DOT will post the certification and project list to a public Web site linked to *http://www.recovery.gov,* as required by law.

### *B. Section 1512: Reports on Use of Funds*

*Recipient Reports.*—Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

(i) The total amount of recovery funds received from that agency;

(ii) The amount of recovery funds received that were expended or obligated to projects or activities; and

(iii) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—

(1) The name of the project or activity;

(2) A description of the project or activity;

(3) An evaluation of the completion status of the project or activity;

(4) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(5) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(iv) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

The data elements required to comply with Public Law 109–282 are: name of entity receiving the award; the amount of the award; information on the award including transaction type, funding agency, the North American Industry Classification System Code or Catalog of Federal Domestic Assistance number (where applicable); program source; and an award title descriptive of the purpose of each funding action.

FTA will extract as much as possible of this information from grant information and standard quarterly reports provided through the TEAM electronic grants award and management system. Supplemental reporting may be required, however, to provide the project and contract level information. FTA will provide further reporting instructions at a later date. FTA is working with other modal administrations within the Department of Transportation (DOT) to standardize the information required from all DOT recipients. DOT will post the information the tribe reports in response to this requirement on *http://www.recovery.gov* to satisfy the transparency requirements of the ARRA.

*C. Section 1512(h): Registration*

Recipients of ARRA funds must register with Central Contractor Registration database (CCR) or complete other registration requirements as determined by the Director of the Office of Management and Budget (OMB). CCR registration can be completed at *http://www.ccr.gov.* CCR registration must be completed before the first quarterly Section 1512 report is due (ten days after the end of the first quarter after the tribe receives an ARRA grant). OMB has issued guidance requiring FTA and other Federal agencies to ensure that grantees and first tier subawardees (subrecipients and contractors) obtain a DUNS number, or update their DUNS record if necessary. DUNS registration can be completed at *http://www.dnb.com.* OMB has not yet issued a final determination on the extent to which subawardees will be required to register in CCR.

*D. Section 1201(a): Maintenance of Effort*

Not later than March 19, 2009 for each amount that is distributed to a State or agency thereof from an appropriation in ARRA for a covered program, the Governor of State is required to certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor is required to submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of February 17, 2009, during the period of February 17, 2009 through September 30, 2010, for the types of projects that are funded by the appropriation.

This requirement applies only to State funding for transportation projects eligible for ARRA funding. DOT will treat this maintenance of effort requirement through one consolidated certification from the Governor to the Secretary, which should include State funding for transit projects, as well as highway and other transportation modal projects. The tribe is not required to complete this certification, but must report any State transportation funding received in its quarterly Section 1201(c)(2) report.

*E. Section 1201(c)(2): Periodic Reports*

For amounts received under each covered program by a grant recipient under ARRA, the grant recipient shall include in the periodic reports information tracking:

(A) The amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;

(B) The number of projects that have been put out to bid under the appropriation;

(C) The number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) The number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) The number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) The number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since February 17, 2009; and

(G) The actual aggregate expenditures by each grant recipient from State sources for projects eligible for funding under the program during the period of February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of the date of enactment of ARRA.

Each grant recipient is required to submit the first of the periodic reports including the Section 1201(c)(2) data required above not later than 90 days from February 17, 2009 and is required to submit updated reports not later than 180 days, one year, two years, and three years from February 17, 2009.

FTA will extract as much as possible of this information from grant information and standard quarterly reports provided through the TEAM electronic grants award and management system. Supplemental reporting may be required, however, to provide the project and contract level information. FTA will provide further reporting instructions at a later date. FTA is working with other modal administrations within DOT to standardize the information required from all DOT recipients, including the possibility of generating the required jobs data through the use of economic models and factors applied to the data provided in the grant awards and other information reported by the grant.

