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WHAT: Free public briefings (approximately 3 hours) to present:

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, 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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Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB98

Common Crop Insurance Regulations, Tobacco Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations Tobacco Crop Provisions. The amended provisions removed the Quota Tobacco Crop Insurance Provisions, and revised the Guaranteed Tobacco Crop Insurance Provisions, and changed the title of the Guaranteed Tobacco Crop Insurance Provisions to Tobacco Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers. The changes will apply for the 2010 and succeeding crop years.

DATES: This rule is effective May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Stop 0812, Room 421, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

This rule finalizes changes to the Common Crop Insurance Regulations by removing the Quota Tobacco Crop Insurance Provisions and reserving § 457.156. FCIC also changes the Guaranteed Tobacco Crop Insurance Provisions by changing the title to Tobacco Crop Insurance Provisions. The American Jobs Creation Act of 2004 eliminated the tobacco quota support program and quota support price as administered by the Farm Service Agency (FSA). Prior to the American Jobs Creation Act of 2004, tobacco was sold in United States Department of Agriculture (USDA) auction warehouses. The prices paid by various auction warehouses by tobacco companies were based upon the quality and grade of the tobacco. Today the majority of tobacco is grown and sold under contract with a tobacco company. Therefore, a new environment exists for tobacco production and marketing and FCIC proposed to revise the tobacco policy to reflect this new environment. These changes were published by FCIC on Wednesday, May 23, 2007, as a notice of proposed rulemaking in the **Federal Register** at 72 FR 28895–28901. The public was afforded 60 days to submit written comments after the regulation was published in the **Federal Register**.

A total of 207 public comments were received from 131 commenters. The commenters were insurance providers, agents, an insurance service organization, attorneys, trade associations, producers, grower associations, agriculture credit associations, State agricultural associations, State departments of agriculture, and other interested parties.

Based on these public comments, FCIC will not require a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance, nor will an insured with a contract be allowed to insure tobacco using a contract price. FCIC recognized the proposed rule requiring a tobacco contract could deny insurance coverage to tobacco producers in regions where a tobacco contract is traditionally not offered, such as the New England States. Also, FCIC recognized the proposed rule requiring a tobacco contract could deny insurance coverage for small tobacco producers in other regions who cannot obtain a tobacco contract. Since contracts are no longer required, all provisions related to the contracting requirement are also removed. This would include the use of a base price to determine the price election, requirements to sign contracts prior to the acreage reporting date and quality adjustment based on contractual standards.

Due to statutory language contained in the Food, Conservation, and Energy Act of 2008, FCIC removed the ''basic unit'' definition in section 1 of the proposed rule and will retain the current ''basic unit'' definition in the current Guaranteed Tobacco Crop Provisions and Quota Tobacco Crop Provisions in this final rule.

The public comments regarding the proposed rule and FCIC's responses to the comments are listed below identifying issues and concerns, and the changes made, if any, to address the comments as follows:

Comment: A commenter requested a clarification on the definition of ''average price received'' in section 1. It appears the ''average price received'' is defined as the average price received for sold production. Also, this ''average price received'' is used in the calculation of quality adjustment in section 12(e)(4). Based on the definition, one would have to wait to quality adjust any tobacco until the production has actually been sold. In addition to waiting until the production is sold, it would not be possible to quality adjust mature appraised tobacco production. A change to the definition or an additional definition needs to be considered.

Response: FCIC has removed the definition of ''average price received'' and will retain the existing policy definition of ''average value,'' which includes the average value of any production for the applicable tobacco type divided by the appraised pounds and/or harvested pounds without regard to discounts or incentives. Retention of the ''average value'' definition allows quality adjustment to be performed without waiting for the producer to sell the insured tobacco.

Comment: A commenter questioned the phrase ''without regard to discounts or incentives'' in the definition of ''average price received'' whether this means ''excluding'' discounts or incentives.

Response: FCIC has removed the definition of ''average price received'' and will retain the existing policy definition of ''average value''. Therefore, discounts or incentives are not applicable.

Comment: Comments were received opposing the definition of ''basic unit'' in section 1 and the provisions in section 2 that limits units by tobacco type. A few commenters agreed with the proposed rule ''basic unit'' definition to limit units by tobacco type, but stated FCIC should allow optional and enterprise units by the Special Provisions where appropriate. Other commenters stated division by basic or optional units by farm serial number (FSN) should be retained because of the occurrences of drastic weather patterns on one farm and not the other. Other commenters stated tobacco growers should be treated the same as producers of other Category B crops, which allows optional units by FSN or by section.

Response: Due to statutory language in the Food, Conservation, and Energy Act of 2008, FCIC has removed the ''basic unit'' definition in section 1 of the proposed rule and will retain the ''basic unit'' definition in the current Guaranteed Tobacco Crop Provisions and Quota Tobacco Crop Provisions in this final rule. Section 2 of these Crop Provisions allows optional and enterprise units if authorized in the Special Provisions.

Comment: A commenter suggested that if the definition of ''commercial tobacco producer'' is necessary, it should be included in the definition of ''tobacco contract'' in reference to ''producer or entity''.

Response: FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Therefore, FCIC has removed the definition of ''commercial tobacco producer'' and all references to this term in this final rule.

Comment: A commenter stated the definition of ''contract price'' needs to be clarified because tobacco contracts often contain multiple prices based on the type of tobacco grade and level of tobacco stalk position.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Therefore, FCIC removed the definition of ''contract price'' and all references to this term in this final rule.

Comment: A commenter stated the definition of ''minimum acreage'' needs clarification because the tobacco contract specifies the total pounds of tobacco to be delivered by the producer, plus the contract is not county specific.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Therefore, FCIC removed the definition of ''minimum acreage'' and all references to this term in this final rule.

Comment: A few comments were received regarding the definition of ''price election.'' The commenters asked how would the price election be determined if an insured had multiple contracts for the same type of tobacco

within the unit. Another comment stated the definition does not recognize that contract prices will vary by the type and grade of tobacco.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Since contracts are no longer required, contract prices will no longer be used. Therefore, FCIC removed the definition of ''price election'' in this final rule. The definition of ''price election'' contained in the Basic Provisions is applicable to these Tobacco Crop Insurance Provisions.

Comment: A commenter noted FCIC deleted the definition of ''production guarantee'' and recommends FCIC should retain the old ''production guarantee'' definition in the policy and add the term ''acres'' multiplied by the approved yield, multiplied by the coverage level percentage selected.

Response: Tobacco is an actual production history (APH) crop. Therefore, the definition of ''production guarantee (per acre)'' in the Basic Provisions is applicable to the Tobacco Crop Insurance Provisions and is consistent with other APH crops. No change has been made.

Comment: A commenter questioned whether the definition of ''tobacco bed'' is relevant to today's current tobacco farming operations.

Response: Tobacco beds are still used by tobacco producers in their farming operations. Therefore, the definition of ''tobacco bed'' is left in this final rule.

Comment: A commenter recommended revising the definition of ''tobacco company'' to include the terms ''tobacco company,'' ''commercial marketing association'' and ''tobacco handler'' to reduce two other definitions into one.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Therefore, FCIC removed the definitions of ''tobacco company,'' ''commercial marketing association,'' and ''tobacco handler'' and all references to these terms in this final rule.

Comment: A few comments were received regarding the definition of ''tobacco contract''. A commenter recommended revising the definition of ''tobacco contract'' to state, ''A written agreement between the insured producer or entity and a tobacco company.'' This will clarify the insured must be a party to the underlying contract. Further, FCIC should revise subsections (a) and (b) accordingly. This revision is consistent with section 6(a), which requires the entity named on the tobacco contract to be the same as the entity named on the application for insurance. Another commenter stated tobacco companies will only give one contract name on their paperwork/checks, even if a share exists. The proposed policy language and elsewhere needs additional review to address the problem of a tobacco contact being in one entity name but other entities (not named on the tobacco contract) also having a share they wish to insure. A commenter stated subsection (b) of the definition of ''tobacco contract'' includes the phrase, ''(an option to purchase is not a commitment)'' [to purchase the tobacco pounds specified]. This language was a problem before for another contract crop and suggested revising the language to comply with other contract crops.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for insurance. Therefore, FCIC removed the definition of ''tobacco contract'' and all references to this term in this final rule.

Comment: A commenter stated, although tobacco types are defined in the Special Provisions, the definition of ''Tobacco types'' should identify the various types of tobacco insured under the policy and include the caveat, not all types are insurable in all States.

Response: It would be more confusing to add the insurable types to the policy because, as the commenter states, not all types are produced in all states. Further, new types may be developed that would require a revision to the policy to be effective. By including only the insurable tobacco types in a county in the Special Provisions, which are provided annually to the producer, there should be no confusion in any county what types are insurable. Therefore no change has been made.

Comment: Comments were received opposing the proposed rule in section 2 to limit units by type. A few commenters agreed with the unit division to limit basic units by type; but stated, if FCIC intends on limiting units by type, the inclusion of a Special Provision of Insurance statement will provide FCIC the flexibility if it later decides in certain instances, optional units or enterprise units are appropriate. Other commenters stated the unit division for basic and optional units by FSN contained in the current Guaranteed and Quota Tobacco Crop Provisions should be retained. Other commenters stated tobacco growers should be treated the same as producers of other Category B crops, which allows for optional units by FSN or by section.

Response: Due to statutory language contained in the Food, Conservation, and Energy Act of 2008, FCIC removed the ''basic unit'' definition in section 1 of the proposed rule and will retain the current ''basic unit'' definition in the current Guaranteed Tobacco Crop Provisions and Quota Tobacco Crop Provisions in this final rule. Section 2 of these Crop Provisions allows optional and enterprise units by the Special Provisions. However, the program integrity problems that revising the definition of ''basic unit'' was intended to address still exist. The loss ratio remains high in many areas and there have been issues with producers shifting production between units and between policies. FCIC is examining other changes to the policy that will prevent such program vulnerabilities.

Comment: A few commenters stated the term ''sufficient acreage'' as referenced in section 3(b) is a defined term and should be included in section 1. A commenter asked why FCIC is imposing a set number of ''sufficient acres'' on an insured deemed to have acreage for producing their contract poundage and then reduce the production guarantee if the insured did not plant enough acreage to fill their contract. This language penalizes the insured for planting fewer acres than the required number of acres which would be expected to produce the contracted amount of production. This would be an issue between the insured and the tobacco company if the insured was not able to produce the number of pounds required to fulfill the contract. The commenter also states this provision is internally inconsistent and does not provide the basis upon which one can determine whether the acreage is sufficient. Another commenter suggested FCIC to reconsider section 3 and recommend using language in the Loss Adjustment Manual (LAM) to address how the total production guarantee is computed for all other contracted crops.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for insurance. Therefore, there is no longer a ''sufficient acreage'' requirement and FCIC has removed all references to this term in this final rule.

Comment: In reference to section 3(a), a commenter asked if Cigar Binder and Cigar Wrapper are tobacco types insured under the Tobacco Crop Insurance Provisions, and whether each insured tobacco type is insured as a separate crop, which is designated by a ''crop

code'' on the actuarial documents. Also, if a producer intends on insuring three types of tobacco, the commenter asks if the tobacco producer should be required to list all types separately on the application, will the tobacco producer be allowed to add a tobacco type at the acreage reporting date so long as the tobacco type is reported on their application, or with reference to the provision in subsection 7(a), are tobacco producers only allowed coverage if the specific tobacco type is timely applied for by sales closing date.

Response: Cigar Binder and Cigar Wrapper and other insurable tobacco types listed on the Special Provisions are insured as separate crops under these Tobacco Crop Insurance Provisions. The tobacco producer must elect each tobacco type being insured by the sales closing date. The tobacco producer cannot add a tobacco type to the acreage report if the tobacco producer did not elect to insure the tobacco type by the sales closing date.

Comment: A few comments were received regarding the requirement in section 6(a), which states the insured is to provide a copy of all tobacco contracts to the approved insurance provider on or before the acreage reporting date and the name on the tobacco contract match the insured entity name. The commenters ask whether it is FCIC's intention the approved insurance provider, rather than the agent as designee/affiliate, must review each contract for this requirement.

Response: As stated above, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Therefore, no tobacco contracts have to be submitted by the insured producer.

Comment: A few commenters questioned why section 6(b) is requiring a copy of a written lease agreement, if applicable, between the insured and any landlord or tenant identifying all persons sharing in the crop and must be provided on or before the acreage reporting date.

Response: There have been issues in the past with the proper identification of persons with a share in the crop when leases have been involved and the amount of such shares. FCIC added this provision to assist insurance providers in properly determining and verifying who has an insurable interest and that the reported shares in the insured crop are accurate.

Comment: A commenter stated the following: (1) The use of the phrase, ''elect to insure'' in section 7(a) means an insured is not required to insure each tobacco type the insured grows in the county; (2) It is unclear when the insured must report all tobacco (insured or insurable) types produced in a county; and (3) Further, if the tobacco producer grows tobacco that is not insurable, i.e., not grown under a tobacco contract, the commenter asked whether the insured must report this tobacco too.

Response: (1) FCIC agrees the use of the phrase, ''elect to insure'' in section 7(a) means a tobacco producer is not required to insure all insurable tobacco types the tobacco producer grows in the county. (2) and (3) Section 6 of the Basic Provisions requires producers to report all acreage of the crop in the county, including insurable and uninsurable on or before the acreage reporting date. Since each type is considered a separate crop, all insurable and uninsurable acreage of each type the producer elects to insure must be reported. However, as stated above, the provisions regarding the requirement to have a contract with a tobacco company have been removed. Therefore, failure to have a contract no longer makes the tobacco uninsurable.

Comment: A commenter stated the provision in section 7(a) provides insureds the option to elect which types of tobacco to insure by treating each tobacco type as a separate crop, and presumably a separate administrative fee would apply to each type insured. The commenter recommended the provisions in section 7(a) be revised to require all insurable tobacco types grown by the insured to be the crop insured. This would be similar to the Dry Beans Crop Provisions which requires all dry bean types to be the crop insured.

Response: FCIC has always allowed tobacco types to be insured as separate crops with separate administrative fees. This provision simply provides a clarification of the existing requirement. This proposed change would be a substantive change for which the public was not provided the opportunity to comment. Therefore, no change can be made.

Comment: Comments were received opposing the proposed rule that only tobacco grown under a tobacco contract is eligible for insurance. Commenters stated FCIC's contention that the majority of tobacco is grown under contract with a tobacco company is not accurate as to all types of tobacco in all regions. Also, the commenter stated this requirement will adversely impact tobacco producers in the New England States, substantially all of whom grow the tobacco types for which tobacco contracts are not traditionally offered.

A commenter disagreed with FCIC's certification in the Regulatory Flexibility Act that the proposed rule regulation will not have significant impact on a substantial number of small entities. The requirement of a tobacco contract will effectively disqualify a significant number of Cigar Binder, Filler and Wrapper tobacco producers. For this reason the commenter believes FCIC is not in compliance with the Regulatory Flexibility Act. Some commenters agreed with the proposed rule requirement to insure only tobacco grown under contract for the majority of tobacco acreage, but FCIC should allow insurance for certain tobacco types grown without a tobacco contract via the Special Provisions.

Response: As stated above, for many of the reasons cited by these commenters, FCIC is no longer requiring a tobacco producer to have a tobacco contract with a tobacco company for their tobacco to be eligible for crop insurance. Therefore, FCIC removed all references to this term ''tobacco contract'' in this final rule.

Comment: A comment recommended adding language to section 8(b) to read, ''Failure to obtain plants for replanting is not an insurable reason not to replant''.

Response: The definition of ''practical to replant'' in the Basic Provisions states it will be considered ''practical to replant'' regardless of the availability of plants or seed. Thus, if the tobacco producer fails to obtain tobacco plants for any reason and does not replant the damaged acreage when it is practical to replant such acreage is not insured. Therefore, no change has been made.

Comment: A few comments were received regarding changing the end of insurance period date in section 9(f) for Flue-Cured tobacco in the States of Alabama, Florida, Georgia, North Carolina, and Virginia, and moving dates for all other tobacco types to 15 days earlier than currently indicated.

Response: FCIC based the end of the insurance periods on agronomic conditions in those States. However, if the commenter has information to support changes to the end of insurance periods; such information can be submitted to the appropriate Risk Management Agency (RMA) Regional Office for consideration. The current policy provisions allow for exceptions to the end of insurance period dates by the Special Provisions. No change has been made.

Comment: A commenter questioned in reference to section 10, who can, or is going to be required to prove or disprove a fire was caused by lightning. Voltage surges and short circuits can

leave the same physical evidence as lightning in mechanical devices. Lightning striking in the middle of a tobacco field or tobacco barn will leave no physical evidence of its cause.

Response: In accordance with section 14(e) of the Basic Provision, the burden of proof is on the insured to show that the loss was due to an insurable cause. This means to not only establish that a fire occurred, the insured must also establish that the fire was due to a naturally occurring event (*i.e.*, lightning). Since fire can be caused by other naturally occurring events other than lightning, FCIC removed the terms ''if caused by lightning.'' As long as the fire can be proven to be from any naturally occurring event, it is an insurable cause of loss.

Comment: One commenter asked when representative samples are required in reference to section 11. Both the Basic Provisions and the Tobacco Crop Insurance Provisions indicate representative samples are required, but neither one says when.

Response: Section 11(b) states that if a notice of damage is filed the stalks and stubble must be left intact. However, it does not state when samples must be left for unharvested acreage. Section 11(a) is revised to require representative samples be left for any field that will not be harvested.

Comment: A commenter stated section 12(a) refers to the commingling of production. The proposed rule permits insurance for basic units by type only. So, when there is commingled production by type, the commenter asks whether the commingled production is allocated on a pro rata basis. In the absence of optional units, FCIC must clarify the concept of commingled production.

Response: Section 12(a) references the loss will be determined on a unit basis. Due to statutory language contained in the Food, Conservation, and Energy Act of 2008, FCIC removed the ''basic unit'' definition of section 1 of the proposed rule and will retain the current ''basic unit'' definition in the current Guaranteed Tobacco Crop Provisions and Quota Tobacco Crop Provisions in this final rule. Optional and enterprise units may be allowed by the Special Provisions. FCIC will also retain the current language in the section 12(a)(1)(2) of the Guaranteed Tobacco Crop Provisions that addressed how commingled production is handled for basic and optional units in this final rule and makes these Tobacco Crop Provisions consistent with other crop policies. If production is commingled, the production will be allocated to the liability on the harvested acreage for each unit and in accordance with procedures approved by FCIC.

Comment: A commenter stated if section 12(c) does not define ''production guarantee (per acre),'' an approved insurance provider cannot enforce section 12(c)(1)(i).

Response: The definition of ''production guarantee (per acre)'' in the Basic Provisions is applicable to these Tobacco Crop Insurance Provisions. Therefore, there should be no difficulty in applying section 12(c)(1)(i).

Comment: A commenter recommended adding a provision in section 12(c) stating production to count will be at least 35 percent of all unharvested acreage. This provision is warranted due to the costs for harvesting tobacco which would not be incurred for an unharvested crop.

Response: FCIC did not propose changes regarding production to count on unharvested acreage so the public was not afforded an opportunity to provide comments. Therefore, no change can be made as a result of this comment.

Comment: A commenter stated section 12(c)(1)(i)(E) is inconsistent with section 11. Accordingly, this provision should be amended to read, ''Of any type of tobacco when the stalks and stubble have been destroyed in violation of section 11(b)''.

Response: FCIC has made the change for clarification.

Comment: A few commenters stated they were not in favor of the addition of prevented planting coverage for tobacco and recommend that it be removed.

Response: Prevented planting is a legitimate peril faced by tobacco producers. These provisions provide coverage for tobacco producers whose acreage is prevented from being planted due to an insured cause of loss. These provisions make the tobacco crop insurance program consistent with other crop programs. Therefore, FCIC will retain the prevented planting coverage provisions.

In addition to the changes made above, FCIC will remove the paragraph immediately preceding section 1 which refers to the order of priority of provisions in the event of conflict. This information is contained in the Basic Provisions; therefore, it is duplicative and should be removed in the Tobacco Crop Insurance Provisions.

FCIC has also added a new section 12(e) that allows claims to be settled based on appraised production even if the acreage has been harvested unless we determine that the harvested production is inconsistent with appraised production and the producer cannot prove that an insurable cause of loss occurred between the appraisal and the end of the insurance period that could account for the reduction in production. Once tobacco has been harvested and removed from the field it is placed in a curing barn and loses its identity. This makes it difficult to determine the total production to count at the unit level. FCIC realizes this is a program vulnerability. This language allows approved insurance providers to settle tobacco claims based on appraised tobacco production in the field and helps ensure accuracy in determining production to count for claims purposes. The appraised production will be determined in accordance with loss adjustment procedures approved by FCIC. If the claim is settled on the appraised production, redesignated section 12(f) regarding quality adjustment is not applicable, since quality adjustment on tobacco can only be determined after the tobacco is cured.

List of Subjects in 7 CFR Part 457

Crop insurance, Tobacco, Reporting, and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

■ 2. Revise § 457.136 to read as follows:

§ 457.136 Tobacco crop insurance provisions

The Tobacco Crop Insurance Provisions for the 2010 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Tobacco Crop Insurance Provisions

1. Definitions.

Average value. For appraised production, the value of such production divided by the appraised pounds for the tobacco types. For harvested production, the value of such production divided by the harvested pounds for the tobacco type.

Basic unit. In lieu of the definition in the Basic Provisions, a basic unit is all

insurable acreage of an insurable type of tobacco in the county in which you have a share on the date of planting for the crop year and that is indentified by a single FSA farm serial number at the time insurance first attaches under these provisions for the crop year.

Harvest. Cutting or priming and removing all insured tobacco from the unit.

Hydroponic plants. Seedlings grown in liquid nutrient solutions.

Late planting period. In lieu of the definition in section 1 of the Basic Provisions, the period that begins the day after the final planting date for the insured crop and ends 15 days after the final planting date, unless otherwise specified in the Special Provisions.

Planted acreage. In addition to the definition contained in the Basic provisions, land in which tobacco seedlings, including hydroponic plants, have been transplanted by hand or machine from the tobacco bed to the field.

Pound. Sixteen ounces avoirdupois.

Priming. A method of harvesting tobacco by which one or more leaves are removed from the stalk as they mature.

Tobacco bed. An area protected from adverse weather in which tobacco seeds are sown and seedlings are grown until transplanted into the tobacco field by hand or machine.

Tobacco types. Insurable tobacco as shown on the Special Provisions of Insurance.

2. Unit Division.

A basic unit will be determined in accordance with the definition of basic unit contained in section 1 of these Crop Provisions. Optional and enterprise units may be allowed by the Special Provisions of Insurance.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must select only one price election percentage and coverage level for each tobacco type designated in the Special Provisions of Insurance that you elect to insure.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of any written lease agreement, if applicable, between you and any landlord or tenant. The written lease agreement must:

(1) Identify all other persons sharing in the crop; and

(2) Be submitted to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each tobacco type you elect to insure and for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That meets all rotation requirements on the Special Provisions of Insurance.

(b) You will be considered to have a share in the insured crop if you retain control of the acreage on which the tobacco is grown and you are at risk of loss.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that is:

(a) Planted in any manner other than as provided in the definition of ''planted acreage'' in section 1 of these Crop Provisions, unless otherwise provided by the Special Provisions of Insurance or by written agreement; or

(b) Damaged before the final planting date to the extent that the majority of producers in the area would normally not further care for the tobacco crop, unless such crop is replanted or we agree that replanting is not practical.

9. Insurance Period.

In lieu of the provisions of section 11 of the Basic Provisions, coverage ends at the earlier of:

(a) Total destruction of the tobacco on the unit;

(b) Removal of the tobacco from the unit where grown, except for curing, grading, and packing;

(c) Abandonment of the crop on the unit;

(d) Final adjustment of the loss on the unit; or

(e) The calendar date for the end of the insurance period, which is the date immediately following planting and designated by tobacco types and states (or as otherwise stated on the Special Provisions of Insurance) as follows:

(i) Flue cured—November 30 in North Carolina and Virginia;

(ii) Flue cured—October 31 in Alabama, Florida, Georgia, and South Carolina;

(iii) Burley—February 28 in all states;

(iv) Dark air cured—March 15 in Kentucky, Tennessee, and Virginia;

(v) Fire cured—April 15 in Kentucky, Tennessee, and Virginia;

(vi) Cigar Binder, Cigar Filler, and Cigar Wrapper—April 30 in Connecticut, Massachusetts, Pennsylvania, and Wisconsin; and

(vii) Maryland type—May 15 in Maryland and Pennsylvania.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 10(a) through (g) that also occurs during the insurance period.

11. Duties In The Event of Damage or Loss.

(a) In accordance with section 14 of the Basic Provisions, you must maintain representative samples of each unharvested tobacco crop (type) for our inspection. The representative samples must be at least 5 feet wide (at least two rows), and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until after our inspection.

(b) If you have filed a notice of damage, you must leave all tobacco stalks and stubble in the unit intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by your applicable production guarantee (per acre);

(2) Multiplying the result of section 12(b)(1) by your price election;

(3) Multiplying the total production to count determined in section 12(c) by your price election;

(4) Subtracting the result of section 12(b)(3) from the result of section 12(b)(2); and

(5) Multiplying the result of section 12(b)(4) by your share.

For example:

You have 100 percent share in a unit to produce 3,000 pounds of Burley tobacco, a production guarantee of 1,950 pounds (APH yield of 3,000 pounds × .65 coverage level), you plant 1.0 acre, your price election is $1.50 per pound, and your production to count is 500 pounds. Your indemnity would be calculated as follows:

(1) 1.0 acre × 1,950 pounds production guarantee = 1,950 pounds;

(2) 1,950 pounds × $1.50 price election = $2,925.00 value of the production guarantee;

(3) 500 pounds production to count × $1.50 price election = $750.00 value of the production to count;

(4) $2,925.00 value of the production guarantee—$750.00 value of the production to count = $2,175.00; and

(5) $2,175.00 × 1.000 share = $2,175.00 indemnity.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) For which you fail to provide records of production, that are acceptable to us; or

(E) For any type of tobacco when the stalks and stubble have been destroyed without our consent under section 11(b);

(ii) Production lost due to uninsured causes.

(iii) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from insurable acreage.

(d) Once we agree the current year's tobacco has no average value due to an insured cause of loss, you must destroy it, and it will not be considered production to count. If you refuse to destroy such tobacco, we will include it as production to count and value it at the applicable price election.

(e) In lieu of section 15(b) of the Basic Provisions, if we have conducted an appraisal of your insured crop and we determine that the harvested production you report is inconsistent with the appraised production and you cannot prove that an insurable cause of loss occurred between the appraisal and the end of the insurance period that can account for the reduction in production, your claim will be settled based on the appraised production on insured acreage, even if you have harvested the acreage. If we settle your claim based on your appraised production, section 12(f) regarding quality adjustment is not applicable.

(f) Mature tobacco may be adjusted for quality deficiencies when production has been damaged by insurable causes.

(1) You must contact us before any tobacco is disposed of so we can inspect the tobacco to determine the extent of the damage.

(2) Our inspection will be used to determine whether the average value is reasonable. Based on amount of damage determined during the inspection, if the average value is:

(i) Reasonable, such average value will be used to determine the quality adjustment in section 12(f)(5);

(ii) Unreasonable, we may adjust the average value used to calculate the quality adjustment in section 12(f)(5).

(3) If you dispose of any production without giving us the opportunity to have the tobacco inspected, you will not receive a quality adjustment for such tobacco, regardless of the average value of the production.

(4) Production to count will only be reduced if the average value for damaged tobacco is less than 75 percent of your tobacco price election. You must provide us with records that are acceptable to us which clearly shows the number of pounds, price per pound, and the quality of such tobacco.

(5) Any reduction in the production to count will be determined by:

(i) Dividing the average value per pound as determined by us in accordance with section 12(f)(2) of these Crop Provisions by your applicable price election; and

(ii) Multiplying this result by the number of pounds of damaged production.

13. Late Planting.

In lieu of late planting provisions in the Basic Provisions regarding acreage initially planted after the final planting date, insurance will be provided for acreage planted to the insured crop after the final planting date as follows:

(a) The production guarantee (per acre) for acreage planted during the late planting period will be reduced by:

(1) One percent per day for the 1st through the 10th day; and

(2) Two percent per day for the 11th through the 15th day;

(b) The premium amount for insurable acreage planted to the insured crop after the final planting date will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage planted after the final planting date exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

14. Prevented Planting.

Your prevented planting coverage will be 35 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for tobacco.

§ 457.156 [Removed and Reserved]

■ 3. Remove and reserve § 457.156.

Signed in Washington, DC, on March 19, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–6726 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

48 CFR Part 470

Commodity Credit Corporation

7 CFR Parts 1496 and 1499

Foreign Agricultural Service

7 CFR Part 1599

RIN 0551–AA78

McGovern Dole International Food for Education and Child Nutrition Program and Food for Progress Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations to administer the Food for Progress (FFPr) Program and the McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole Program) by making revisions to provide greater clarity with respect to all aspects of the program, with specific emphasis on the eligibility requirements that a participant must meet and the actions that must be undertaken by a participant in order to receive assistance under these programs, including the reports that are filed by program participants with the Foreign Agricultural Service (FAS). This final rule also amends the Agriculture Acquisition Regulation (AGAR), to specify the criteria that is used in determining whether a commodity that is procured under these programs and under domestic feeding programs administered by U.S. Department of Agriculture (USDA) is considered to be a product of the United States. The purpose of these amendments is to improve the efficiency of the programs and make it clearer to participants what they must do to meet eligibility requirements.

DATES: *Effective Date:* May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Babette Gainor, Deputy Director, Food Assistance Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1034, 1400 Independence Avenue, SW., Washington, DC 20250–1034; *telephone:* (202) 720–4221; *Fax:* (202) 690–0251; *E-Mail: PPDED@fas.usda.gov* and/or *Babette.Gainor@fas.usda.gov*.

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SUPPLEMENTARY INFORMATION:

Background

On October 24, 2008, FAS published a proposed rule (73 FR 63387) to remove 7 CFR part 1496; revise 7 CFR parts 1499 and 1599, which contain the general regulations governing the FFPr and the McGovern-Dole Program; and add 48 CFR part 470, which governs the commodity acquisition procedures of USDA. The proposed rule was intended to accomplish the following objectives:

- Improve the efficiency of the programs by providing greater clarity to program participants on eligibility, reporting and performance requirements;
- Better define the criteria used to determine a product of the United States;
- Allow for the full utilization of all types of acquisition contracts that are authorized under the Federal Acquisition Regulations (FAR); and,
- Restructure and rewrite the regulations, including new subparts and sections, to make them easier to read and understand.

Analysis of Comments Received

Seventeen comments on the proposed rule were received from private entities that are affected by these regulations, including: three private voluntary organizations (PVOs), two PVO associations, seven commodity organizations, four shipping and freight industry representatives, and one Office of Inspector General (OIG). One comment was received by an organization comprised of over 250 non-governmental organizations that stated, ''Overall we believe FAS has done an excellent job in revising part 1499 and that the changes will improve the quality of the food aid programs and increase the ability of PVOs to assist those in need.'' The comments are discussed below, except for those dealing with issues outside of the scope of the proposed rule, making editorial suggestions, or simply expressing support for the proposed rule.

A. Eligibility Determination: 7 CFR Parts 1499.3(a)(1) and 1599.3(a)(1)

Comment: One commenter suggested that USDA should change ''grants'' to ''awards'' to be more inclusive since ''awards'' includes grants and cooperative agreements.

Response: USDA accepts this suggestion and has made the changes accordingly.

B. Agreements: 7 CFR Parts 1499.5(c) and 1599.5(c)

Comment: One commenter suggested that USDA allow a participant to make 100 percent line item adjustments to the budget unless the agreement specifies otherwise. The commenter further stated that this is the norm for most Government regulations.

Response: The current language affords USDA the ability to provide greater flexibility to participants' budgets other than just line item adjustments. Additionally, due to various sources from which USDA receives funds for grants governed under parts 1499 and 1599, USDA cannot provide 100 percent flexibility between all budget line items as it has the potential of inadvertently creating an Antideficiency Act violation within the program. For example, FFPr operates under statutory authority that limits the amount of funds that may be spent each year for freight costs and administrative expenses. USDA only can allow flexibility within a budget that would not allow for the possibility of these limits being exceeded. This limitation is also covered in 7 CFR 3019.25(f).

C. Payments: 7 CFR Parts 1499.6 and 1599.6

Comments: One commenter questioned whether survey costs noted in sections 1499.6(a)(7) and 1599.6(a)(7) included load, discharge, and delivery surveys. A comment was received that questioned the necessity of an ''original'' bill of lading for payment, particularly given that an original is required to take title of commodities. Additionally, a commenter requested that all references to 7 CFR part 3019 be quoted directly in the relevant sections of 7 CFR parts 1499 and 1599 rather than referring the reader back to 7 CFR part 3019.

Response: Load survey costs are not included in sections 1499.6(a)(7) and 1599.6(a)(7). The determination whether a discharge survey, a delivery survey, or both have been completed is dependent upon multiple factors, including but not limited to destination country and contract terms. To provide greater clarity in these sections, USDA has replaced ''survey costs'' with ''survey costs other than those at load port.'' In response to the comment about providing an original bill of lading, USDA agrees that an original or ''true copy'' of the bill of lading, such as a pdf version of the original bill of lading,

would be acceptable for payment purposes; this change has been made to these sections. USDA cannot accede to the request to directly quote applicable sections of 7 CFR part 3019 into the relevant sections of the regulations. The provisions of 7 CFR part 3019 are applicable to all USDA grant programs and refer to pertinent circulars released by the Office of Management and Budget (OMB). This regulation is likely to change more often than the FAS and the Commodity Credit Corporation (CCC) grant program regulations. Quoting the applicable sections of 7 CFR part 3019 directly into parts 1499 and 1599 would multiply the regulations requiring updates and notifications to the public that otherwise could be limited to only 7 CFR part 3019.

D. Transportation of Goods: 7 CFR Parts 1499.7(b) and 1599.7(b)

Comments: Two comments were received on this section. The first commenter encouraged USDA to implement direct ocean freight procurement for its food aid programs. The other commenter objected to USDA directly contracting for freight in accordance with the FAR on the bases that the current process is not unlawful and has been upheld in a previous court ruling, the change would preclude freight forwarders from participating in the program, the proposed system would return to a process that was ruled inefficient by the Grace Commission, and, finally, USDA failed to provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully on this change.

Response: USDA is committed to providing an efficient and effective acquisition process under its food donation programs. USDA is further committed to ensuring transparency and fairness in this process. Therefore, once the Final Rule is published, USDA will use the Food Aid Consultative Group (FACG) to outline acquisition processes that USDA is considering implementing under these regulations. The FACG is the official consultative group that allows all organizations with an interest in food aid programs to provide input to the U.S. Government.

With respect to the proposal to use the FAR to acquire freight, this provision is primarily included to reflect the fact that under this rule USDA would be directly contracting for freight in many circumstances and program recipients would not have the burden of obtaining such services. Further, under current practices, in most instances the program recipient is not solely responsible for procuring freight services; but rather, while such entities do a significant portion of the work related to obtaining freight, decisions regarding the acceptance of freight contracts also involve decisions of employees of USDA. In order to alleviate any questions that exist concerning the propriety of this activity, the determination has been made to follow provisions of the FAR. To the extent that a program participant is solely responsible for these activities without regard to any involvement of employees of USDA, then the FAR provisions would not be applicable.

With respect to the use of freight forwarders, the use of the FAR to acquire freight does not preclude the use, by USDA, of the services of a licensed freight forwarder, similar to the process currently used in Title II of the Food for Peace Act, (Pub. L. 83–480, or referred to as Pub. L. 480 Title II). In such a case, a licensed freight forwarder would act as directed by USDA.

E. Transportation of Goods: 7 CFR Parts 1499.7(c) and 1599.7(c)

Comments: Four comments were received concerning the use of a licensed freight forwarder rather than a shipping agent. Three commenter's objected to the use of a licensed freight forwarder rather than a shipping agent to facilitate the acquisition of transportation. One commenter stated that sections 1499.7(c)(1)–(3) and 1599.7(c)(1)–(3) go beyond USDA's authority and conflict with that of the Federal Maritime Commission's (FMC) application requirements. Another comment was received asking to clarify the intention of sections 1499.7(c) and 1599.7(c) as to preclude the use of entities other than licensed freight forwarders or to govern only licensed freight forwarders within these sections.

Response: USDA agrees with the comments concerning sections 1499.7(c)(1)–(3) and 1599.7(c)(1)–(3) being in conflict with the FMC's application process and has removed these provisions. USDA further agrees with the comments concerning sections 1499.7(c)(4) and 1599.7(c)(4) and has removed this requirement since proof of financial responsibility is required in the FMC application process. As to the comments requesting the continued use of shipping agents, USDA does not agree with this comment and will adopt the proposed change set forth in the proposed rule. Currently, there is no definition of ''shipping agent'' and there are no services of a shipping agent identified that a licensed freight forwarder could not provide. In fact, an unlicensed freight forwarder may not book or arrange vessel space for others, process shipping documentation or collect freight forwarder compensation from the ocean carriers. Further information regarding this issue is found at the Web site maintained by FMC at *http://www.fmc.gov/home/faq/index.asp.* In addition, FMC has a regulated process for licensing freight forwarders that will remove this duplicative process from USDA. Lastly, USDA has provided further clarification on the intention of sections 1499.7(c) and 1599.7(c) to allow only licensed freight forwarders to be used by participants in arranging transportation.

F. Damage to and Loss of Commodities: 7 CFR Parts 1499.9 and 1599.9

Comment: One commenter expressed concern regarding the number of times a notification of loss or damage to commodities may be required during the commodity voyage.

Response: USDA agrees with the concern expressed by the commenter but also notes that timely notification of damages to and losses of commodities are necessary to protect the assets of the program. USDA has removed the word ''immediately'' from this section and inserted the provision for a timeframe of notification to be outlined in the program agreement.

G. Claims for Damage to or Loss of Commodities: 7 CFR Parts 1499.10 and 1599.10

Comments: Three comments were received on this section. One commenter asked if funds arising from a claim could cover the cost of services from a third party sub-contract who settled the claims process, and if so, would this arrangement have to be stipulated in the program agreement or could ''advance approval'' for such a use of these funds be obtained in another manner. The second commenter recommended USDA to require program participants to purchase marine cargo insurance as this requirement would lend itself to the goal of timely resolution of cargo claims. This commenter also suggested that USDA adopt a percentage threshold for establishing claim value levels. The third commenter suggested that USDA allow the participant to determine whether or not to file a claim for losses under $10,000 rather than $20,000. This commenter also asked for clarification on who would provide funds for marine cargo insurance if such insurance were required.

Response: USDA agrees that, if such a situation were to arise, it should be handled outside the program agreement. The current regulation allows for advance approval and does not stipulate

that such approval must be stipulated in the program agreement; therefore, no changes are made to the regulations. However, USDA will include procedures on this subject matter in applicable program documents and in the guidance provided to participants, which will be developed once the final rule is in effect. Regarding the required purchase of marine cargo insurance, USDA will consider this provision on an agreement basis as USDA assesses the risk involved in moving the commodities. If USDA determines that it is in the best interest of the programs, USDA will require and provide funding for marine cargo insurance. As to the value for requiring a claim to be filed, USDA does not agree with either suggestion and therefore has not made any changes to these sections. The current language allows participants to file a claim at any level. In setting the $20,000 value level, USDA determined that a benefit to the program could be reached while factoring in the amount of resources necessary to administer the claims process.