*F. Section 1607*

Section 1607 requires that the Governor certify within 45 days of enactment (April 3, 2009) that, for funds provided, the state will request and use funds provided by this Act and the

funds will be used to create jobs and promote economic health. If the Governor does not provide this certification, then the state legislature may act to accept the funds. This requirement applies to all ARRA programs across the government and is not directly applicable to the ARRA TTP.

*G. Section 1609*

Under section 1609(c), FTA is required to report to certain congressional committees every 90 days following enactment on the status and progress of projects funded or proposed for funding under the Act with respect to compliance with NEPA and its implementing regulations. FTA will necessarily ask recipients for assistance in compiling this quarterly report.

*H. Other Reporting*

To satisfy the needs for transparency and accountability related to funding appropriated under the ARRA, grantees may be required to provide additional information not yet specified in response to requests from the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), the Government Accountability Office (GAO), or the DOT Inspector General (IG). FTA will inform grantees if and when such additional reports are required.

**VI. Application Content**

The following information must accompany all requests for ARRA TTP funding. Information such as the identity of the applicant need not be repeated, but the project description and budget must clearly indicate capital activities for which the tribe seeks ARRA TTP funding, and the application must specifically address the ARRA related aspects of the evaluation criteria.

*A. Applicant Information*

1. Name of federally recognized tribe and, if appropriate, the specific tribal agency submitting the application.

2. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number if available. (Note: If selected, applicant will be required to provide DUNS number prior to grant award.)

3. Contact information including: contact name, title, address, fax and phone number, and e-mail address if available.

4. Description of public transportation services including areas currently served by tribe, if any.

5. Name of person(s) authorized to apply on behalf of tribe (signed transmittal letter) must accompany application.

*B. Technical, Legal, and Financial Capacity To Implement the Proposed Project*

Tribes that cannot demonstrate adequate capacity in technical, legal and financial areas will not be considered for funding. Every application must describe the tribe's legal, technical, and financial capacity to implement the proposed project.

1. *Legal Capacity:* Provide documentation or other evidence to show that the applicant is a federally recognized tribe. Also, who is the authorized representative to execute legal agreements with FTA on behalf of the tribe? Does the tribe have appropriate Federal or State operating authority?

2. *Technical Capacity:* Give examples of the tribe's management of other Federal projects. What resources does the tribe have to implement a transit project?

3. *Financial Capacity:* Does the tribe have adequate financial systems in place to receive and manage a Federal grant? Describe the tribe's financial systems and controls.

*C. Project Information*

1. *Budget:* Provide the Federal amount requested for each purpose for which funds are sought and any funding from other sources that will be provided.

2. *Project Description:* Provide a summary description of the proposed project and how it will be implemented (e.g., number and type of vehicles, service area, schedules, type of services, fixed route or demand responsive), route miles (if fixed route), major origins and destinations, population served, and whether the tribe provides the service directly or contracts for services and how will vehicles be maintained. Note that while application must include a description of how equipment requested will be used and maintained, only capital expenses are eligible under the ARRA. Costs of operations are not eligible under this program. Include a summary discussion of how the project is consistent with the objectives of the ARRA.

3. *Project Timeline:* Include significant milestones such as date of contract for purchase of vehicle(s), actual or expected delivery date of vehicles, and service start up dates.

*D. Application Evaluation Criteria*

Applications for funding of transit services should address the application criteria based on project to be funded (for more detail see section VI below). Note that while these are the same criteria used for FTA's annual TTP program, special attention for these ARRA TTP resources will be placed upon the readiness of the project to be implemented (within criterion 1) and the estimated number of jobs created or sustained (within criterion 3).

1. *Criterion 1:* Project Planning and Coordination.

2. *Criterion 2:* Demonstration of Need.

3. *Criterion 3:* Project Benefits.

4. *Criterion 4:* Financial Commitment and Operating Capacity.

*E. Intergovernmental Review*

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*F. Funding Restrictions*

FTA will consider applications for funding only from eligible recipients for eligible capital activities (see section II). Due to funding limitations, applicants that are selected for funding may receive less than the amount requested. Current TTP grantees applying for ARRA funding must be in an active status to receive additional funding.