H. Subrecipients: 7 CFR Parts 1499.12 and 1599.12

Comment: One commenter questioned the need for USDA to receive copies of subrecipient contracts. The commenter suggested that the participant retain copies of the subrecipient contracts and make them available upon request by USDA.

Response: USDA understands the concern expressed by the commenter; however, USDA has had recent experiences with subrecipient contracts either not being in place or not providing adequate assurances to protect the integrity of the donation programs. Further, OIG also recommends that these contracts receive oversight by FAS and CCC. Therefore, USDA is retaining the current language in this section.

I. Recordkeeping and Reporting Requirements: 7 CFR Parts 1499.13 and 1599.13

Comment: One commenter recommended the following: require USDA to make the annual Single Audit Act and OMB Circular A–133 mandatory, regardless of funding availability; provide specific timeframes for participants to submit reports and evaluations; and clarify how the new evaluation requirement will complement FAS's current system of close-out reviews.

Response: USDA agrees that participants must conduct an annual audit in accordance with the Single Audit Act (31 U.S.C. 7501–7507) and revised OMB Circular A–133. In support of this, 7 CFR 3019.26(a), that is referenced in sections 1499.13(d) and 1599.13(d), contains the reference to the Single Audit Act and OMB Circular A–133. Regarding the timeframe for report submissions, USDA intends to provide a specific timeframe for participants to submit reports and evaluations within the agreements. At this time, USDA does not foresee a change in reporting timeframes but has moved this provision into the agreements to afford flexibility in managing the programs. Evaluating activities conducted under USDA food aid programs will provide insight to USDA in developing more effective programs as well as enable USDA to highlight program outcomes rather than program outputs that are currently captured in semi-annual reports. These evaluations will complement FAS's current system of close-out reviews by using a third party neutral evaluator and, in the case of mid-period evaluations, afford more transparency on program short-comings prior to the actual closure process so that USDA can determine the best course of action to remedy the short-comings.

J. Definitions: 48 CFR Part 470.101

Comments: Three comments were received that outlined the ability for some commodities to be maintained in a non-commingled manner, and, therefore, requested that USDA consider either excluding some commodities from this definition, removing the definition, and thereby the allowance for commingling in its entirety, or modifying it to conform more closely to the domestic commodity donation programs.

Response: USDA recognizes that commodities are maintained and stored in various manners. USDA further agrees with protecting the U.S. origin integrity of commodities when this is the normal commercial practice. Accordingly, 48 CFR 470.101 has been revised to provide that in those instances in which it has been determined by USDA that a commodity that is stored in a commingled manner but which is one that can be reasonably stored on an identity preserved basis with respect to its origin, USDA will require such commodity that is being procured to originate from the United States.

K. United States Origin of Agricultural Products: 48 CFR Part 470.103(b)

Comments: USDA received three comments concerning USDA's attempt to harmonize the use of additives in international programs with those used in domestic programs. The commenter's suggest replacing ''or'' with ''and'' at the end of section 470(b)(1).

Response: Section 402(2) of Public Law 480 provides, in relevant part, that with respect to the administration of Title II of that Act, ''* * * a product of an agricultural commodity shall not be considered to be produced in the United States if it contains any ingredient that is not produced in the United States, if that ingredient is produced and is commercially available at fair and reasonable prices. This provision is also made applicable to the FFPr Program by section 1110(e)(4) of the FFPr Act. With respect to the McGovern-Dole Program, section 3107(a) of the Farm Security and Rural Investment Act of 2002 defines an agricultural commodity to be ''an agricultural commodity, or a product of an agricultural commodity, that is produced in the United States.''

Based upon the review of the issues raised by this comment, since procurements of commodities for use in Public Law 480 and the FFPr Program must follow the requirements of section 402(2) of Public Law 480, the definition of ''additive'' has been modified to refer to ''ingredient'' and the cited statutory provision has been incorporated into the definition of ''ingredient''. With respect to the McGovern-Dole Program, in order to ensure consistency with these other two programs and in recognition of the fact that often procurements of commodities are done simultaneously for two or more of these programs, USDA will use the same definition of ''ingredient.''

USDA concurs with the comment since it is desirable to harmonize the manner in which ingredients are treated for this purpose. USDA has revised 48 CFR 470.103(b) to reflect the statutory provision regarding ingredients as found in Public Law 480 with regard to procurements made for FAS and the U.S. Agency for International Development (USAID) programs. Accordingly, for these international programs, the procurement of commodities with ingredients will be handled in the same manner as procurements relating to programs administered by the Food and Nutrition Service except as may otherwise be required by statute.

L. United States Origin of Agricultural Products: 48 CFR Part 470.103(c)

Comments: USDA received four comments concerning the use of commingled products as a product of the United States. Two of the comments expressed concern that non-U.S. origin products may be provided under USDA food assistance programs, while two

other comments suggested modifications related to the timing of the commodity procurement to bring the language into commercial norms.

Response: USDA agrees that this section does not adequately take into consideration the situation in which a vendor has procured U.S. agricultural products prior to the issuance of a solicitation. Accordingly, this provision has been revised to provide that a commingled product shall be considered to be a product of the United States, if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the U.S. Government.

In addition, this section has been revised with respect to the domestic origin requirements for products of animals. Upon further consideration, USDA has determined that rather than to attempt to set forth in this section a generic provision regarding domestic origin, that the specific requirements applicable to the country in which the animal from which the product was obtained was bred, raised, slaughtered and processed should be set forth in individual solicitations. Under this process, USDA can take into account the differences that exist with respect to various animals, *e.g.*, poultry, pork or beef, and the various types of products that are obtained, *e.g.*, full cuts of meat or poultry and processed products.

M. Issuance of Invitations: 7 CFR Part 1496.4

Comment: One commenter pointed out that the removal of the provision requiring a one day turnaround of supplier bids would impose immense new market risks for suppliers.

Response: Regarding the turnaround time for the acceptance of offers (referred to as ''bids''), the process would follow the practices prescribed by the FAR, 48 CFR Chapter 4. These are standard solicitation methods prescribed government-wide. Offerors would be given the opportunity to propose prices for a specific period of time, for example, 24, 36 or 48 hours. This would be the offer acceptance period. After that time, offers would expire and would no longer be valid, thereby preventing the imposition of new market risks for suppliers.

N. Miscellaneous Points of Clarification

Comments: One comment was received recommending that FAS continue to monitor agreements entered into under Section 416(b) of the Agricultural Act of 1949 (Section 416(b)) in the same manner and subject to the same regulations as the McGovern-Dole Program and FFPr. Another comment was received that recommended USDA create and attach reporting forms to the agreements. A commenter asked a question about the relevant application of OMB A–122 Circular to 7 CFR parts 1499 and 1599.

Response: In response to the comment on monitoring Section 416(b), USDA intends to monitor Section 416(b) in a manner consistent with 7 CFR parts 1499 and 1599 as relevant to the purpose and scope of Section 416(b). Under Section 416(b), CCC makes available commodities that it has acquired in its normal operations for use in international programs. No commodities are procured for use under this provision. By using the **Federal Register** to announce and administer Section 416(b), USDA will have the flexibility to apply the relevant sections of 1499 and 1599 to this donation program while taking into account any unique requirements for this program. In response to the comment on reporting forms, USDA may reference the reporting form number and revision date within the agreement but attaching the reporting forms will only add to the volume of the agreement. With regard to OMB A–122 Circular, this circular, as well as others, has been incorporated into 7 CFR 3019, entitled ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''.

In reviewing the language in 48 CFR part 470, we have determined that while changes to the actual provisions of 48 CFR 470.202(e)(3) are not needed, USDA does wish to make clear that with respect to the lowest landed cost determination, as the programs have evolved over many years, the program participant obtains potential bids from prospective carriers and these bids are provided to the Farm Service Agency (FSA) which utilizes a sophisticated computer program to analyze the freight bids in conjunction with the various bids obtained in the procurement of commodities to ascertain which combination of carrier bids and commodity bids produces the lowest landed cost of delivery of the commodity to foreign destinations. Prior to the computer system running a lowest landed cost analysis, the grantees and/or USAID determine if each offeror's service and rates are responsive to their needs. Once the grantee and/or USAID provides their acceptance of the offers of service, USDA then runs an analysis to determine lowest landed cost. USAID and grantee organizations will have full discretion over carrier responsiveness determinations in accordance with the procedures identified in 22 CFR 211.

Changes to the AGAR have been reviewed and approved by the Acting Deputy Assistant Secretary for Departmental Administration as authorized in 48 CFR Chapter 4, subpart 401.601(a)(1).

Executive Order 12866

The final rule has been determined to be non-significant under E.O. 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because FAS is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking and as such under Section 601(2) of the Act it is exempt.

Environmental Assessment

FAS has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment consistent with the National Environmental Policy Act (NEPA), 40 CFR part 1502.4, Major Federal actions requiring the preparation of Environmental Impact Statements; and Compliance with NEPA implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508. Therefore no environmental assessment or environmental impact statement will be prepared.

Executive Order 12988

This rule has been reviewed under E.O. 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule would not be retroactive.

Executive Order 12372

This program is not subject to E.O. 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Unfunded Mandates

This rule contains no unfunded mandates as defined in sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA).

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from OMB with respect to the information collection required to support these programs. The Information Collection is described below:

Title: Food Donation Programs (Food for Progress, Section 416(b)) and McGovern-Dole International Food for Education and Child Nutrition.

OMB Control Number: 0551–0035.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at *http://www.fas.usda.gov*.

List of Subjects

7 CFR Part 1496

Agricultural commodities, Food assistance programs, Foreign aid, Government procurement.

7 CFR Part 1499

Agricultural commodities, Food assistance programs, Foreign aid.

7 CFR Part 1599

Agricultural commodities, Food assistance programs, Exports, Foreign aid.

48 CFR Part 470

Government procurement, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, under the authority of 5 U.S.C. 553: 15 U.S.C. 714b and 714c, 7 CFR parts 1496, 1499, 1599 and 48 CFR part 470 are amended as follows:

Title 7—Agriculture

PART 1496—[REMOVED]

■ 1. 7 CFR part 1496 is removed.

■ 2. Revise part 1499 to read as follows:

PART 1499—FOOD FOR PROGRESS PROGRAM

Sec.

Authority: 7 U.S.C. 1736o; and 15 U.S.C. 714b and 714c.

§ 1499.1 General statement.

(a) This part sets forth the general terms and conditions governing the donation of commodities by the Commodity Credit Corporation (CCC) to participants in the Food for Progress Program (FFPr). Under FFPr, participants use the donated commodities or proceeds from the sale of such commodities to implement activities in a foreign country pursuant to an agreement with CCC. The Foreign Agricultural Service (FAS) of the Department of Agriculture (USDA) administers FFPr on behalf of CCC.

(b) In addition to the provisions of this part, other regulations of general application issued by USDA, including the regulations set forth in Chapter 30 of this title, are applicable to the FFPr. All provisions of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory provisions that are generally applicable to CCC are applicable to FFPr and the regulations set forth in this part.

(c) This part shall not apply to a donation by CCC to a foreign government or an intergovernmental agency or organization (such as the United Nations' World Food Program) under FFPr.

§ 1499.2 Definitions.

The following definitions are applicable to this part:

Activity means a project to be carried out by a participant, directly or through a subrecipient, to fulfill the objectives of an agreement.

Agreement means a legally binding agreement entered into between CCC and a participant to implement activities under FFPr.

CCC means the Commodity Credit Corporation and includes any official of the United States delegated the responsibility to act on behalf of CCC.

CCC-provided funds means U.S. dollars provided under an agreement to a participant for expenses for the internal transportation, storage and handling of the donated commodities, expenses involved in the administration and monitoring of the activities under the agreement, and technical assistance related to the monetization of donated commodities.

Commodities mean U.S. agricultural commodities or products of U.S. agricultural commodities.

Donated commodities means the commodities donated by CCC to a participant under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

FAS means the Foreign Agricultural Service acting on behalf of CCC.

FFPr means the Food for Progress Program.

Force majeure is a common clause in contracts, exempting the parties for non-fulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

Income means interest earned on sale proceeds and other resources received by a participant, other than sale proceeds, as a result of carrying out an agreement. The term may include resources from VAT refunds, activity fees, interest on loans, and other sources.

Participant means an entity with which CCC has entered into an agreement.

Subrecipient means a legal entity that receives donated commodities, income, sale proceeds or other resources from a participant for the purpose of implementing in the targeted country activities described in a FFPr agreement and that is accountable to such participant for the use of such commodities, funds, or resources. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of FAS.

Sale proceeds mean funds received by a participant from the sale of donated commodities.

Targeted country means the country in which activities are implemented under an agreement.

§ 1499.3 Eligibility determination.

(a) An entity will be eligible to become a participant only after FAS determines that the entity has:

(1) Organizational experience in implementing and managing awards, and the capability and personnel to develop, implement, monitor, report on, and provide accountability for activities in accordance with this part;

(2) Experience working in the proposed targeted country;

(3) An adequate financial framework to implement the activities the entity proposes to carry out under FFPr. In order to determine whether the entity is financially responsible, FAS may require it to submit corporate policies and financial materials that have been audited or otherwise reviewed by a third party;

(4) A person or agent located in the United States with respect to which service of judicial process may be obtained by FAS on behalf of the entity; and

(5) An operating financial account in the proposed targeted country, or a satisfactory explanation for not having such an account and a description of how a FFPr agreement would be administered without such an account.

(b) In determining whether an entity will be eligible to be a participant, FAS may consider the entity's previous compliance or noncompliance with the provisions of this part and part 1599 of this title. FAS may consider matters such as whether the entity corrected deficiencies in the implementation of an agreement in a timely manner and whether the entity has timely and accurately filed reports and other submissions that are required to be filed with FAS and other agencies of the United States.

§ 1499.4 Application process.

(a) An entity seeking to enter into an agreement with CCC shall submit an application, in accordance with this section, that sets forth its proposal to carry out activities under FFPr in the proposed targeted country. An application shall contain the items specified in paragraph (b) of this section and shall be submitted electronically to FAS at the address set forth at *http://www.fas.usda.gov*. An entity that has not yet met the eligibility requirements in § 1499.3 may submit an application, but FAS will not enter into an agreement with an entity until FAS had made a determination of eligibility under § 1499.3.

(b) An applicant shall include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction that contains the elements specified in paragraph (c) of this section; and

(3) A plan of operation that contains the elements specified in paragraph (d) of this section.

(c) The introduction shall include:

(1) An explanation of the need for the food aid in the targeted country and how the applicant's proposed activities would address that need;

(2) Information regarding the applicant's ability to become registered and operate in the targeted country;

(3) Information about the applicant's past food aid projects; and

(4) A budget that details the amount of any sale proceeds, income, and CCC-provided funds that the applicant proposes to use to fund:

(i) Administrative costs;

(ii) Inland transportation, storage and handling costs; and

(iii) Activity costs.

(d) A plan of operation shall include:

(1) The name of the targeted country where the proposed activities would be implemented;

(2) The kind, quantity, and proposed use of the commodities requested, and any commodities that would be acceptable substitutions therefor, and the proposed delivery schedule;

(3) If monetization or barter is proposed:

(i) The quantity of the requested commodities that would be sold or bartered;

(ii) The amount of sale proceeds anticipated;

(iii) The amount of income expected to be generated;

(iv) The anticipated monetization completion date;

(v) The goods or services to be generated from the barter of the requested commodities; and

(vi) The value of the goods or services anticipated to be generated from the barter of the requested commodities.

(4) A list of each of the activities that would be implemented, with a brief statement of the objectives to be accomplished under each activity;

(5) For each proposed activity, the targeted geographic area, anticipated beneficiaries, and methods that the applicant would use to choose such beneficiaries, including obtaining and considering statistics on poverty levels, food deficits, and any other required items set forth on the FAS Web site at *http://www.fas.usda.gov*.

(6) For each proposed activity:

(i) An explanation of whether the activity would be carried out through the distribution or barter of the requested commodities or funded by sale proceeds, income, or a combination thereof; and

(ii) The amount of commodities requested and of any sale proceeds and income expected to be generated to carry out such activity; and

(iii) A detailed description of the activity, including the steps involved in its implementation and the anticipated completion date;

(7) Any cash or non-cash contributions that the applicant expects to receive from non-CCC sources that:

(i) Are critical to the implementation of the proposed activities; or

(ii) Enhance the implementation of the activities;

(8) Any subrecipient that would be involved and a description of each subrecipient's responsibilities and its capability to perform responsibilities;

(9) Any governmental or nongovernmental entities that would be involved and the extent to which FFPr will strengthen or increase the capabilities of such entities to further economic development in the targeted country;

(10) The method by which the applicant intends to inform beneficiaries of an activity about the source of the requested commodities or funding for the activity and, where the beneficiaries will be receiving the commodities directly, how to prepare and use them properly;

(11) Established baselines, a timeline, and proposed outcomes that would enable FAS to measure the applicant's progress towards achieving the objectives of the proposed activities;

(12) If the proposed activities would involve the use of sale proceeds or income:

(i) The process that the applicant would use to sell the requested commodities, including steps the applicant would take to use, to the extent possible, the private sector in the monetization process; and

(ii) The procedures that the applicant would use to assure that sale proceeds and income are received and deposited into a separate, interest-bearing account and disbursed from such account for use only in accordance with the agreement;

(13) A description of any port, transportation, storage, and warehouse facilities that would be used with sufficient detail to demonstrate that they would be adequate to handle the requested commodities without undue spoilage or waste, and, in cases where the applicant proposes to distribute some or all of the requested

commodities, a description of how they would be transported from the receiving port to the point at which distribution would be made to the beneficiaries;

(14) Any reprocessing or repackaging of the requested commodities that would take place prior to the distribution, sale or barter by the applicant;

(15) The action the applicant would take to ensure that any commodities to be distributed to beneficiaries, rather than sold, would be imported and distributed free from all customs, duties, tolls, and taxes;

(16) A plan that shows how the requested commodities could be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products in the country where they will be delivered, and the extent to which any sale or barter of the requested commodities would displace or interfere with any sales that may otherwise be made by the applicant or any other entity in the country where they will be delivered; and

(17) Any additional required items set forth on the FAS Web site at *http://www.fas.usda.gov*.

§ 1499.5 Agreements.

(a) After FAS approves an applicant's proposal, FAS will develop an agreement in consultation with the applicant. The agreement will set forth the obligations of CCC and the participant. A participant must comply with the terms of the agreement to receive assistance.

(b) A participant shall not use donated commodities, sale proceeds, income or CCC-provided funds for any activity or any expenses incurred by the participant prior to the date of the agreement or after the agreement is suspended or terminated, except as approved by FAS.

(c) The agreement will include a budget that sets forth the maximum amounts of sale proceeds and CCC-provided funds that may be expended for various purposes under the agreement. A participant may make adjustments to this budget without prior approval from FAS only as specified in the agreement.

(d) Prior to providing any donated commodities or CCC-provided funds to a participant under an agreement, FAS may require the participant to complete a training program administered by FAS that is designed to ensure that the participant is aware of, and has the capacity to complete, all required reporting and audit functions set forth in this part.

(e) A participant will be prohibited from using CCC-provided funds to acquire goods and services, either directly or indirectly through another party, from certain countries that will be specified in the agreement. Any violation of this provision of the agreement will be a basis for immediate termination by CCC of the agreement, in addition to the imposition of any other applicable civil and criminal penalties.

(f) The agreement will prohibit the sale or transshipment of the donated commodities to a country not specified in the agreement for as long as such donated commodities are controlled by the participant.

(g) CCC may enter into a multicountry agreement in which donated commodities are delivered to one country and activities are carried out in another.

(h) CCC may provide donated commodities and CCC-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

§ 1499.6 Payments.

(a) If the participant arranges for transportation in accordance with § 1499.7(b)(2), and the participant seeks payment directly, the participant shall, as specified in the agreement, either submit to FAS, or maintain on file and make available to FAS, the following documents:

(1) A signed copy of the completed Form CCC–512;

(2) The original, or a true copy of, each on-board bill of lading indicating the freight rate and signed by the originating carrier;

(3) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and,

(iii) A signed copy of the National Cargo Bureau Certificate of Loading;

(4) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(5) A signed copy of the liner booking note or charter party covering ocean transportation of the cargo;

(6) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances of force majeure have prevented the vessel's arrival at the first port of discharge;

(7) A request by the participant for reimbursement of freight, survey costs other than at load port, and other expenses approved by CCC, indicating the amount due and accompanied by a certification from the carrier or other parties that payments have been received from the participant; and

(8) A document on letterhead and signed by an officer or agent of the participant specifying the name of the entity to receive payment; the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the participant's taxpayer identification number; and the type of the account into which the payment will be deposited.

(b) If the participant arranges for transportation in accordance with § 1499.7(b)(2), and the participant has used a freight forwarder, the participant shall cause the freight forwarder to submit the documents specified in § 1499.6(a) in order to receive payment from CCC.

(c) In no case will CCC reimburse a participant for demurrage costs or pay demurrage to any other entity.

(d) If FAS has agreed to pay the costs of transporting, storing, and distributing the donated commodities from the designated port or point of entry, the participant will be reimbursed in the manner set forth in the agreement.

(e) If the agreement authorizes the payment of CCC-provided funds, CCC will pay these funds to the participant on a reimbursement for expenses basis, except as provided in paragraph (f)(1) of this section. The participant shall request the payment of CCC-provided funds to reimburse it for authorized expenses in the manner set forth in the agreement.

(f)(1) A participant may request an advance of the amount of funds specified in the agreement. FAS will not approve any request for an advance if:

(i) It is received earlier than 60 days after the date of a previous advance made in connection with the same agreement; or

(ii) Any required reports, as specified in § 1499.13 and in the agreement, are more than six months in arrears.

(2) Except as may otherwise be provided in the agreement, the participant shall deposit and maintain in a bank account located in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in § 3019.22(k) of this title apply, or FAS determines that this requirement would constitute an undue burden. The participant shall remit semi-annually to CCC any interest earned on the advanced funds. The participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to FAS

accounting for all funds advanced and all interest earned.

(3) The participant shall return to CCC any funds that are advanced by CCC if such funds have not been obligated as of the 180th day after the advance was made. Such funds and interest shall be transferred to FAS within 30 days of such date.

(g) If a participant is required to pay funds to CCC in connection with an agreement, the participant shall make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

(h) Suppliers of commodities shall seek payment according to the purchase contract with CCC.

§ 1499.7 Transportation of goods.

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305 and 55314, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by CCC under FFPr will be acquired under a specific agreement in the manner determined by FAS. Such transportation will be acquired by:

(1) CCC in accordance with the Federal Acquisition Regulations (FAR), USDA's procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR), and directives issued by the Director, Office of Procurement and Property Management, USDA; or

(2) The participant, with reimbursement by CCC, in the manner specified in the agreement.

(c) A participant that acquires transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the FMC and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the participant must submit to FAS a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any FFPr agreement to which the participant is a party; and

(2) Is not affiliated with the participant and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the participant.

(d) A participant that is responsible for transportation under paragraph (b)(2) of this section shall declare in the transportation contract the point at which the ocean carrier will take custody of commodities to be transported.

§ 1499.8 Entry and handling of commodities.

(a) The participant shall make all necessary arrangements for receiving the donated commodities in the targeted country, including obtaining appropriate approvals for entry and transit. The participant shall store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter.

(b) The participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the commodities passes to the participant by contracting directly with suppliers of services, as set forth in the agreement.

(c)(1) If a participant arranges for the packaging or repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the people of the United States of America; and,

(iv) Includes a statement indicating that the donated commodities shall not be sold, exchanged or bartered.

(2) If a participant arranges for the reprocessing and repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the reprocessed product;

(iii) Includes a statement indicating that the reprocessed product was made with commodities furnished by the people of the United States of America; and,

(iv) Includes a statement indicating that the reprocessed product shall not be sold, exchanged or bartered.

(3) If a participant distributes donated commodities that are not packaged, the participant shall, to the extent practicable, display:

(i) Banners, posters or other media informing the public of the name and source of the donated commodities; and

(ii) A statement that the donated commodities may not be sold, exchanged, or bartered.

(d) A participant shall arrange with the government of the targeted country that all donated commodities to be distributed will be imported and distributed free from all customs, duties, tolls, and taxes. A participant is encouraged to make similar arrangements, where possible, with the government of the country where donated commodities to be sold or bartered are delivered.

§ 1499.9 Damage to or loss of commodities.

(a) FAS will be responsible for the donated commodities prior to the transfer of title to the commodities to the participant. The participant will be responsible for the donated commodities following the transfer of title to the commodities to the participant. The title will transfer as specified in the agreement.

(b) A participant shall inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities that occurs following the transfer of title to the commodities to the participant. The participant shall take all steps necessary to protect its interests and the interests of CCC with respect to any damage to or loss of the donated commodities that occurs after title has been transferred to the participant. The agreement will specify whether the participant is responsible for obtaining a survey in the event that the donated commodities are damaged or lost following the transfer of title to the commodities to the participant.

(c) If the donated commodities are damaged or lost during the time that they are in the care of the carrier:

(1) And either FAS or the participant engages the services of an independent cargo surveyor, the surveyor will provide to FAS and the participant any report, narrative chronology or other commentary that it prepares;

(2) FAS and the participant will provide to each other the names and addresses of any individuals known to be present at the time of discharge or during the survey who can verify the quantity of damaged or lost commodities;

(3) And the participant engages the services of the surveyor, CCC will reimburse the participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The participant was required by the agreement to pay for the survey;

(ii) The survey was a delivery survey and the surveyor did not also prepare a discharge survey; or

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the participant shall, to the extent practicable, be conducted jointly by the surveyor, the participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to:

(i) Observe the discharge of the cargo;

(ii) Report on discharging methods, including scale type, calibrations and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefor and describe the actual method used to determine weight;

(iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advise on the quality of sweepings;

(v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notify the participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the participant has title to the donated commodities, and the value of any damaged donated commodities is in excess of $1,000, the participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities. The participant shall inform FAS of the results of the inspection and indicate whether the damaged commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(e)(1) If the participant has title to the donated commodities, the participant shall arrange for the recovery of that portion of the donated commodities designated as suitable for the use authorized in the agreement. The participant shall dispose of donated commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.*, animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iii) Destruction of the commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) The participant shall arrange for all U.S. Government markings to be obliterated or removed before the donated commodities are transferred by sale or donation.

(f) A participant may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(g) The participant shall notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (e)(1) of this section, including the quantities, values, and dispositions of commodities determined to be unfit.

§ 1499.10 Claims for damage to or loss of commodities.

(a) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the commodities to the participant.

(b) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be $20,000 or greater, the participant will be responsible for:

(1) Initiating a claim arising out of such damage or loss, including actions relating to collections pursuant to commercial insurance contracts; and

(2) Notifying FAS immediately and providing detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the value of the damage or loss.

(c) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be less than $20,000, the participant will be responsible for providing detailed information about the damage or loss in the next report required to be filed under § 1499.13(c)(1) or (2) and shall not be required to initiate a claim collection action.

(d)(1) The value of a claim for lost donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities.

(2) The value of a claim for damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1499.9(e)(1).

(e) If FAS determines that a participant is not exercising due diligence in the pursuit of a claim, FAS may require the participant to assign its rights to pursue the claim to FAS.

(f)(1) The participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the participant paid for the freight or a portion thereof, FAS will use a portion of such funds to reimburse the participant for such expense on a prorated basis.

§ 1499.11 Use of commodities and sale proceeds.

(a) A participant must use the donated commodities in accordance with the agreement.

(b) A participant shall not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of

donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

(d) A participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the participant is disposing of damaged commodities as specified in § 1499.9. The participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(e) The participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in § 3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant may use sale proceeds or income to purchase real or personal property only if local law permits the participant to retain title to such property. However, the participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If such use is not specifically provided for in the agreement, such use may only occur after receipt of written approval from FAS.

(g) A participant shall endeavor to comply with §§ 3019.41 through 3019.43 of this title when procuring goods and services and when engaging in construction work to implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all donated commodities or funds or both provided to the provider by the participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS.

§ 1499.12 Subrecipients.

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement activities under this agreement. The participant shall enter into a written subagreement with the subrecipient, and provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, income or CCC-provided funds to the subrecipient. Such written subagreement shall require the subrecipient to pay to the participant the value of any donated commodities, sale proceeds, income, or CCC-provided cash funds that are not used in accordance with the subagreement or are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a subagreement with a subrecipient, FAS may grant approval to proceed without a subagreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any donated commodities, sale proceeds, income, or CCC-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that donated commodities or funds provided to the subrecipient are used for authorized purposes in compliance with applicable laws and regulations and the agreement and that performance goals are achieved. The participant shall provide in the subagreement that the subrecipient must comply with applicable provisions of the regulations set forth in Chapter XXX of this title.

§ 1499.13 Recordkeeping and reporting requirements.

(a) A program participant shall retain records and permit access to records in accordance with the requirements of § 3019.53 of this title. The date of submission of the final expenditure report, as referenced in § 3019.53(b) of this title, shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section as prescribed by FAS.

(b) A participant shall, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the donated commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the donated commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt and use of sale proceeds and income, and, in the case of bartered commodities, covering the services and goods derived from the barter of donated commodities. Such reports shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and income have been disbursed and reported to FAS. When reporting financial information, the participant shall include the amounts in U.S. dollars and the exchange rate.

(3) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(4) The participant shall retain copies of and make available to FAS all barter receipts, contracts or other documents related to the barter of the donated commodities and the services or goods derived from such barter, for a minimum of two years after the agreement has been closed out.

(5) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with § 3019.26 of this title. If FAS requires an annual financial audit with respect to a particular agreement, and CCC provides funds for this purpose, the participant shall arrange for such audit and submit it to FAS, in the manner specified in the agreement.

(e)(1) A participant shall, as provided in the agreement, submit to FAS interim and final evaluations of the implementation of the agreement. Unless otherwise provided in the agreement, the evaluations shall be submitted at the mid-point and end-

point of the implementation period. The participant shall arrange for the evaluations to be conducted by an independent third party that:

(i) Is financially and legally separate from the participant's organization;

(ii) Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;

(iii) Uses acceptable analytical frameworks such as comparison with non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;

(iv) Uses local consultants, as appropriate, to conduct portions of the evaluation; and,

(v) Provides a detailed outline of the evaluation, major tasks, and specific schedules prior to initiating the evaluation.

(2) Receipt by FAS of the evaluations referred to in paragraph (e)(1) of this section is a condition for the participant to retain any funds provided by CCC to carry out the evaluations.

(f) A participant shall submit to FAS the financial reports and information outlined in § 3019.52 of this title. The agreement will specify the acceptable forms and time requirements for submission.

§ 1499.14 Noncompliance with an agreement.

If a participant fails to comply with a term of an agreement, FAS may take one or more of the enforcement actions set forth in § 3019.62 of this title and, if appropriate, initiate a claim against the participant. FAS may also initiate a claim against a participant if the donated commodities are damaged or lost or the sale proceeds, income, or CCC-provided funds are lost due to an action or omission of the participant.

§ 1499.15 Suspension, termination, and closeout of agreements.

(a) An agreement may be suspended or terminated by CCC if it determines that:

(1) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(2) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the targeted country.

(b) An agreement may be terminated in accordance with § 3019.61 of this title. If an agreement is terminated, the participant shall:

(1) Be responsible for the safety of any undistributed donated commodities and dispose of such commodities only as agreed to by FAS; and

(2) Follow the closeout procedures in §§ 3019.71 through 3019.73 of this title.

(c) An agreement will be considered completed when CCC and the participant have fulfilled their responsibilities under the agreement or the agreement has been terminated. The procedures in sections §§ 3019.71 through 3019.73 of this title will apply to the closeout of a completed agreement.

§ 1499.16 Appeals.

A participant may appeal a determination arising under this part to FAS. Such appeal will be in writing and submitted to the FAS official and in the manner set forth in the agreement. The participant will be given an opportunity to have a hearing before a final decision is made regarding its appeal.

§ 1499.17 Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0551–0035.

■ 3. Revise part 1599 to read as follows:

PART 1599—McGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM

Sec.

Authority: 7 U.S.C. 1736o–1.

§ 1599.1 General statement.

(a) This part sets forth the general terms and conditions governing the donation of commodities by the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) to participants in the McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole Program). Under the McGovern-Dole Program, participants use the donated commodities, proceeds from the sale of such commodities, or funds provided by FAS to implement activities in a foreign country pursuant to an agreement with FAS. FAS administers the McGovern-Dole Program and acts on behalf of the Commodity Credit Corporation (CCC) in cases where the agreement is funded with CCC resources.

(b) In addition to the provisions of this part, other regulations of general application issued by the Department, including the regulations set forth in Chapter 30 of this title, are applicable to the McGovern-Dole Program. In cases where an agreement is funded with CCC resources, provisions of the CCC Charter Act (15 U.S.C. 714 et seq.) and any other statutory provisions that are generally applicable to CCC are applicable to McGovern-Dole Program and the regulations set forth in this part.

(c) This part shall not apply to a donation by FAS to a foreign government or an intergovernmental agency or organization (such as the United Nations' World Food Program) under the McGovern-Dole Program.

§ 1599.2 Definitions.

The following definitions are applicable to this part:

Activity means a project to be carried out by a participant, directly or through a subrecipient, to fulfill the objectives of an agreement.

Agreement means a legally binding agreement entered into between FAS and a participant to implement activities under the McGovern-Dole Program.

CCC means the Commodity Credit Corporation and includes any official of the United States delegated the responsibility to act on behalf of CCC.

Commodities mean U.S. agricultural commodities or products of U.S. agricultural commodities.

Donated commodities mean the commodities donated by FAS to a participant under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FAS-provided funds means U.S. dollars provided under an agreement to a participant for expenses for the internal transportation, storage and handling of the donated commodities,

expenses involved in the administration and monitoring of the activities under the agreement, and the costs of activities conducted in the targeted country that would enhance the effectiveness of the activities implemented by the participant under the McGovern-Dole Program.

Force majeure is a common clause in contracts, exempting the parties for non-fulfillment of their obligations as a result of conditions beyond their control, such as earthquakes, floods or war.

Income means interest earned on sale proceeds and other resources received by a participant, other than sale proceeds, as a result of carrying out an agreement. The term may include resources from VAT refunds, activity fees, interest on loans, and other sources.

McGovern-Dole Program means the McGovern-Dole International Food for Education and Child Nutrition Program.

Participant means an entity with which FAS has entered into an agreement.

Subrecipient means a legal entity that receives donated commodities, income, sale proceeds or other resources from a participant for the purpose of implementing in the targeted country activities described in a McGovern-Dole Program agreement and that is accountable to such participant for the use of such commodities, funds, or resources. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of FAS.

Sale proceeds mean funds received by a participant from the sale of donated commodities.

Targeted country means the country in which activities are implemented under an agreement.

§ 1599.3 Eligibility determination.

(a) An entity will be eligible to become a participant only after FAS determines that the entity has:

(1) Organizational experience in implementing and managing awards, and the capability and personnel to develop, implement, monitor, report on, and provide accountability for activities in accordance with this part;

(2) Experience working in the proposed targeted country;

(3) An adequate financial framework to implement the activities the entity proposes to carry out under McGovern-Dole Program. In order to determine whether the entity is financially responsible, FAS may require it to submit corporate policies and financial materials that have been audited or otherwise reviewed by a third party;

(4) A person or agent located in the United States with respect to which service of judicial process may be obtained by FAS on behalf of the entity; and

(5) An operating financial account in the proposed targeted country, or a satisfactory explanation for not having such an account and a description of how a McGovern-Dole Program agreement would be administered without such an account.

(b) In determining whether an entity will be eligible to be a participant, FAS may consider the entity's previous compliance or noncompliance with the provisions of this part and part 1499 of this title. FAS may consider matters such as whether the entity corrected deficiencies in the implementation of an agreement in a timely manner and whether the entity has timely and accurately filed reports and other submissions that are required to be filed with FAS and other agencies of the United States.

§ 1599.4 Application process.

(a) An entity seeking to enter into an agreement with FAS shall submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the McGovern-Dole Program in the proposed targeted country. An application shall contain the items specified in paragraph (b) of this section and shall be submitted electronically to FAS at the address set forth at *http://www.fas.usda.gov*. An entity that has not yet met the eligibility requirements in § 1599.3 may submit an application, but FAS will not enter into an agreement with an entity until FAS had made a determination of eligibility under § 1599.3.

(b) An applicant shall include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction that contains the elements specified in paragraph (c) of this section; and

(3) A plan of operation that contains the elements specified in paragraph (d) of this section.

(c) The introduction shall include:

(1) An explanation of the need for food aid in the targeted country and how the applicant's proposed activities would address that need;

(2) An explanation of the need for a school feeding program in the targeted country and information regarding:

(i) The country's current school feeding operations, if they exist, the length and sessions of a typical school year, and current funding resources; and

(ii) Teacher training, parent-teacher associations, community infrastructure, and health, nutrition, water and sanitation conditions;

(3) Information regarding the applicant's ability to become registered and operate in the targeted country;

(4) Information about the applicant's past food aid projects;

(5) Methods that the applicant proposes to use to involve indigenous institutions as well as local communities and governments in the development and implementation of the activities in order to foster local capacity building and leadership;

(6) A budget that details the amount of any sale proceeds, income, and FAS-provided funds that the applicant proposes to use to fund:

(i) Administrative costs;

(ii) Inland transportation, storage and handling costs; and

(iii) Activity costs;

(7) A statement verifying the commitment of the government of the targeted country to work toward, through a national action plan, the goals of the World Declaration on Education for All convened in 1990 in Jomtien, Thailand, and the follow-up Dakar Framework for Action of the World Education Forum, convened in 2000; and

(8) A description of:

(i) How the benefits of education, enrollment, and attendance of children in schools in the targeted communities will be sustained when the assistance under the McGovern-Dole Program terminates; and

(ii) The estimated period of time required until the targeted country or the applicant would be able to sustain the program without additional assistance under the McGovern-Dole Program.

(d) A plan of operation shall include:

(1) The name of the targeted country where the proposed activities would be implemented;

(2) The kind, quantity, and proposed use of the commodities requested, and any commodities that would be acceptable substitutions therefor, and the proposed delivery schedule;

(3) If monetization or barter is proposed:

(i) The quantity of the requested commodities that would be sold or bartered;

(ii) The amount of sale proceeds anticipated;

(iii) The amount of income expected to be generated;

(iv) The anticipated monetization completion date;

(v) The goods or services to be generated from the barter of the requested commodities;

(vi) The value of the goods or services anticipated to be generated from the barter of the requested commodities; and

(vii) A justification for monetizing the requested commodities that discusses why monetization would provide a greater benefit than the receipt of FAS-provided funds to carry out activities.

(4) A list of each of the activities that would be implemented, with a brief statement of the objectives to be accomplished under each activity;

(5) For each proposed activity, the targeted geographic area, anticipated beneficiaries, and methods that the applicant would use to choose such beneficiaries, including obtaining and considering statistics on poverty levels, food deficits, literacy rates, and any other required items set forth on the FAS Web site at *http://www.fas.usda.gov*.