**VII. How Proposals Will Be Evaluated**

*A. Competitive Selection Process*

FTA intends to award $17 million in ARRA TTP funding. If a tribe applies for funding both under this announcement (ARRA) and under the FY 2009 annual TTP announcement, FTA will consider both applications in relationship to each other, as appropriate. FTA encourages applicants to review the evaluation criteria and all other related application information prior to preparation of an application. Applicants may receive technical assistance for application development by contacting their FTA regional Tribal liaison, or the National Rural Transportation Assistance Program (RTAP) office. Contact information for technical assistance can be found in Appendix C.

*B. Evaluation Criteria*

1. Project Planning and Coordination (25 points)

In this section, the applicant should describe how the proposed project was developed and demonstrate that there is a sound basis for it. Additionally, the applicant must provide evidence that the project is ready for implementation as soon as a grant is awarded. Information may vary depending upon whether the tribe has a formal plan that includes transit.

a. Applicants without a formal plan that includes transit are advised to consider and address the following areas:

i. Provide a detailed project description.

ii. Identify existing transportation services available to the tribe and discuss whether the proposed project will provide opportunities to coordinate service with existing transit services, including human service agencies, intercity bus services, or other public transit providers.

iii. Discuss the level of support either by the community and/or tribal government for the proposed project.

iv. Describe the implementation schedule for the proposed project, such as time frame, staffing, and procurement. Evidence that project implementation can begin immediately upon grant award is desired.

b. Applicants with a formal transit plan are advised to consider and address the following areas:

i. Describe the planning document and/or the planning process conducted to identify the proposed project.

ii. Describe how the mobility and client-access needs of tribal human service agencies were considered in the planning process.

iii. Describe what opportunities for public participation were provided in the planning process and how the proposed project has been coordinated with transportation provided for the clients of human service agencies, with intercity bus transportation in the area, or with any other rural public transit providers.

iv. Describe how the proposed project complements rather than duplicates any currently available facilities, equipment, or services.

v. Describe the implementation schedule for the proposed project, including time frame, staffing, procurement, etc. Evidence that project implementation can begin immediately upon grant award is desired.

vi. Describe any other planning or coordination efforts that were not mentioned above.

c. Based on the information provided as discussed in the above section, proposals will be rated on the following:

i. Is there a sound basis for the proposed project?

ii. Is the project ready to implement?

2. Demonstration of Need (25 points)

In this section, the application should demonstrate the transit needs of the tribe and discuss how the proposed project will address the identified transit needs. Applications may include information such as destinations and services not currently accessible by transit, need for access to jobs or health care, special needs of the elderly and individuals with disabilities, income-based community needs, or other mobility needs.

Based on the information provided, the proposals will be rated on the following:

a. Is there a demonstrated need for the project?

b. How well does the project fulfill the need?

3. Project Benefits (25 points)

In this section, applications should identify expected project benefits. Possible examples include increased ridership and daily trips, improved service, improved operations and coordination, and economic benefits to the community. Consistent with the objectives of the ARRA, the number of estimated jobs created or sustained should also be provided.

Benefits can be demonstrated by identifying the population of tribal members and non-tribal members in the proposed project service area and estimating the number of daily one-way trips the transit service will provide and/or the number of individual riders. There may be many other, less quantifiable, benefits to the tribe and surrounding community from this project. Please document, explain or show the benefits in whatever format is reasonable to present them.

Based on the information provided proposals will be rated based on:

a. Will the project improve transit efficiency or increase ridership?

b. Will the project improve mobility for the tribe?

c. Will the project improve access to important destinations and services?

d. How many jobs will the proposed project create or sustain?

e. Are there other qualitative benefits?