(6) For each proposed activity:

(i) An explanation of whether the activity would be carried out through the distribution or barter of the requested commodities or funded by FAS-provided funds, sale proceeds, income, or a combination thereof; and

(ii) The amount of commodities and FAS-provided funds requested, and of any sale proceeds and income expected to be generated, to carry out such activity; and

(iii) A detailed description of the activity, including the steps involved in its implementation and the anticipated completion date;

(7) Any cash or non-cash contributions that the applicant expects to receive from non-FAS sources that:

(i) Are critical to the implementation of the proposed activities; or

(ii) Enhance the implementation of the activities;

(8) Any subrecipient that would be involved and a description of each subrecipient's responsibilities and its capability to perform responsibilities;

(9) Any governmental or nongovernmental entities that would be involved and the extent to which the McGovern-Dole Program will strengthen or increase the capabilities of such entities to further educational and economic development in the targeted country;

(10) The method by which the applicant intends to inform beneficiaries of an activity about the source of the requested commodities or funding for the activity and, where the beneficiaries will be receiving the commodities directly, how to prepare and use them properly;

(11) Established baselines, a timeline, and proposed outcomes that would enable FAS to measure the applicant's progress towards achieving the objectives of the proposed activities and the McGovern-Dole Program, which include:

(i) Increased enrollment and attendance rates, especially for girls;

(ii) Improved student achievement levels through improvements in the learning environment;

(iii) Improved maternal, child and student health and nutrition;

(iv) Attracting non-FAS contributions to development activities;

(v) Enabling community support for infrastructure development; and

(vi) Increased government and community support in education;

(12) If the proposed activities would involve the use of sale proceeds or income:

(i) The process that the applicant would use to sell the requested commodities, including steps the applicant would take to use, to the extent possible, the private sector in the monetization process; and

(ii) The procedures that the applicant would use to assure that sale proceeds and income are received and deposited into a separate, interest-bearing account and disbursed from such account for use only in accordance with the agreement;

(13) A description of any port, transportation, storage, and warehouse facilities that would be used with sufficient detail to demonstrate that they would be adequate to handle the requested commodities without undue spoilage or waste, and, in cases where the applicant proposes to distribute some or all of the requested commodities, a description of how they would be transported from the receiving port to the point at which distribution is made to the beneficiaries;

(14) Any reprocessing or repackaging of the requested commodities that would take place prior to the distribution, sale or barter by the applicant;

(15) The action the applicant would take to ensure that any commodities to be distributed to beneficiaries, rather than sold, would be imported and distributed free from all customs, duties, tolls, and taxes;

(16) A plan that shows how the requested commodities could be imported and distributed without a disruptive impact upon production, prices and marketing of the same or like products in the country where they will be delivered, and the extent to which any sale or barter of the requested commodities would displace or interfere with any sales that may otherwise be made by the applicant or any other entity in the country where they will be delivered; and

(17) Any additional required items set forth on the FAS Web site at *http://www.fas.usda.gov*.

§ 1599.5 Agreements.

(a) After FAS approves an applicant's proposal, FAS will develop an agreement in consultation with the applicant. The agreement will set forth the obligations of FAS and the participant. A participant must comply with the terms of the agreement to receive assistance.

(b) A participant shall not use donated commodities, sale proceeds, income or FAS-provided funds for any activity or any expenses incurred by the participant prior to the date of the agreement or after the agreement is suspended or terminated, except as approved by FAS.

(c) The agreement will include a budget that sets forth the maximum amounts of sale proceeds and FAS-provided funds that may be expended for various purposes under the agreement. A participant may make adjustments to this budget without prior approval from FAS only as specified in the agreement.

(d) Prior to providing any donated commodities or FAS-provided funds to a participant under an agreement, FAS may require the participant to complete a training program administered by FAS that is designed to ensure that the participant is aware of, and has the capacity to complete, all required reporting and audit functions set forth in this part.

(e) A participant will be prohibited from using FAS-provided funds to acquire goods and services, either directly or indirectly through another party, from certain countries that will be specified in the agreement. Any violation of this provision of the agreement will be a basis for immediate termination by FAS of the agreement in addition to the imposition of any other applicable civil and criminal penalties.

(f) The agreement will prohibit the sale or transshipment of the donated commodities to a country not specified in the agreement for as long as such donated commodities are controlled by the participant.

(g) FAS may enter into a multicountry agreement in which donated commodities are delivered to one country and activities are carried out in another.

(h) FAS may provide donated commodities and FAS-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

§ 1599.6 Payments.

(a) If the participant arranges for transportation in accordance with § 1599.7(b)(2), and the participant seeks payment directly, the participant shall, as specified in the agreement, either submit to FAS, or maintain on file and make available to FAS, the following documents:

(1) A signed copy of the completed Form CCC–512;

(2) The original, or a true copy of, each on-board bill of lading indicating the freight rate and signed by the originating carrier;

(3) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate (Vessel Hold Certificate);

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness (Vessel Hold Inspection Certificate); and

(iii) A signed copy of the National Cargo Bureau Certificate of Loading;

(4) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(5) A signed copy of the liner booking note or charter party covering ocean transportation of the cargo;

(6) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances of force majeure have prevented the vessel's arrival at the first port of discharge;

(7) A request by the participant for reimbursement of freight, survey costs other than at load port, and other expenses approved by FAS indicating the amount due and accompanied by a certification from the carrier or other parties that payments have been received from the participant; and

(8) A document on letterhead and signed by an officer or agent of the participant specifying the name of the entity to receive payment; the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the participant's taxpayer identification number; and the type of the account into which the payment will be deposited.

(b) If the participant arranges for transportation in accordance with § 1599.7(b)(2), and the participant has used a freight forwarder, the participant shall cause the freight forwarder to submit the documents specified in § 1599.6(a) in order to receive payment from FAS.

(c) In no case will FAS reimburse a participant for demurrage costs or pay demurrage to any other entity.

(d) If FAS has agreed to pay the costs of transporting, storing, and distributing the donated commodities from the designated port or point of entry, the participant will be reimbursed in the manner set forth in the agreement.

(e) If the agreement authorizes the payment of FAS-provided funds, FAS will pay these funds to the participant on a reimbursement for expenses basis, except as provided in paragraph (f)(1) of this section. The participant shall request the payment of FAS-provided funds to reimburse it for authorized expenses in the manner set forth in the agreement.

(f)(1) A participant may request an advance of the amount of funds specified in the agreement. FAS will not approve any request for an advance if:

(i) It is received earlier than 60 days after the date of a previous advance made in connection with the same agreement; or

(ii) Any required reports, as specified in § 1499.13 and in the agreement, are more than six months in arrears.

(2) Except as may otherwise be provided in the agreement, the participant shall deposit and maintain in a bank account located in the United States all funds advanced by FAS. The account shall be interest-bearing, unless the exceptions in § 3019.22(k) of this title apply, or FAS determines that this requirement would constitute an undue burden. The participant shall remit semi-annually to FAS any interest earned on the advanced funds. The participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to FAS accounting for all funds advanced and all interest earned.

(3) The participant shall return to FAS any funds that are advanced by FAS if such funds have not been obligated as of the 180th day after the advance was made. Such funds and interest shall be transferred to FAS within 30 days of such date.

(g) If a participant is required to pay funds to FAS in connection with an agreement, the participant shall make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

(h) Suppliers of commodities shall seek payment according to the purchase contract.

§ 1599.7 Transportation of goods.

(a) Shipments of donated commodities are subject to the requirements of 46 U.S.C. 55305 and 55314, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by FAS under the McGovern-Dole Program will be acquired under a specific agreement in the manner determined by FAS. Such transportation will be acquired by:

(1) FAS in accordance with the Federal Acquisition Regulations (FAR), the Department's procurement regulations set forth in chapter 4 of title 48 of the Code of Federal Regulations (the AGAR) and directives issued by the Director, Office of Procurement and Property Management, U.S. Department of Agriculture; or

(2) The participant, with reimbursement by FAS, in the manner specified in the agreement.

(c) A participant that acquires transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the Federal Maritime Commission (FMC) and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the participant must submit to FAS a certification indicating that the freight forwarder:

(1) Is not engaged, and will not engage, in supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any McGovern-Dole Program agreement to which the participant is a party; and

(2) Is not affiliated with the participant and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the participant.

(d) A participant that is responsible for transportation under paragraph (b)(2) of this section shall declare in the transportation contract the point at which the ocean carrier will take custody of commodities to be transported.

§ 1599.8 Entry and handling of commodities.

(a) The participant shall make all necessary arrangements for receiving the donated commodities in the targeted country, including obtaining appropriate approvals for entry and transit. The participant shall store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale or barter.

(b) The participant shall, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities from the designated point and time where title to the commodity passes to the participant by contracting directly with suppliers of services, as set forth in the agreement.

(c)(1) If a participant arranges for the packaging or repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the people of the United States of America; and

(iv) Includes a statement indicating that the donated commodities shall not be sold, exchanged or bartered.

(2) If a participant arranges for the reprocessing and repackaging of donated commodities that are to be distributed, the participant shall ensure that the packaging:

(i) Is plainly labeled in the language of the targeted country;

(ii) Contains the name of the reprocessed product;

(iii) Includes a statement indicating that the reprocessed product was made with commodities furnished by the people of the United States of America; and

(iv) Includes a statement indicating that the reprocessed product shall not be sold, exchanged or bartered;

(3) If a participant distributes donated commodities that are not packaged, the participant shall, to the extent practicable, display:

(i) Banners, posters or other media informing the public of the name and source of the donated commodities; and

(ii) A statement that the donated commodities may not be sold, exchanged, or bartered.

(d) A participant shall arrange with the government of the targeted country that all donated commodities to be distributed will be imported and distributed free from all customs, duties, tolls, and taxes. A participant is encouraged to make similar arrangements, where possible, with the government of the country where donated commodities to be sold or bartered are delivered.

§ 1599.9 Damage to or loss of commodities.

(a) FAS will be responsible for the donated commodities prior to the transfer of title to the commodities to the participant. The participant will be responsible for the donated commodities following the transfer of title to the commodities to the participant. The title will transfer as specified in the agreement.

(b) A participant shall inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities that occurs following the transfer of title to the commodities to the participant. The participant shall take all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the donated commodities that occurs after title has been transferred to the participant. The agreement will specify whether the participant is responsible for obtaining a survey in the event that the donated commodities are damaged or lost following the transfer of title to the commodities to the participant.

(c) If the donated commodities are damaged or lost during the time that they are in the care of the carrier:

(1) And either FAS or the participant engages the services of an independent cargo surveyor, the surveyor will provide to FAS and the participant any report, narrative chronology or other commentary that it prepares;

(2) FAS and the participant will provide to each other the names and addresses of any individuals known to be present at the time of discharge or during the survey who can verify the quantity of damaged or lost commodities;

(3) And the participant engages the services of the surveyor, FAS will reimburse the participant for the reasonable costs, as determined by FAS, of the survey, unless:

(i) The participant was required by the agreement to pay for the survey;

(ii) The survey was a delivery survey and the surveyor did not also prepare a discharge survey; or

(iii) The survey was not conducted contemporaneously with the discharge of the vessel, unless FAS determines that such action was justified under the circumstances;

(4) Any survey obtained by the participant shall, to the extent practicable, be conducted jointly by the surveyor, the participant, and the carrier, and the survey report shall be signed by all parties;

(5) And the damage or loss occurred with respect to a bulk grain shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall obtain the services of an independent cargo surveyor to:

(i) Observe the discharge of the cargo;

(ii) Report on discharging methods, including scale type, calibrations and any other factor that may affect the accuracy of scale weights, and, if scales are not used, state the reason therefor and describe the actual method used to determine weight;

(iii) Estimate the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advise on the quality of sweepings;

(v) Obtain copies of port or vessel records, if possible, showing the quantity discharged; and

(vi) Notify the participant immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(6) And the damage or loss occurred with respect to a container shipment, if the agreement provides that the participant is responsible for survey and outturn reports, the participant shall engage the services of an independent cargo surveyor to list the container numbers and seal numbers shown on the containers, indicate whether the seals were intact at the time the containers were opened, and note whether the containers were in any way damaged.

(d) If the participant has title to the donated commodities, and the value of any damaged donated commodities is in excess of $1,000, the participant shall immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged commodities. The value of damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by CCC with respect to such commodities. The participant shall inform FAS of the results of the inspection and indicate whether the damaged commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(e)(1) If the participant has title to the donated commodities, the participant shall arrange for the recovery of that portion of the donated commodities designated as suitable for the use authorized in the agreement. The participant shall dispose of donated commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, i.e., animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or for other non-food use; or

(iii) Destruction of the commodities if they are unfit for any use, in such

manner as to prevent their use for any purpose.

(2) The participant shall arrange for all U.S. Government markings to be obliterated or removed before the donated commodities are transferred by sale or donation.

(f) A participant may retain any proceeds generated by the disposal of the donated commodities in accordance with paragraph (e)(1) of this section and shall use the proceeds for expenses related to the disposal of the donated commodities and for activities specified in the agreement.

(g) The participant shall notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (e) of this section, including the quantities, values and dispositions of commodities determined to be unfit.

§ 1599.10 Claims for damage to or loss of commodities.

(a) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the commodities to the participant.

(b) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be $20,000 or greater, the participant will be responsible for:

(1) Initiating a claim arising out of such damage or loss, including actions relating to collections pursuant to commercial insurance contracts; and

(2) Notifying FAS immediately and providing detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost donated commodities, and the value of the damage or loss.

(c) If the participant has title to the donated commodities, and the value of the damaged or lost donated commodities is estimated to be less than $20,000, the participant will be responsible for providing detailed information about the damage or loss in the next report required to be filed under § 1599.13(c)(1) or (2) and shall not be required to initiate a claim collection action.

(d)(1) The value of a claim for lost donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities.

(2) The value of a claim for damaged donated commodities shall be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1599.9(e)(1).

(e) If FAS determines that a participant is not exercising due diligence in the pursuit of a claim, FAS may require the participant to assign its rights to pursue the claim to FAS.

(f)(1) The participant may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds shall only be expended for purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the participant paid for the freight or a portion thereof, FAS will use a portion of such funds to reimburse the participant for such expense on a prorated basis.

§ 1599.11 Use of commodities and sale proceeds.

(a) A participant must use the donated commodities in accordance with the agreement.

(b) A participant shall not permit the distribution, handling, or allocation of donated commodities on the basis of political affiliation, geographic location, or the ethnic, tribal or religious identity or affiliation of the potential consumers or beneficiaries.

(c) A participant shall not permit the distribution, handling, or allocation of donated commodities by the military forces or any government or insurgent group without the specific authorization of FAS.

(d) A participant may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the participant is disposing of damaged commodities as specified in § 1599.9. The participant shall sell the donated commodities at a reasonable market price in the economy where the sale occurs. The participant shall use any sale proceeds, income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(e) The participant shall deposit all sale proceeds and income into a separate, interest-bearing account unless the exceptions in § 3019.22(k) of this title apply, the account is in a country where the laws or customs prohibit the payment of interest, or FAS determines that this requirement would constitute an undue burden.

(f) A participant may use sale proceeds or income to purchase real or personal property only if local law permits the participant to retain title to such property. However, the participant shall not use sale proceeds or income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a participant may use sale proceeds or income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities, but only if such structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities are stored in it. If such use is not specifically provided for in the agreement, such use may only occur after receipt of written approval from FAS.

(g) A participant shall endeavor to comply with §§ 3019.41 through 3019.43 of this title when procuring goods and services and when engaging in construction work to implement the agreement. The participant shall also establish procedures to prevent fraud. As provided for in the agreement, the participant shall enter into a written contract with each provider of goods, services or construction work that requires the provider to maintain adequate records to account for all donated commodities or funds or both provided to the provider by the participant and to submit periodic reports to the participant. The participant shall submit a copy of the signed contracts to FAS.

§ 1599.12 Subrecipients.

(a) If provided for in the agreement, a participant may utilize the services of a subrecipient to implement activities under this agreement. The participant shall enter into a written subagreement with the subrecipient, and provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities, sale proceeds, income or FAS-provided funds to the subrecipient. Such written subagreement shall require the subrecipient to pay to the participant the value of any donated commodities, sale proceeds, income, or FAS-provided cash funds that are not used in accordance with the subagreement or are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(b) If a participant demonstrates to FAS that it is not feasible to enter into a subagreement with a subrecipient,

FAS may grant approval to proceed without a subagreement; provided, however, that the participant must obtain such approval from FAS prior to transferring any donated commodities, sale proceeds, income, or FAS-provided funds to the subrecipient.

(c) The participant shall monitor the actions of a subrecipient as necessary to ensure that donated commodities or funds provided to the subrecipient are used for authorized purposes in compliance with applicable laws and regulations and the agreement and that performance goals are achieved. The participant shall provide in the subagreement that the subrecipient must comply with applicable provisions of the regulations set forth in Chapter XXX of this title.

§ 1599.13 Recordkeeping and reporting requirements.

(a) A program participant shall retain records and permit access to records in accordance with the requirements of § 3019.53 of this title. The date of submission of the final expenditure report, as referenced in § 3019.53(b) of this title, shall be the final date of submission of the forms required by paragraphs (c)(1) and (2) of this section, as prescribed by FAS.

(b) A participant shall, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where commodities were delivered.

(c)(1) A participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt, handling and disposition of the donated commodities. Such report shall be submitted to FAS, by the dates and for the reporting periods specified in the program agreement, until all of the donated commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the participant shall submit to FAS information, using a form as prescribed by FAS, covering the receipt and use of sale proceeds and income, and, in the case of bartered commodities, covering the services and goods derived from the barter of donated commodities. Such reports shall be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and income have been disbursed and reported to FAS. When reporting financial information, the participant shall include the amounts in U.S. dollars and the exchange rate.

(3) The participant shall report, in the manner specified in the agreement, its progress, measured against established baselines, towards achieving the objectives of the activities under the agreement.

(4) The participant shall retain copies of and make available to FAS all barter receipts, contracts or other documents related to the barter of the donated commodities and the services or goods derived from such barter, for a minimum of two years after the agreement has been closed out.

(5) The participant shall provide to FAS additional information or reports relating to the agreement if requested by FAS.

(d) A participant shall submit to FAS, in the manner specified in the agreement, an annual audit in accordance with § 3019.26 of this title. If FAS requires an annual financial audit with respect to a particular agreement, and FAS provides funds for this purpose, the participant shall arrange for such audit and submit to FAS, in the manner specified in the agreement.

(e)(1) A participant shall, as provided in the agreement, submit to FAS interim and final evaluations of the implementation of the agreement. Unless otherwise provided in the agreement, the evaluations shall be submitted at the mid-point and end-point of the implementation period. The participant shall arrange for the evaluations to be conducted by an independent third party that:

(i) Is financially and legally separate from the participant's organization;

(ii) Has staff with demonstrated knowledge, analytical capability, language skills and experience in conducting evaluations of development programs involving agriculture, education, and nutrition;

(iii) Uses acceptable analytical frameworks such as comparison with non-project areas, surveys, involvement of stakeholders in the evaluation, and statistical analyses;

(iv) Uses local consultants, as appropriate, to conduct portions of the evaluation; and

(v) Provides a detailed outline of the evaluation, major tasks, and specific schedules prior to initiating the evaluation.

(2) Receipt by FAS of the evaluations referred to in paragraph (e)(1) of this section is a condition for the participant to retain any funds provided by FAS to carry out the evaluations.

(f) A participant shall submit to FAS the financial reports and information outlined in § 3019.52 of this title. The agreement will specify the acceptable forms and time requirements for submission.

§ 1599.14 Noncompliance with an agreement.

If a participant fails to comply with a term of an agreement, FAS may take one or more of the enforcement actions set forth in § 3019.62 of this title and, if appropriate, initiate a claim against the participant. FAS may also initiate a claim against a participant if the donated commodities are damaged or lost or the sale proceeds, income, or FAS-provided funds are lost due to an action or omission of the participant.

§ 1599.15 Suspension, termination, and closeouts of agreements.

(a) An agreement may be suspended or terminated by FAS if it determines that:

(1) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(2) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the targeted country.

(b) An agreement may be terminated in accordance with § 3019.61 of this title. If an agreement is terminated, the participant shall:

(1) Be responsible for the safety of any undistributed donated commodities and dispose of such commodities only as agreed to by FAS; and

(2) Follow the closeout procedures in §§ 3019.71 through 3019.73 of this title.

(c) An agreement will be considered completed when FAS and the participant have fulfilled their responsibilities under the agreement or the agreement has been terminated. The procedures in §§ 3019.71 through 3019.73 of this title will apply to the closeout of a completed agreement.

§ 1599.16 Appeals.

A participant may appeal a determination arising under this part to FAS. Such appeal will be in writing and submitted to the FAS official and in the manner set forth in the agreement. The participant will be given an opportunity to have a hearing before a final decision is made regarding its appeal.

§ 1599.17 Paperwork Reduction Act.

The information collection requirements contained in this regulation have been approved by OMB under provisions of 44 U.S.C. Chapter

35 and have been assigned OMB Number 0551–0035.

Title 48—Federal Acquisition Regulations System

CHAPTER 4—DEPARTMENT OF AGRICULTURE

■ 4. Amend 48 CFR Chapter 4 by establishing subchapter I consisting of part 470 to read as follows:

SUBCHAPTER I—FOOD ASSISTANCE PROGRAMS

PART 470—COMMODITY ACQUISITIONS

Sec.

Authority: 5 U.S.C. 301; 7 U.S.C. 1691 through 1726b; 1731 through 1736g–3; 1736o; 1736o–1; 40 U.S.C. 121(c); 46 U.S.C. 53305, 55314 and 55316.

470.000 Scope of part.

This part sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by the Department of Agriculture for use:

(a) Under any domestic feeding and assistance program administered by the Food and Nutrition Service; and

(b) Under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*); the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other international food assistance program.

470.101 Definitions.

The following definitions are applicable to this part:

Commingled product means grains, oilseeds, rice, pulses, other similar commodities and the products of such commodities, when such commodity or product is normally stored on a commingled basis in such a manner that the commodity or product produced in the United States cannot be readily distinguished from a commodity or product not produced in the United States.

Department means the Department of Agriculture.

Food and Nutrition Service means such agency located within the Department of Agriculture.

Foreign Agriculture Service means such agency located within the Department of Agriculture.

Free alongside ship (f.a.s.) (* * named port of shipment)* means a term of sale which means the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The buyer bears all costs and risks of loss of or damage to the goods from that moment.

Grantee organization means an organization which will receive commodities from the United States Agency for International Development under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*) or from the Foreign Agricultural Service under the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other international food assistance program.

Ingredient means spices, vitamins, micronutrients, desiccants, and preservatives when added to an agricultural commodity product.

Free carrier (FCA) (* * named place)* means a term of sale which means the seller fulfills its obligation when the seller has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose, within the place or range stipulated, where the carrier should take the goods into their charge.

Last contract lay day means the last day specified in an ocean freight contract by which the carriage of goods must start for contract performance.

Lowest landed cost means, as authorized by 46 U.S.C. 55314(c), with respect to an agricultural product acquired under this part the lowest aggregate cost for the acquisition of such product and the shipment of such product to a foreign destination.

Multi-port voyage charter means the charter of an ocean carrier in which the carrier will stop at two or more ports to discharge cargo.

470.102 Policy.

(a) *Policy.* It is the policy of the Department to follow the policies and procedures set forth in the Federal Acquisition Regulation (FAR) as supplemented by the Agriculture Acquisition Regulation, including this part, in the procurement of agricultural commodities and products of agricultural commodities that are used in domestic feeding and international feeding and development programs.

(b) *Electronic submission.* To the maximum extent possible, the use of electronic submission of solicitation-related documents shall be used with respect to the acquisition of agricultural commodities and related freight; however, to the extent that a solicitation allows for the submission of written information in addition to information in an electronic format and there is a discrepancy in such submissions, the information submitted in a written format shall prevail unless the electronic submission states that a specific existing written term is superseded by the electronic submission.

(c) *Freight.* With respect to the acquisition of freight for the shipment of agricultural commodities and products of agricultural commodities, the provisions of the FAR, including Part 47, shall be utilized and various types of services to be obtained may include multi-trip voyage charters.

470.103 United States origin of agricultural products.

(a) *Products of United States origin.* As provided by 7 U.S.C. 1732(2) and 1736o–1(a) commodities and the products of agricultural commodities acquired for use in international feeding and development programs shall be products of United States origin. A product shall not be considered to be a product of the United States if it contains any ingredient that is not produced in the United States if that ingredient is:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(b) *Use by the Food and Nutrition Service.* Commodities and the products of agricultural commodities acquired for use by the Food and Nutrition Service shall be a product of the United States, except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to ingredients. Ingredients from non-domestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

(1) Produced in the United States; and

(2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(c) *Commingled product.*

(1) Except as provided in paragraph (c)(2) of this section, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to

the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States.

(2) To the extent the Department has determined a commodity is one that is generally commingled, but is also one which can be readily stored on an identity preserved basis with respect to its country of origin, the Department may require that the commodity procured by the Department shall be of 100 percent United States origin.

(d) *Product derived from animals.* With respect to the procurement of products derived from animals, the solicitation will set forth any specific requirement that is applicable to the country in which the animal was bred, raised, slaughtered or further processed.

470.200 [Reserved]

470.201 Acquisition of commodities and freight shipment for Foreign Agricultural Service programs.

(a) *Lowest landed cost and delivery considerations.*

(1) Except as provided in paragraphs (a)(3) and (4) of this section, in contracts for the Foreign Agricultural Service for commodities and related freight shipment for delivery to foreign destinations, the contracting officer shall consider the lowest landed cost of delivering the commodity to the intended destination. This lowest landed cost determination will be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement or a related freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or related freight, when combined with other offers for commodities or related freight, results in a lower landed cost to the Department.

(2) The Department may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors considered in this determination may include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the contracting officer may award an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors may adversely affect the delivery of such commodities through damage or untimely delivery. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels not being able to dock and load cargo without delay due to conditions at the port; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the timely delivery of the commodity;

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured; or

(E) The contracting officer determines that extenuating circumstances preclude awards on the basis of lowest-landed cost, or that efficiency and cost-savings justify use of types of ocean service that would not involve an analysis of freight. However, in all such cases, commodities would be transported in compliance with cargo preference requirements. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery cost and freight (C & F), delivery cost insurance and freight (CIF), and indexed ocean freight costs.

(4) If a contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer will provide to the Head of Contracting Activity Designee a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis consistent with Title 48 Code of Federal Regulations. This request shall include a statement of the reasons for not using lowest landed cost basis. The Head of the Contracting Activity Designee, or the designee one level above the contracting officer, may either accept or reject this request and shall document this determination.

(b) *Multiple offers or delivery points.* If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(c) *Freight shipping and rates.*

(1) In determining the lowest-landed cost, the Department shall use the freight rates offered in response to solicitations issued by the Department or, if applicable, the grantee organization.

(2) Freight rates offered must be submitted as specified in the solicitation issued by the Department or, if applicable, the grantee organization.

Any such solicitation issued by a grantee organization must contain the following elements:

(i) If directed by the Department, include a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that freight offers are required to have a canceling date no later than the last contract lay day specified in the solicitation;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Be received and opened prior to any related offer for acquisition of commodities to be shipped.

(3) The Department may require organizations that will receive commodities from the Department to submit information relating to the capacity of a U.S. port, or, if applicable, a terminal, prior to the acquisition of such commodities or freight.

(d) *Freight rate notification.* If the Department is not the party procuring freight with respect to a shipment of an agricultural commodity for delivery to a foreign destination, the organization that will receive commodities from the Department, or its shipping agent, shall be notified by the Department of the vessel freight rate used in determining the commodity contract award and the organization will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate.

470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.

(a) *Lowest landed cost and delivery considerations.*

(1) Except as provided in paragraphs (a)(3) and (e)(2) of this section, with respect to the acquisition of agricultural commodities for delivery to foreign destinations and related freight to transport such commodities under Title II of Public Law 480, contracts will be entered into in a manner that will result in the lowest landed cost of such commodity delivery to the intended destination. This lowest landed cost determination shall be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet 46 U.S.C. 55314(c)(3) and cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement or a freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or freight, when combined with other offers for commodities or freight, results in a lower landed cost to USAID.

(2) The Department may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. The Department may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of the Department to have the commodity delivered in a safe and/or timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) *Use of other than lowest landed cost.* In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the Department may complete an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section, if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors will adversely affect the delivery of such commodities without damage or in a timely manner. Such similar factors include, but are not limited to: port congestion; overloaded facilities at the port; vessels would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the ability of the Department to achieve timely delivery of the commodity; or

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer shall provide to the head of contracting activity designee and to USAID, a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis. This request shall include a statement of the reasons for not using lowest landed cost basis. The head of contracting authority designee, or one level above the contracting officer, with the concurrence of USAID, shall, on an expedited basis, either accept or reject this request and shall document this determination in writing and provide a copy to USAID.

(b) *Freight shipping and rates.*

(1) In determining lowest-landed cost as specified in paragraph (a) of this section, the Department shall use vessel rates offered in response to solicitations issued by USAID or grantee organizations receiving commodities under 7 U.S.C. 1731 *et seq.*

(2) USAID may require, or direct a grantee organization to require, an ocean carrier to submit offers electronically through a Web-based system maintained by the Department. If electronic submissions are required, the Department may, at its discretion, accept corrections to such submissions that are submitted in a written form other than by use of such Web-based system.

(c) *Delivery date.* The contracting officer shall consider total transit time, as it relates to a final delivery date, in order to satisfy Public Law 480 Title II program requirements.

(d) *Delivery points.*

(1) Commodities offered for delivery free alongside ship Great Lakes port range or intermodal bridge-point Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on a lowest landed cost basis. Tonnage allocated on this basis will not be reevaluated on a lowest landed cost U.S.-flag basis unless

the contracting officer determines that 25 percent of the total annual tonnage of bagged, processed, or fortified commodities furnished under 7 U.S.C. 1731 *et seq.* has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) The contracting officer shall consider commodity offers as offers for delivery ''intermodal bridge-point Great Lakes port range'' only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

(e) *Multiple awards or delivery points.*

(1) If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(2) The contracting officer may determine that extenuating circumstances preclude awards on the basis of lowest landed cost. However, in all such cases, commodities may be transported in compliance with cargo preference requirements as determined by USAID.

(3) The contracting officer shall notify USAID or, if applicable, the grantee organization, that its shipping agent will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or USAID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

470.203 Cargo preference.

An agency having responsibility under this subpart shall administer its programs, with respect to this subpart, in accordance with regulations prescribed by the Secretary of Transportation.

Dated: March 19, 2009.

Suzanne Hall,

Acting Administrator, Foreign Agricultural Service, and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–6487 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–10–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 742

RIN 3133–AD53

Regulatory Flexibility Regarding Ownership of Fixed Assets

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its Regulatory Flexibility (RegFlex) Program to provide additional flexibility to qualifying federal credit unions (FCUs) when acquiring unimproved land for future expansion. Previously, when an FCU acquired unimproved land for future expansion and did not fully occupy the completed premises within one year, it was required to partially occupy the completed premises within three years or obtain a waiver. This amendment increases the three years to six years for RegFlex FCUs without a waiver. NCUA is also making conforming amendments to its fixed asset rule to be consistent with the RegFlex changes.

DATES: The rule is effective April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

1. Proposal

NCUA issued proposed amendments to its RegFlex and fixed assets rules in September 2008 as summarized above. 73 FR 57013 (October 1, 2008). NCUA received six comment letters on the proposal: three from credit unions, two from credit union trade associations, and one from a bank trade association. All commenters except the bank trade association support the amendments.

2. Fixed Assets

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, the fixed asset rule provides limits on fixed asset investments, establishes occupancy and other requirements for acquired and abandoned premises, and prohibits certain transactions. 12 CFR 701.36. Fixed assets are defined in § 701.36(e) as premises, furniture, fixtures, and equipment and include any office, branch office, suboffice, service center, parking lot, facility, real estate where a credit union transacts or will transact business, office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

Section 701.36 prohibits an FCU with $1 million or more in assets from investing in fixed assets, the aggregate of which exceeds five percent of the FCU's shares and retained earnings; although upon an FCU's application, a regional director may set a higher limit. 12 CFR 701.36(a)(1)–(2). If an FCU acquires premises, as broadly defined in § 701.36(e), for future expansion and does not fully occupy the space within one year, its board must have a resolution in place by the end of that year with plans for full occupation and make those plans available to NCUA upon request. 12 CFR 701.36(b)(1). Additionally, the FCU must partially occupy the premises within a reasonable period, not to exceed three years, unless the FCU obtains a waiver within 30 months of acquiring the premises. 12 CFR § 701.36(b)(1)–(2). In this rulemaking, NCUA is only addressing the circumstance where an FCU is acquiring unimproved land but no other kind of premises.

3. Regulatory Flexibility Program

The RegFlex Program exempts from certain regulatory restrictions and grants additional powers to those FCUs that have demonstrated sustained superior performance as measured by CAMEL ratings and net worth classifications. 12 CFR 742.1. An FCU may qualify for RegFlex treatment automatically or by application to the appropriate regional director. 12 CFR 742.2. Also, an FCU's RegFlex authority can be lost or revoked. 12 CFR 742.3.

B. Discussion

Although a RegFlex eligible FCU is exempt from the five percent aggregate limit on fixed asset investments under the current rule, it is not exempt from the requirement to partially occupy premises acquired for future expansion within three years or request a waiver of this requirement. 12 CFR 701.36(a), 701.36(b)(2), 701.36(d), 742.4(a)(3). Where an FCU is acquiring unimproved land, the partial occupancy requirement often is more difficult to satisfy than if the FCU were purchasing premises with an existing branch building. The Board is aware that some FCUs contend the fixed asset rule's three-year partial occupancy requirement, even with a waiver option, is burdensome and an unnecessary level of oversight for

RegFlex FCUs that have demonstrated sustained superior performance.

Although the NCUA Board believes additional regulatory relief can and should be granted, the time limit for an FCU to fulfill the partial occupancy requirement cannot be unlimited. That would be the equivalent of an FCU making an impermissible real estate investment and also could cause serious safety and soundness concerns. NCUA recognizes, however, that many real estate transactions are complex, time consuming, and can involve a host of wide-ranging issues that must be addressed before an FCU is ready to occupy the premises. This is especially true in the unimproved land context considering the addition of construction-related issues. Accordingly, NCUA is extending the three-year time period to six years for RegFlex FCUs but only with respect to the acquisition of unimproved land. NCUA believes six years is a sufficiently long time period to provide RegFlex FCUs with the flexibility they need to manage their fixed asset portfolios, in any context, free of unnecessary regulation and consistent with safe and sound credit union operations. All other substantive aspects of the fixed asset rule remain unchanged, including an FCU's ability to request a waiver of the partial occupancy requirement. NCUA adopts the amendments as proposed without change.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This rule provides additional flexibility and reduces regulatory burden. Accordingly, this rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget (OMB), has determined that, for purposes of SBREFA, this is not a major rule.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of OMB.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule 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. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 19, 2009.

Mary Rupp,

Secretary of the Board.

■ For the reasons discussed above, NCUA amends 12 CFR parts 701 and 742 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Section 701.36(d) introductory text is amended by adding a sentence between the first and second sentences to read as follows:

§ 701.36 FCU Ownership of fixed assets.

* * * * *

(d) * * * Those federal credit unions are also exempt from the three-year partial occupancy requirement described in paragraph (b) of this section when acquiring unimproved land for future expansion pursuant to the terms of section 742.4(a)(3) of this chapter. * * *

* * * * *

PART 742—REGULATORY FLEXIBILITY PROGRAM

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C. 1756, 1766.

■ 4. Section 742.4(a)(3) is amended by adding two sentences at the end to read as follows:

§ 742.4 RegFlex Relief.

(a) * * *

(3) * * * Section 701.36(b)(2) of this chapter concerning the three-year partial occupancy requirement when acquiring unimproved land for future expansion; RegFlex credit unions are instead subject to a six-year partial occupancy requirement when acquiring unimproved land but remain subject to all other provisions of that section including the waiver provision;

* * * * *

[FR Doc. E9–6730 Filed 3–25–09; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1229

RIN 2590–AA21

Capital Classifications and Critical Capital Levels for the Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The Federal Housing Finance Agency (FHFA) published in the **Federal Register** of January 30, 2009, an interim final rule with request for comments that implemented the statutory requirement of the Housing and Economic Recovery Act of 2008 that

FHFA specify critical capital levels for the Federal Home Loan Banks (Bank(s)). Specifically, the interim final rule defined the critical capital level for each Bank; established criteria based on the amount and type of capital held by a Bank for each of the following capital classifications: adequately capitalized, undercapitalized, significantly undercapitalized and critically undercapitalized; and delineated FHFA's prompt corrective action authority over the Banks.

The *E-mail* address to submit comments that was listed in the interim final rule of January 30, 2009, was incorrect. The correct *E-mail* address is listed below. To compensate for this error, FHFA is extending the comment period 15 days until May 15, 2009, to allow all interested parties additional time to submit comments on the interim final rule.

DATES: Comments on the interim final rule must be received on or before May 15, 2009. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the interim final rule, identified by regulatory information number (RIN) 2590–AA21 by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel and Christopher T. Curtis, Senior Deputy General Counsel, Attention: Comments/RIN 2590–AA21, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel and Christopher T. Curtis, Senior Deputy General Counsel, Attention: Comments/RIN 2590–AA21, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel and Christopher T. Curtis, Senior Deputy General Counsel, may be sent by e-mail to *RegComments@FHFA.gov*. Please include ''RIN 2590–AA21'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, (202) 408–2842, and Anthony Cornyn, Senior Associate Director, (202) 408–2522, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The FHFA invites comments on all aspects of the interim final rule, and will amend the rule as appropriate after taking all comments into consideration. Copies of all comments will be posted on the internet Web site at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

Dated: March 20, 2009.

James B. Lockhart, III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–6780 Filed 3–25–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1142; Directorate Identifier 2008–NM–060–AD; Amendment 39–15861; AD 2009–07–02]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model MU–300–10 Airplanes and Model 400 and 400A Series Airplanes; and Raytheon (Mitsubishi) Model MU–300 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain BEECH Model 400, 400A, and MU–300–10 airplanes. That AD currently requires installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. This new AD would add airplanes to the applicability of the existing AD. This AD results from reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. We are issuing this AD to prevent sudden shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

DATES: This AD becomes effective April 30, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 30, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain other publication as of March 13, 1996 (61 FR 5275, February 12, 1996).

ADDRESSES: For service information identified in this AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com;* Internet *https://www.hawkerbeechcraft.com/service_support/pubs.*

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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 96–03–07, amendment 39–9504 (61 FR 5275, February 12, 1996). The existing AD applies to certain BEECH Model 400, 400A, and MU–300–10 airplanes. That NPRM was published in the **Federal Register** on October 31, 2008 (73 FR 64899). That NPRM proposed to continue to require

installation of an improved adjustment mechanism on the flightcrew seats and replacement of the existing aluminum seat reinforcement assemblies with steel assemblies. That NPRM also proposed to require the actions on additional airplanes.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Explanation of Changes to NPRM

The product identification and paragraph (c) of the NPRM have been revised to correspond to the identity of the type certificate holder and model designation for the affected airplanes.

We have re-identified Note 1 as paragraph (h) in this final rule to emphasize that if deviations occur from the instructions provided in Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, an alternative method of compliance must be requested under the provisions of paragraph (i) of this AD. We have re-identified subsequent paragraphs accordingly.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

The actions specified by this AD were previously required by AD 96–03–07, which was applicable to approximately 121 airplanes. The actions required by that AD take about 24 work-hours per airplane at $80 per work-hour. Required parts cost up to $7,433 per airplane. Based on these figures, we estimate the cost of the current requirements of that AD on U.S. operators to be up to $1,131,713, or $9,353 per airplane. In consideration of the compliance time and effective date of AD 96–03–07, we assume that operators of the 121 airplanes subject to that AD have already initiated the required actions. This AD adds no new costs associated with those airplanes.