4. Financial Commitment and Operating Capacity (25 points)

In this section, the application should identify any other funding sources used by the tribe to support the proposed project, including human service transportation funding, Indian Reservation Roads, or other FTA programs such as Job Access and Reverse Commute (JARC), New Freedom, section 5311, section 5310, or section 5309 bus and bus facilities funding.

The application should show how ARRA TTP funding will supplement (not duplicate or replace) current funding sources. If the transit system was previously funded under section 5311 through the State's apportionment or the annual TTP, describe how requested ARRA TTP funding will expand facilities, and/or other capital resources.

Describe any other resources the tribe will contribute to the project, including in-kind contributions, commitments of support from local businesses, donations of land or equipment, and human resources, and describe to what extent the new project or funding for existing service leverages other funding.

The tribe should show its ability to manage programs by demonstrating the existing programs it administers in any area of expertise such as human services. Based upon the information provided, the proposals will be rated on the extent to which the proposal demonstrates that:

a. This project provides new services or complements existing service;

b. TTP funding does not replace existing funding;

c. The tribe has or will provide non-financial support to project;

d. The tribe has demonstrated ability to provide other services or manage other programs; and

e. Project funds are used in coordination with other services for efficient utilization of funds.

*C. Continuation Projects*

If an applicant is proposing to fund, with ARRA resources, the continuation of a project funded previously with FY 06–08 TTP funding, tribes must demonstrate that their project(s) are in an active status to receive additional funding. Along with the criteria listed in Section B, proposals should state that the applicant is a current TTP grantee and provide information on their transit project(s) status including services now being provided and how the new funding will complement the existing service. Please provide any data that would be helpful to project evaluators, i.e., ridership, increased service hours, extended service routes, stops, etc. If you received a planning grant in previous fiscal years, please indicate the status of your planning study and how this project relates to that study.

*D. Review and Selection Process*

Each application will be screened by a panel of members, including FTA Headquarters and regional staff. Incomplete or non-responsive applications will be disqualified. FTA will make an effort to award grants to as many qualified applicants as possible.

**VIII. Award Administration Information**

FTA will award grants directly to Federally-recognized Indian tribes for the projects selected through this competition. Following publication of the selected recipients, projects, and amounts, FTA regional staff will assist

the successful applicants in preparing electronic applications for grant awards. At that time, the tribe will be required to sign the Certification and Assurances contained in Appendix A. The Master Agreement is available on FTA's Web site at *http://www.fta.dot.gov/17861_18441_ENG_HTML.htm.*

FTA will notify all applicants, both those selected for funding and those not selected, when the competitive selection process is complete. Projects selected for funding will be published in a **Federal Register** notice, along with any additional grants and reporting requirements for ARRA funds.

## IX. Technical Assistance

Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding general and ARRA-specific grants and reporting requirements and will provide assistance in preparing the documentation necessary for the grant award. Contact the appropriate FTA regional Tribal Liaison (Appendix B) for application specific information and issues. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC, this 18th day of March, 2009.

**Matthew J. Welbes,**

*Acting Deputy Administrator.*

## Appendix A

*Federal Fiscal Year 2009 Certifications and Assurances for the Federal Transit Administration Public Transportation on Indian Reservation Program*

### Federal Fiscal Year 2009 Certifications and Assurances for Federal Transit Administration Assistance Programs; Preface

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2008. Twenty-four (24) Categories of certifications and assurances are listed by numbers 01 through 24 in the TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients.'' Category 01 applies to all Applicants. Category 02 applies to all applications for Federal assistance in excess of $100,000. Categories 03 through 24 will apply to and be required for some, but not all, Applicants and projects. FTA's annual certifications and assurances permit the Applicant to select a single certification which can cover all the programs for which it anticipates submitting an application. FTA requests the Applicant to read each certification and assurance carefully and select all certifications and assurances that may apply to the programs for which it expects to seek Federal assistance.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every project for which FTA provides Federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing Federal financial assistance for the project will determine which provisions apply. The terms of these certifications and assurances reflect applicable requirements of FTA's enabling legislation currently in effect.