This AD applies to approximately 76 additional airplanes. The existing actions required by this AD take about 24 work-hours per airplane. The manufacturer has updated the cost of required parts; the required parts now cost up to $24,474 per airplane. Based on the figures discussed above, we estimate the current costs of the existing actions required by this AD on U.S. operators of the additional airplanes to be up to $2,005,944. This figure is based on assumptions that no operator of these additional airplanes has yet done any of the requirements of this AD, and that no operator would do those actions in the future if this AD were not adopted.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

We have determined that this 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 that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–9504 (61 FR 5275, February 12, 1996) and by adding the following new airworthiness directive (AD):

2009–07–02 Hawker Beechcraft Corporation (Formerly Raytheon Aircraft Company, formerly Beech Aircraft Corporation): Amendment 39–15861. Docket No. FAA–2008–1142; Directorate Identifier 2008–NM–060–AD.

Effective Date

(a) This AD becomes effective April 30, 2009.

Affected ADs

(b) This AD supersedes AD 96–03–07.

Applicability

(c) This AD applies to the airplanes specified in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Manufacturer	Model	Serial Nos.
Hawker Beechcraft Corporation	Model 400 series airplanes	RJ–1 through RJ–65 inclusive.
Hawker Beechcraft Corporation	Model 400A series airplanes	RK–1 through RK–93 inclusive.
Hawker Beechcraft Corporation	Model MU–300–10 airplanes	A1001SA through A1011SA inclusive.
Raytheon (Mitsubishi)	Model MU–300 airplanes	A003SA through A091SA inclusive.

Unsafe Condition

(d) This AD results from reports of incomplete latching of the existing adjustment mechanism and cracked reinforcement assemblies, which could result in sudden shifting of a flightcrew seat. We are issuing this AD to prevent sudden shifting of a flightcrew seat, which could impair the flightcrew's ability to control the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of the Requirements of AD 96–03–07

(f) For Hawker Beechcraft Model MU–300–10 airplanes and Model 400 and 400A series airplanes: Within 200 hours time-in-service after March 13, 1996 (the effective date of AD 96–03–07), install an improved adjustment mechanism on the flightcrew seat, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Beechcraft Service Bulletin No. 2536, Revision 1, dated April 1995; or Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002.

Requirements for Additional Airplanes

(g) For Raytheon (Mitsubishi) Model MU–300 airplanes: Within 200 flight hours or 12 months after the effective date of this AD, whichever occurs first, install an improved adjustment mechanism on the flightcrew seats, and replace the existing aluminum seat reinforcement assemblies with steel assemblies, in accordance with Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002.

(h) A note in the Accomplishment Instructions of Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, instructs operators to contact Raytheon if any difficulty is encountered while accomplishing the actions specified in that service bulletin. However, any deviation from the instructions provided in Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, must be approved as an alternative method of compliance (AMOC) under provisions of paragraph (i) of this AD.

Alternative Methods of Compliance

(i)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107; 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 appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(j) You must use Beechcraft Service Bulletin No. 2536, Revision 1, dated April 1995; or Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 25–2536, Revision 2, dated March 2002, under 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register approved the incorporation by reference of Beechcraft Service Bulletin No. 2536, Revision 1, dated April 1995, as of March 13, 1996 (61 FR 5275, February 12, 1996).

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com;* Internet *https://www.hawkerbeechcraft.com/service_support/pubs*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference 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*.

Issued in Renton, Washington, on March 16, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6227 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0521; Directorate Identifier 2008–NM–040–AD; Amendment 39–15854; AD 2009–06–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (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) originated 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:

Following in-flight test deployments, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. * * *

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 30, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe & Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

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 May 7, 2008 (73 FR 25612). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Following in-flight test deployments, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This

directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Extend Compliance Time for Inspecting the Identification Plate

Comair requests that we change the compliance time specified in paragraph (f)(1)(ii) of the NPRM to remove the ''before further flight'' phrase. Comair states that it has already reviewed its maintenance records and found that affected ADGs are installed on its fleet. Since the review was performed before the effective date of the AD, it is not clear when Comair would be required to inspect the ADG identification plate. Comair suggests a compliance time of 12 months after the effective date of the AD.

We agree to change the compliance time. The intent of the AD is to inspect and modify the ADG wiring within 12 months after the effective date of the AD. We have revised the compliance time of paragraph (f)(1)(ii) of this AD accordingly.

Request To Shorten Compliance Time and Restrict Dispatch Conditions

Air Line Pilots Association, International (ALPA), requests that the compliance time be shortened from 12 months to 3 months. ALPA states that although its review did not reveal any incidents of full electrical failures in Bombardier airplanes, the ADG is the only remaining source of electrical power sustaining the batteries and flight critical electrical systems if all other generators fail or are unavailable. In addition, ALPA states there are procedures for deferring an engine-driven or APU generator under certain circumstances, but the ADG is a non-deferrable item. ALPA recommends that, given the potential consequences of a full electrical system failure, particularly in low visibility weather conditions in which these airplanes routinely operate, we shorten the compliance time to 3 months. ALPA also recommends that no flights be allowed with a non-operating engine-driven or APU generator unless this AD has been complied with.

We do not agree to shorten the compliance time. We have considered the risks (probability of dual engine shutdown due to a common cause and total loss of electrical power, including the emergency battery power) and have determined that a 12-month compliance time is appropriate. The issue of not allowing flights to be dispatched without an operational engine-driven or APU generator would be better addressed in the applicable Master Minimum Equipment List (MMEL). We are considering a revision to the MMEL for that issue. No change to the AD was made in this regard.

Request To Revise Applicability

Air Wisconsin Airlines requests that the applicability section of the AD be revised to apply to the part and serial numbers of the ADG instead of the serial numbers of the airplanes. Air Wisconsin points out that the ADG is a rotable, serialized component which can be installed on any applicable airplane.

We do not agree to revise the applicability. The serial number range for the airplane addresses airplanes on which the ADG was delivered and airplanes on which the ADG could be installed. Paragraph (f)(1) of this AD addresses airplanes that were delivered with ADGs installed, while paragraph (f)(2) of this AD addresses airplanes that ADGs could be installed on. We have not revised the AD in this regard.

Request To Revise Installation Criteria for Identification Plate

Air Wisconsin requests that we revise a phrase in paragraph (f)(2) of this AD from ''* * * no ADG * * * may be installed * * * unless the identification plate of the ADG is identified with the symbol '24–2' '' to ''* * * no ADG * * * may be installed * * * unless the ADG has been modified in accordance with [Bombardier] SB 601R–24–113.'' Air Wisconsin considers that what is important is not that the data plate has been marked ''24–2'', but that the modification in the service bulletin is done. Part 121 operators have approved methods for showing compliance with ADs.

We do not agree to revise the phrase in paragraph (f)(2) of this AD. Not all affected ADGs are installed on airplanes operated by Part 121 operators. Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005, refers to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2, dated February 19, 2004, as a source of information for accomplishing the Bombardier service bulletin. The Hamilton Sundstrand service bulletin specifies that ADGs modified in accordance with that service bulletin should have ''24–2'' marked on the identification plates. We have not changed the AD in this regard.

Clarification

We have revised paragraphs (f)(1)(i) and (f)(1)(ii)(A) of this AD from ''* * * by this AD.'' to ''* * * by this paragraph.'' to clarify that if the criteria in those paragraphs are met, no further actions are required by those paragraphs. The requirements of paragraph (f)(2) of this AD would still be in effect.

We have removed reference to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2, dated February 19, 2004, from paragraph (f)(2) of this AD. Instead, we have added Note 1 of this AD to include this information.

Conclusion

We reviewed the available data, including the comments 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.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 686 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $274,400 or $400 per product.

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 the NPRM, the regulatory 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

2009–06–17 Bombardier, Inc. (Formerly Canadair): Amendment 39–15854. Docket No. FAA–2008–0521; Directorate Identifier 2008–NM–040–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; certificated in any category; having serial numbers (SNs) 7305 through 7990, and 8000 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Following in-flight test deployments, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight.

Actions and Compliance

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

(1) For airplanes having serial number (SN) 7305 through 7990 and 8000 through 8083: Within 12 months after the effective date of this AD, inspect the SN of the installed ADG. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the ADG can be conclusively determined from that review.

(i) If the serial number is not listed in paragraph 1.A of Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005, no further action is required by this paragraph.

(ii) If the serial number is listed in paragraph 1.A of Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005, within 12 months after the effective date of this AD, inspect the ADG identification plate and, as applicable, do the actions of paragraph (f)(1)(ii)(A) or (f)(1)(ii)(B) of this AD.

(A) If the identification plate is marked with the symbol ''24–2,'' no further action is required by this paragraph.

(B) If the identification plate is not marked with the symbol ''24–2,'' modify the ADG wiring in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005.

(2) For airplanes having SN 7305 through 7990, and 8000 and subsequent: As of the effective date of this AD, no ADG as described in Table 1 of this AD may be installed on any airplane, unless the identification plate of the ADG is identified with the symbol ''24–2.''

Note 1: Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005, refers to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2, dated February 19, 2004, for further information on identifying the symbol ''24–2.''

TABLE 1—ADG IDENTIFICATION

ADG part number—	Having ADG serial number—
604–90800–1 (761339C), 604–90800–17 (761339D), or 604–90800–19 (761339E).	0101 through 0132, 0134 through 0167, 0169 through 0358, 0360 through 0438, 0440 through 0456, 0458 through 0467, 0469, 0471 through 0590, 0592 through 0597, 0599 through 0745, 0747 through 1005, or 1400 through 1439.

(3) Actions done before the effective date of this AD according to Bombardier Service Bulletin 601R–24–113, dated April 22, 2004, are considered acceptable for compliance with the corresponding actions specified in this AD, provided the ADG has not been replaced since those actions were done.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, 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: Fabio Buttitta, Aerospace Engineer, Airframe & Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–09, dated February 5, 2008; and Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 601R–24–113, Revision A, dated August 11, 2005, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Qubec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference 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*.

Issued in Renton, Washington, on March 6, 2009.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6221 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0888; Directorate Identifier 2008–NM–084–AD; Amendment 39–15840; AD 2009–06–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (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) originated 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:

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards * * *.

This assessment showed that there is insufficient electrical bonding for lightning protection at certain locations inside the fuel tanks. In addition, the assessment also revealed that existing bonding jumpers across self-bonded couplings are not required. Insufficient electrical bonding, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 30, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531.

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 August 19, 2008 (73 FR 48312). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

This assessment showed that there is insufficient electrical bonding for lightning protection at certain locations inside the fuel tanks. In addition, the assessment also revealed that existing bonding jumpers across self-bonded couplings are not required. Insufficient electrical bonding, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion.

To correct the unsafe condition, this directive mandates the modification of certain bonding jumpers inside the fuel tanks.

Corrective actions include, for certain airplanes, a general visual inspection to determine if the modification has been done on both sides of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Revision to Service Bulletin Information

Since the NPRM was issued, we have received Revision F of Bombardier Service Bulletin 601R–28–055, dated May 27, 2008. We referred to Bombardier Service Bulletin 601R–28–055, Revision E, dated March 17, 2008, as the appropriate source of service information for accomplishing the actions proposed in the NPRM. Revision F of Bombardier Service Bulletin 601R–

28–055 changes Figure 7 in the Accomplishment Instructions and also includes small editorial changes that do not affect the technical content of the service bulletin. We have revised paragraphs (f)(1) and (f)(2) of this AD to refer to Revision F of Bombardier Service Bulletin 601R–28–055, and we have added paragraph (f)(3) of this AD to give credit for actions done before the effective date of this AD in accordance with Revision E of Bombardier Service Bulletin 601R–28–055.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Revise the Costs of Compliance Section

Air Wisconsin states that the service information does not discuss warranty consideration for parts needed to do the modification proposed in the NPRM, and requests that we amend the Costs of Compliance section of the NPRM to reflect the cost of kits at $427 per airplane.

We agree to revise the Costs of Compliance section to reflect the parts cost. The cost per product and fleet cost have increased accordingly.

Request To Allow Credit for Prior Service Bulletin Revision

Air Wisconsin states that Revision D of Bombardier Service Bulletin 601R–28–055, dated July 17, 2006, added a statement to modify both sides of the airplane, and requests that we revise the NPRM to give credit for actions performed according to Revision D of the service bulletin. Air Wisconsin notes that Canadian Airworthiness Directive CF–2007–34 allows compliance with Bombardier Service Bulletin 601R–28–055, Revision D.

We agree with Air Wisconsin to give credit for Revision D of Bombardier Service Bulletin 601R–28–055, and have revised paragraph (f)(3) of this AD accordingly. We have also revised Table 1 of this AD to remove the restriction on Revision D of Bombardier Service Bulletin 601R–28–055. In addition, we have removed Note (1) from the NPRM and therefore Note (2) of the NPRM becomes Note 1 of this AD. Note (2) is also revised to remove the difference for Revision D of Bombardier Service Bulletin 601R–28–055.

Conclusion

We reviewed the available data, including the comments 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.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 686 products of U.S. registry. We also estimate that it will take about 18 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $427 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,280,762, or $1,867 per product.

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 the NPRM, the regulatory 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

2009–06–04 Bombardier, Inc. (Formerly Canadair): Amendment 39–15840. Docket No. FAA–2008–0888; Directorate Identifier 2008–NM–084–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067, and 7069 through 7929, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Bombardier Aerospace has completed a system safety review of the CL–600–2B19 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action is required.

This assessment showed that there is insufficient electrical bonding for lightning protection at certain locations inside the fuel tanks. In addition, the assessment also revealed that existing bonding jumpers across self-bonded couplings are not required. Insufficient electrical bonding, if not corrected, could result in arcing and potential ignition source inside the fuel tank during lightning strikes and consequent fuel tank explosion.

To correct the unsafe condition, this directive mandates the modification of certain bonding jumpers inside the fuel tanks.

Corrective actions include, for certain airplanes, a general visual inspection to determine if the modification has been done on both sides of the airplane.

Actions and Compliance

(f) Unless already done: Within 5,000 flight hours after the effective date of this AD, do the following actions.

(1) For airplanes on which none of the Bombardier service bulletins identified in Table 1 of this AD have been incorporated as of the effective date of this AD: Modify the fuel tank bonding jumpers inside the wing and center fuel tanks in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008.

TABLE 1—SERVICE BULLETINS

Bombardier service bulletin—	Revision—	Dated—
601R–28–055	Original	May 4, 2004.
601R–28–055	A	February 14, 2005.
601R–28–055	B	September 14, 2005.
601R–28–055	C	January 9, 2006.

(2) For airplanes on which any Bombardier service bulletin identified in Table 1 of this AD has been incorporated as of the effective date of this AD: Do a general visual inspection of the inside of the wing and center fuel tanks to determine if the actions in Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008, have been done on both sides of the airplane. If Part A of Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008, has not been done on either side of the airplane, before further flight, do the actions specified in Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008; for the side of the airplane on which Part A of Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008, has not been done.

(3) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–28–055, Revision D, dated July 17, 2006; or Bombardier Service Bulletin 601R–28–055, Revision E, dated March 17, 2008; is acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

The MCAI specifies that the modification must be done on all airplanes in accordance with Bombardier Service Bulletin 601R–28–055, Revision D, dated July 17, 2006, and that accomplishing Bombardier Service Bulletin 601R–28–055, dated May 4, 2004; Bombardier Service Bulletin 601R–28–055, Revision A, dated February 14, 2005; or Bombardier Service Bulletin 601R–28–055, Revision B, dated September 14, 2005; does not satisfy the requirements of the MCAI. This AD requires doing the modification on airplanes on which any Bombardier service bulletin identified in Table 1 of this AD, has not been done. For airplanes on which any Bombardier service bulletin identified in Table 1 of this AD has been done, this AD requires inspecting to determine if the modification is done on both sides of the airplane and modifying the airplane if the modification was not done on both sides.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, 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: Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–34, dated December 21, 2007; and Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 601R–28–055, Revision F, dated May 27, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference 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*.

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6569 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1025; Directorate Identifier 2008–NE–31–AD; Amendment 39–15862; AD 2009–07–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 and CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF6–80C2 and CF6–80E1 series turbofan engines with high-pressure compressor rotor (HPCR) spool shaft stage 14 disks, part number (P/N) 1703M49G02, 1703M49G03, or 1509M71G10 installed. This AD requires a one-time eddy current inspection (ECI) of the HPCR spool shaft stage 14 disk web for crack indications, and removing from service any parts with web cracks. This AD results from reports of 12 HPCR spool shaft stage 14 disks with web cracks discovered to date. We are issuing this AD to prevent cracks from propagating to an uncontained failure of the disk and damage to the airplane.

DATES: This AD becomes effective April 30, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of April 30, 2009.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

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: Christopher Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov*; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–80C2 and CF6–80E1 series turbofan engines with HPCR spool shaft stage 14 disks, P/N 1703M49G02, 1703M49G03, or 1509M71G10 installed. We published the proposed AD in the **Federal Register** on November 26, 2008 (73 FR 71949). That action proposed to require a one-time ECI of the HPCR spool shaft stage 14 disk web for crack indications, and removing from service any parts with web cracks.

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.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Compliance Should Be at Next Engine Shop Visit

One commenter, Amiri Flight, states that the compliance should be at next engine shop visit and should not have a calendar time limit, which may require forced removal/shop visit of low-utilization engines.

We agree. The compliance in the proposed AD, and the AD, require inspection at next engine shop visit only. We did not change the AD.

Request To Correct the Boeing Airplane Models

One commenter, The Boeing Company, requests that we correct some of the minor models listed in the applicability section, and add a missing model. They state that for their airplanes, the AD should only list 747 and 767 models as-listed in the type certificate data sheet. We agree. We changed the AD to state ''Boeing 747–200B/300/400/400D/400F, 767–200/300/400F/400ER and MD–11 airplanes''.

Costs of Compliance Is the Cost of a Single Spool Replacement

One commenter, FedEx Express, states that it appears that the proposed AD costs of compliance total to U.S. operators of $594,500, is inaccurate and might be the cost of a single spool replacement, rather than the accumulated total of the proposed action, if the estimate of 10 affected units is accurate.

We agree that the proposed AD total is inaccurate. We had a typo in the proposed AD costs of compliance. The total cost should have been $5,594,500. We corrected the total in the final rule AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 126 CF6–80C2 and CF6–80E1 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 10 work-hours per engine to perform the inspection, and about 281 hours to complete the actions if done at module level, and that the average labor rate is $80 per work-hour. The pro-rated cost of a HPCR stage 10–14 spool shaft, based on average life remaining on disks found cracked, is $526,890. Using data on the percentage of the affected fleet already in compliance with the corrective actions, we estimate there will be 10 disks found cracked as a result of these inspections. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $5,594,500.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this 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 that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 airworthiness directive:

2009–07–03 General Electric Company: Amendment 39–15862. Docket No. FAA–2008–1025; Directorate Identifier 2008–NE–31–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF6–80C2 and CF6–80E1 series turbofan engines with high-pressure compressor rotor (HPCR) spool shaft stage 14 disks, part number (P/N) 1703M49G02, 1703M49G03, or 1509M71G10 installed. These engines are installed on, but not limited to, Airbus A300–600R/F, A310–200/300, and A330–200/300, and Boeing 747–200B/300/400/400D/400F, 767–200/300/400F/400ER, and MD–11 airplanes.

Unsafe Condition

(d) This AD results from reports of 12 cracked HPCR spool shaft stage 14 disk webs discovered to date. We are issuing this AD to prevent cracks from propagating to an uncontained failure of the disk and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next engine shop visit where the separation of a major engine flange will occur after the effective date of this AD, unless the actions have already been done.