The Applicant also understands and agrees that these certifications and assurances are special pre-award requirements specifically prescribed by Federal law or regulation and do not encompass all Federal laws, regulations, and directives that may apply to the Applicant or its project. A comprehensive list of those Federal laws, regulations, and directives is contained in the current FTA Master Agreement MA(14) for Federal Fiscal Year 2008 at the FTA Web site *http://www.fta.dot.gov/documents/14–Master.pdf.* The certifications and assurances in this document have been streamlined to remove most provisions not covered by statutory or regulatory certification or assurance requirements.

Because many requirements of these certifications and assurances will require the compliance of the subrecipient of an Applicant, we strongly recommend that each Applicant, including a State, that will be implementing projects through one or more subrecipients, secure sufficient documentation from each subrecipient to ensure compliance, not only with these certifications and assurances, but also with the terms of the Grant Agreement or Cooperative Agreement for the project, and the Master Agreement or an alternative Master Agreement for its project, if applicable, incorporated therein by reference. Each Applicant is ultimately responsible for compliance with the provisions of the certifications and assurances applicable to itself or its project irrespective of participation in the project by any subrecipient.

### 01. Assurances Required for Each Applicant

Each Applicant for FTA assistance must provide all assurances in this Category ''01.'' Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category ''01.''

*A. Assurance of Authority of the Applicant and Its Representative*

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

*B. Standard Assurances*

The Applicant ensures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

*C. Intergovernmental Review Assurance*

Except if the Applicant is an Indian tribal government seeking assistance authorized by 49 U.S.C. 5311(c)(1), the Applicant ensures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant ensures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance derived from FTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

*D. Nondiscrimination Assurance*

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant ensures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity

(particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant ensures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant ensures that it will submit the required information pertaining to its compliance with these provisions.

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.

(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

*E. Assurance of Nondiscrimination on the Basis of Disability*

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant ensures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant ensures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.,* and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.,* and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

*F. U.S. Office of Management and Budget (OMB) Assurances*

Consistent with OMB assurances set forth in SF–424B and SF–424D, the Applicant ensures that, with respect to itself or its project, the Applicant:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 *et seq.,* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 201 *et seq.,* relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.,* relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.,* which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR 24.4, the Applicant ensures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.,* and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to

provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.,* the Copeland ''Anti-Kickback'' Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,* regarding labor standards for federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to ensure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f through 300j–6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.,* and U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) To the extent applicable, will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.,* and U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.,* OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' Revised, and the most recent applicable OMB A–133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws, regulations, and directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

**22. Tribal Transit Program**

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurance set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances by selecting Category ''22.''

In accordance with 49 U.S.C. 5311(c)(1) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian tribal governments, the Applicant certifies and ensures as follows:

A. The Applicant ensures that:

(1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects of that project;

(2) It has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) The project equipment and facilities will be adequately maintained; and

(4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources.

B. In accordance with 49 CFR 18.36(g)(3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36.

C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document.

D. If its application exceeds $100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.

## Appendix B

*FTA Regional Offices and Tribal Transit Liaisons*

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine, Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Phone: (617) 494–2055, Fax: (617) 494–2865, Regional Tribal Liaison: Judi Molloy.

Region II—New York, New Jersey, Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, Phone: (212) 668–2170, Fax: (212) 668–2136, Regional Tribal Liaison: Rebecca Reyes-Alicea.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC, Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Phone: (215) 656–7100, Fax: (215) 656–7260, Regional Tribal Liaison: NA.

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico, Virgin Islands, Yvette G. Taylor, FTA Regional Administrator, 230 Peachtree St., NW., Suite 800, Atlanta, GA 30303, Tel.: 404–865–5600, Fax: 404–865–5605, Regional Tribal Liaisons: Jamie Pfister and James Garland.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan, Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, Phone: (312) 353–2789, Fax: (312) 886–0351, Regional Tribal Liaisons: William Wheeler, Joyce Taylor.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Phone: (817) 978–0550, Fax: (817) 978–0575, Regional Tribal Liaison: Lynn Hayes.

Region VII—Iowa, Nebraska, Kansas, Missouri, Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, Phone: (816) 329–3920, Fax: (816) 329–3921, Regional Tribal Liaisons: Joni Roeseler and Cathy Monroe.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah, Terry Rosapep, FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, Phone: (720) 963–3300, Fax: (720) 963–3333, Regional Tribal Liaisons: Jennifer Stewart and David Beckhouse.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam, Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1831, Phone: (415) 744–3133, Fax: (415) 744–2726, Regional Tribal Liaison: Lorraine Lerman.

Region X—Washington, Oregon, Idaho, Alaska, Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Phone: (206) 220–7954, Fax: (206) 220–7959, Regional Tribal Liaisons: Bill Ramos and Annette Clothier.

Appendix C

*Technical Assistance Contacts*

Alaska Tribal Technical Assistance Program, Kim Williams, University of Alaska, Fairbanks, P.O. Box 756720, Fairbanks, AK 99775–6720, (907) 842–2521, (907) 474–5208, *williams@nushtel.net*, *http://community.uaf.edu/~alaskattac.* Service area: Alaska.

National Indian Justice Center, Raquelle Myers, 5250 Aero Drive, Santa Rosa, CA 95403, (707) 579–5507 or (800) 966–0662, (707) 579–9019, *nijc@aol.com*, *http://www.nijc.org/ttap.html.* Service area: California, Nevada.

Tribal Technical Assistance Program at Colorado State University, Ronald Hall, Rockwell Hall, Room 321, Colorado State University, Fort Collins, CO 80523–1276, (800) 262–7623, (970) 491–3502, *ronald.hall@colostate.edu*, *http://ttap.colostate.edu/.* Service area: Arizona, Colorado, New Mexico, Utah.

Tribal Technical Assistance Program (TTAP), Bernie D. Alkire, 301–E Dillman Hall, Michigan Technological University, 1400 Townsend Drive, Houghton, MI 49931–1295, (888) 230–0688, (906) 487–1834, *balkire@mtu.edu*, *http://www.ttap.mtu.edu/.* Service area: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania.

Northern Plains Tribal Technical Assistance Program, Dennis Trusty, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504, (701) 255–3285 ext. 1262, (701) 530–0635, *nddennis@hotmail.com*, *http://www.uttc.edu/forum/ttap/ttap.asp.* Service area: Montana (Eastern), Nebraska (Northern), North Dakota, South Dakota, Wyoming.

Northwest Tribal Technical Assistance Program, Richard A. Rolland, Eastern Washington University, Department of Urban Planning, Public & Health Administration, 216 Isle Hall, Cheney, WA 99004, (800) 583–3187, (509) 359–7485, *rrolland@ewu.edu*, *http://www.ewu.edu/TTAP/.* Service area: Idaho, Montana (Western), Oregon, Washington.

Tribal Technical Assistance Program at Oklahoma State University, James Self, Oklahoma State University, 5202 N. Richmond Hills Road, Stillwater, OK 74078–0001, (405) 744–6049, (405) 744–7268, *jim.self@okstate.edu*, *http://ttap.okstate.edu/.* Service area: Kansas, Nebraska (Southern), Oklahoma, Texas.

Other Technical Assistance Resources

National RTAP (National Rural Transit Assistance Program), Contact: Nichole Goldsmith, Executive Director, 10 G Street NE., Suite 710, Washington, DC 20002, Telephone: (202) 248–5044, Fax: (202) 289–6539, *http://www.nationalrtap.org.*

Community Transportation Association of America, The Resource Center—800–891–0590, *http://www.ctaa.org/.*

[FR Doc. E9–6271 Filed 3–20–09; 8:45 am]

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