(f) For the purpose of this AD, introduction of an engine into a shop solely for the following maintenance actions is not considered an engine shop visit:

(1) Removal of a compressor case for airfoil or variable stator vane bushing maintenance.

(2) Removal or replacement of the stage 1 fan disk.

(3) Replacement of the turbine rear frame.

(4) Removal or replacement of the accessory and/or transfer gearbox.

(5) Removal or replacement of the fan forward case.

(6) Any combination of the maintenance actions listed above.

One-Time Eddy Current Inspection (ECI)

(g) Using the following Alert Service Bulletin (ASB) instructions, perform a one-time ECI of the HPCR spool shaft stage 14 disk web for crack indications, and remove from service those parts found to be cracked.

(1) Use paragraphs 3.B.(1) through 3.B.(5) of the Accomplishment Instructions of GE ASB No. CF6–80C2 S/B 72–A1122, Revision 1, dated June 19, 2006, to ECI the CF6–80C2 series engine HPCR spool shaft stage 14 disk web at the module level.

(2) Use paragraph 3.C.(1) of the Accomplishment Instructions of GE ASB No. CF6–80C2 S/B 72–A1122, Revision 1, dated June 19, 2006, to ECI the CF6–80C2 series engine HPCR spool shaft stage 14 disk web at the piece-part level.

(3) Use paragraphs 3.B.(1) through 3.B.(5) of the Accomplishment Instructions of GE ASB No. CF6–80E1 S/B 72–A0258, Revision 1, dated June 15, 2006, to ECI the CF6–80E1 series engine HPCR spool shaft stage 14 disk web at the module level.

(4) Use paragraph 3.C.(1) of the Accomplishment Instructions of GE ASB No. CF6–80E1 S/B 72–A0258, Revision 1, dated June 15, 2006, to ECI the HPCR spool shaft stage 14 disk web at the piece-part level.

Previous Credit

(h) Performance of a one-time ECI of the HPCR spool shaft stage 14 disk web for crack indications, done before the effective date of this AD and following the procedures defined in GE ASB No. CF6 80C2 S/B 72–A1122, dated January 19, 2004, for CF6–80C2 series engines or GE ASB No. CF6 80E1 S/B 72–A0258, dated January 19, 2004, for CF6–80E1 series engines satisfies the compliance requirements specified in this AD.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Christopher Richards, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *christopher.j.richards@faa.gov*; telephone (781) 238–7133; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use the service information specified in the following Table 1 to perform the one-time ECI required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1—INCORPORATION BY REFERENCE

GE Alert Service Bulletin No.	Page	Revision	Date
CF6–80C2 S/B 72–A1122 Total Pages: 57	ALL	1	June 19, 2006.
CF6–80E1 S/B 72–A0258 Total Pages: 57	ALL	1	June 15, 2006.

Issued in Burlington, Massachusetts, on March 18, 2009.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–6387 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0522; Directorate Identifier 2008–NM–041–AD; Amendment 39–15855; AD 2009–06–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (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) originated 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:

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 30, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe & Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

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 May 8, 2008 (73 FR 26045). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Extend Compliance Time for Inspecting the Identification Plate

Comair requests that we change the compliance time specified in paragraph (f)(1)(ii) of the NPRM to remove the ''before further flight'' phrase. Comair states that it has already reviewed their maintenance records and found that affected ADGs are installed on its fleet. Since the review was performed before the effective date of the AD, it is not clear when Comair would be required to inspect the ADG identification plate. Comair suggests a compliance time of 12 months after the effective date of the AD.

We agree to change the compliance time. The intent of the AD is to inspect and modify the ADG wiring within 12 months after the effective date of the AD. We have revised the compliance time of paragraph (f)(1)(ii) of this AD accordingly.

Request To Shorten Compliance Time and Restrict Dispatch Conditions

Air Line Pilots Association, International (ALPA), requests that the compliance time be shortened from 12 months to 3 months. ALPA states that although its review did not reveal any incidents of full electrical failures in Bombardier airplanes, the ADG is the only remaining source of electrical power sustaining the batteries and flight critical electrical systems if all other generators fail or are unavailable. In addition, ALPA states there are procedures for deferring an engine-driven or APU generator under certain circumstances, but the ADG is a non-deferrable item. ALPA recommends that, given the potential consequences of a full electrical system failure, particularly in low visibility weather conditions in which these airplanes routinely operate, we shorten the compliance time to 3 months. ALPA also recommends that no flights be allowed with a non-operating engine-driven or APU generator unless this AD has been complied with.

We do not agree to shorten the compliance time. We have considered the risks (probability of dual engine shutdown due to a common cause and total loss of electrical power, including the emergency battery power) and have determined that a 12-month compliance time is appropriate. The issue of not allowing flights to be dispatched without an operational engine-driven or APU generator would be better addressed in the applicable Master Minimum Equipment List (MMEL). We are considering a revision to the MMEL for that issue. No change to the AD was made in this regard.

Clarification

We have revised paragraphs (f)(1)(i) and (f)(1)(ii)(A) of this AD from ''* * * by this AD.'' to ''* * * by this paragraph.'' to clarify that if the criteria in those paragraphs are met, no further actions are required by those paragraphs. The requirements of paragraph (f)(2) of this AD would still be in effect.

We have removed reference to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2, dated February 19, 2004, from paragraph (f)(2) of this AD. Instead we have added Note 1 of this AD to include this information.

Conclusion

We reviewed the available data, including the comments 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.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 304 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $121,600, or $400 per product.

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 the NPRM, the regulatory 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

2009–06–18 Bombardier, Inc. (Formerly Canadair): Amendment 39–15855. Docket No. FAA–2008–0522; Directorate Identifier 2008–NM–041–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, having serial numbers (SNs) 10004 and subsequent; and Model CL–600–2D15 (Regional Jet Series 705) airplanes and Model CL–600–2D24 (Regional Jet Series 900) airplanes, having SN 15002 and subsequent; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Following in-flight test deployments on CL–600–2B19 aircraft, several Air-Driven generators (ADGs) failed to come on-line. Investigation revealed that, as a result of a wiring anomaly that had not been detected during ADG manufacture, a short circuit was possible between certain internal wires and their metallic over-braided shields, which could result in the ADG not providing power when deployed. This directive mandates checking of the ADG and modification of the ADG internal wiring, if required. It also prohibits future installation of unmodified ADGs.

The unsafe condition is that failure of the ADG could lead to loss of several functions essential for safe flight.

Actions and Compliance

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

(1) For airplanes identified in Table 1 of this AD: Within 12 months after the effective date of this AD, inspect the serial number of the installed ADG. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the ADG can be conclusively determined from that review.

TABLE 1—BOMBARDIER AIRPLANE IDENTIFICATION

Model	Serial No.
CL–600–2C10 airplanes.	10004 through 10265.
CL–600–2D15 and CL–600–2D24 airplanes.	15002 through 15162.

(i) If the serial number is not listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, no further action is required by this paragraph.

(ii) If the serial number is listed in paragraph 1.A of Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006 (''the service bulletin''), within 12 months after the effective date of this AD,

inspect the ADG identification plate and, as applicable, do the actions of paragraph (f)(1)(ii)(A) or (f)(1)(ii)(B) of this AD.

(A) If the identification plate is marked with the symbol ''24–2,'' no further action is required by this paragraph.

(B) If the identification plate is not marked with the symbol ''24–2,'' modify the ADG wiring in accordance with the Accomplishment Instructions of the service bulletin.

(2) For all Model CL–600–2C10 airplanes having SN 10004 and subsequent, and Model CL–600–2D15 and CL–600–2D24 airplanes having SN 15002 and subsequent: As of the effective date of this AD, no ADG part number 604–90800–19 (761339E), having SN 0101 through 0132, 0134 through 0167, 0169 through 0358, 0360 through 0438, 0440 through 0456, 0458 through 0467, 0469, 0471 through 0590, 0592 through 0597, 0599 through 0745, 0747 through 1005, or 1400 through 1439, may be installed on any airplane, unless the identification plate of the ADG is identified with the symbol ''24–2.''

Note 1: Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, refers to Hamilton Sundstrand Service Bulletin ERPS10AG–24–2, dated February 19, 2004, for further information on identifying the symbol ''24–2.''

(3) Actions done before the effective date of this AD according to Bombardier Service Bulletin 670BA–24–015, dated May 17, 2004, are considered acceptable for compliance with the corresponding actions specified in this AD, provided the ADG has not been replaced since those actions were done.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, 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: Fabio Buttitta, Aerospace Engineer, Airframe & Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to Canadian Airworthiness Directive CF–2008–10, dated February 5, 2008; and Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 670BA–24–015, Revision A, dated December 18, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference 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*.

Issued in Renton, Washington, on March 6, 2009.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6222 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0831; Directorate Identifier 2008–NM–051–AD; Amendment 39–15853; AD 2009–06–16]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (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) originated 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 has been found the occurrence of failed bearings of the RAT [ram air turbine] generator, which may lead to a RAT generator failure. The RAT generator was designed to provide emergency electrical power to essential systems in case of loss of all other sources of aircraft AC electrical power.

* * * * *

Loss of emergency electrical power could result in reduced controllability of the airplane during in-flight emergencies. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 30, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 30, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

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 August 4, 2008 (73 FR 45178). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the occurrence of failed bearings of the RAT [ram air turbine] generator, which may lead to a RAT generator failure. The RAT generator was designed to provide emergency electrical power to essential systems in case of loss of all other sources of aircraft AC electrical power.

Loss of emergency electrical power could result in reduced controllability

of the airplane during in-flight emergencies. The corrective actions include determining the part number and serial number of the RAT, and re-identifying or replacing the RAT if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from a single commenter.

Request To Change Applicability

Embraer suggests restricting the applicability specified in paragraph (c) of the NPRM to the affected airplanes ''equipped with a RAT having part number (P/N) 1703781.'' Embraer did not provide a reason for the request.

We do not agree to restrict the applicability as suggested by Embraer. The applicability specified in this AD includes all EMBRAER Model ERJ 170 and ERJ 190 airplanes, because the first action is to determine the part number and serial number of the RAT. Therefore, it is not necessary to restrict the applicability by identifying the part number of the RAT. We have made no change to the AD in this regard.

Request To Clarify RAT Part Number

Embraer asks that we change the replacement part specification in paragraph (f)(1)(ii) of the NPRM from ''a RAT having P/N 1703781A'' to ''a RAT not having P/N 1703781.'' Embraer states that not restricting P/N 1703781A as the only allowable replacement part number will avoid issuing alternative methods of compliance if a new RAT part number is approved in the future.

We agree with the intent of the request to change the replacement part number specification in paragraph (f)(1)(ii) of this AD. We have determined that the replacement part should not be restricted to P/N 1703781A only; therefore, we have removed that part number and specified replacing the affected RAT with a serviceable RAT. We have changed paragraph (f)(1)(ii) of this AD accordingly.

Request To Add Spares Paragraph

Embraer suggests a new paragraph be added to the AD to cover possible spare RATs in stock. Embraer states that, as currently written, airplanes that do not have the affected part installed would be in compliance with the AD. However, the affected part could be installed during performance of airplane maintenance.

We do not agree that a spares paragraph should be added to the AD. In this AD we require that affected parts be replaced with serviceable parts having a new part number. This new part number is also specified in the Aircraft Illustrated Parts Catalog as replacing the old part number; therefore a spares paragraph is not necessary. We have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 124 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,920, or $80 per product.

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 the NPRM, the regulatory 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

2009–06–16 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–15853. Docket No. FAA–2008–0831; Directorate Identifier 2008–NM–051–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 30, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model ERJ 170–100 LR, –100 SE, –100 STD, –100 SU, –200 LR, –200 STD, and –200 SU airplanes; and Model ERJ 190–100 IGW, –100 LR, –100 STD, –100 ECJ, –200 IGW, –200 LR, and –200 STD airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the occurrence of failed bearings of the RAT [ram air turbine] generator, which may lead to a RAT generator failure. The RAT generator was designed to provide emergency electrical power to essential systems in case of loss of all other sources of aircraft AC electrical power.

Loss of emergency electrical power could result in reduced controllability of the airplane during in-flight emergencies. The corrective actions include determining the part number (P/N) and serial number (S/N) of the RAT, and re-identifying or replacing the RAT if necessary.

Actions and Compliance

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

(1) Within 1,300 flight hours or 6 months after the effective date of this AD, whichever occurs first, determine the P/N and S/N of the RAT. For airplanes on which a RAT having P/N 1703781 is installed, do the actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–24–0041, Revision 01, dated August 28, 2007; or 190–24–0012, Revision 01, dated August 21, 2007; as applicable.

(i) For airplanes on which the S/N on the RAT is 0110, 0150, 0255, or 0354 through 0419: Before further flight, re-identify RAT P/N 1703781 to P/N 1703781A.

(ii) For airplanes on which the S/N on the RAT is 0005, 0101 through 0109, 0111 through 0149, 0151 through 0254, or 0256 through 0353: Within 6,000 flight hours or 26 months after the effective date of this AD, whichever occurs first, replace the affected RAT with a serviceable RAT.

(2) Previous accomplishment of the re-identification or replacement of the RAT before the effective date of this AD in accordance with EMBRAER Service Bulletin 170–24–0041 or 190–24–0012, both dated May 4, 2007, meets the requirements of (f)(1)(i) and (f)(1)(ii) of this AD, as applicable.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No difference.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, 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: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directives 2007–12–01 and 2007–12–02, both effective January 24, 2008, and EMBRAER Service Bulletins 170–24–0041, Revision 01, dated August 28, 2007; and 190–24–0012, Revision 01, dated August 21, 2007; for related information.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 170–24–0041, Revision 01, dated August 28, 2007; or EMBRAER Service Bulletin 190–24–0012, Revision 01, dated August 21, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference 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.*

Issued in Renton, Washington, on March 10, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6565 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 137

Operations in Controlled Airspace Designated for an Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This final rule revises an incorrect cross-reference in the regulations regarding operations in controlled airspace designated for an airport. The current regulations cross-reference a particular paragraph that no longer exists. This final rule updates the cross-reference so that the reader will be able to find the appropriate weather minimum limitations on visual flight rules for aircraft in controlled airspace near airports.

DATES: *Effective Date:* This final rule is effective March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Carl N. Johnson, Flight Standards Office, AFS–820, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 493–5351; e-mail *carl.n.johnson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991 (56 FR 65664), an amendment created § 137.43, Operations in controlled airspace designated for an airport. Paragraph (c) of this section contains a reference to paragraph (a)(2) of § 91.157, Special VFR weather minimums. The purpose of the cross-reference is to set out the exceptions for aircraft operating under special visual flight rules (VFR) in

controlled airspace designated for airports. However, a final rule published on December 5, 1995 (58 FR 51968) revised § 91.157. That revision removed paragraph (a)(2) and placed the information in paragraph (b)(4). As a result, the cross-reference in § 137.43 became inaccurate. This final rule revises the cross-reference in § 137.43(c) so that it correctly refers to § 91.157(b)(4).

Technical Amendment

This technical amendment merely revises an out-of-date cross-reference. There are no other changes to the existing regulatory text.

Justification for Immediate Adoption

Because this action updates an inaccurate cross-reference, the FAA finds that notice and public comment under 5 U.S.C. section 553(b) is unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. section 553(d) for making this rule effective upon publication.

List of Subjects in 14 CFR Part 137

Agriculture, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the forgoing, the FAA amends 14 CFR part 137 as follows:

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 1. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

§ 137.43 [Amended]

■ 2. Amend § 137.43(c) by removing the reference ''§ 91.157(a)(2)'' and adding in its place the reference ''§ 91.157(b)(4)''.

Issued in Washington, DC on March 13, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–6731 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') amends Rule 7(c) of the Rules and Regulations under the Textile Fiber Products Identification Act (''Textile Rules'') to establish a new generic fiber subclass name and definition within the existing definition of ''polyester'' for a subclass of fibers made from poly(trimethylene terephthalate) (''PTT''). The amendment establishes the subclass name ''triexta.''

EFFECTIVE DATE: March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C., 20580; (202) 326-3022.

SUPPLEMENTARY INFORMATION: Pursuant to a petition filed by Mohawk Industries, Inc. (''Mohawk''), E. I. du Pont de Nemours and Company (''DuPont''), and PTT Poly Canada (''PTT Canada'') (collectively ''Petitioners''), the FTC amends Rule 7(c) of the Textile Rules. 16 CFR § 303.7(c). The amendment establishes the subclass name ''triexta'' as an alternative to the generic name ''polyester'' for a specific subclass of textile fibers defined in the amendment. In reaching this conclusion, the following **Federal Register** document recounts the procedural history of this matter and details the record established by the petition and public comments. The document then analyzes this record based on the applicable Commission standard.

I. Procedural History

On February 21, 2006, Petitioners asked the Commission to establish a new generic subclass within the existing ''polyester'' category for fibers made from poly(trimethylene terephthalate) (''PTT'').[1] After initially analyzing the request with the assistance of a textile expert, tentatively and without the benefit of public comment, the Commission agreed with Petitioners that PTT fiber satisfied the criteria for establishing a new generic fiber subclass name and definition within Rule 7(c)'s definition of ''polyester.''[2] Accordingly, on April 18, 2006, the Commission assigned Petitioners the designation ''PTT001'' for temporary use in identifying PTT fiber pending a final determination on the merits of their Petition.

On September 7, 2006, Petitioners submitted a revised petition (''Petition'')[3] restating the original request and addressing minor questions raised by Commission staff.[4]

On August 24, 2007, the Commission solicited comment on whether to amend Rule 7(c) of the Textile Rules to establish a new generic fiber subclass name for PTT within the definition of ''polyester'' for PTT (''2007 Notice'').[5] At the close of the comment period, November 12, 2007, the Commission had received 49 comments.[6]

INVISTA S.r.l. (''Invista'')[7] was the sole commenter to oppose the Petition. Its comment, however, raised serious concerns. Specifically, the comment criticized Petitioners' testing procedures and provided Invista's own test results that showed little difference between PTT and traditional ''polyester'' fibers (polyethylene terephthalate (''PET'')).[8] Because the Commission received Invista's comment only three days prior to the close of the 75 day comment period, Petitioners and other interested parties had limited opportunity to review and respond to it.[9] Therefore, on

[1] Mohawk sells a line of carpets manufactured from PTT under the trademark SmartStrand®. DuPont markets PTT under the trademark Sorona®. PTT Canada markets PTT under the trademark Corterra® Polymers.

[2] 16 CFR 303.7(c). Rule 7(c) defines ''polyester'' as ''a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units, and para substituted hydroxy-benzoate units.''

[3] The Petition is available in electronic form at: (*http://www.ftc.gov/os/statutes/textile/info/PTTGenAppRev8-30-06.pdf*). The Petition, as well as any comments filed in this proceeding, are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC.

[4] These questions addressed improving the legibility of some data and identifying the Kruskal-Wallis test as a statistical analysis rather than a carpet human traffic test.

[5] 72 FR 48600 (Aug. 24, 2007).

[6] Comments filed in this rulemaking can be found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR Part 303, Matter No. P074201, ''Mohawk, DuPont, and PTT Canada Generic Fiber Petition Rulemaking.'' The comments also may be viewed on the Commission's website at: (*http://www.ftc.gov/os/comments/textile-mohawk/index.shtm*) and (*http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtm*).

[7] In its comment, Invista stated that it is one of the world's largest integrated producers of man-made fibers, and the largest producer of nylon fibers used in the production of both residential and commercial carpeting. Invista at 1.

[8] Invista also argued that Mohawk violated the Textile Fiber Products Identification Act and Textile Rules by marketing PTT carpet without identifying it as ''polyester,'' and that this failure to comply should weigh heavily against granting the Petition. Invista at 7.

[9] Prior to the comment period closing, the Commission did not receive any comments responding to Invista's comment. Petitioners

Continued

April 7, 2008, the Commission reopened the comment period for an additional 30 days (''2008 Notice'').[10] By the close of the extended comment period, May 5, 2008, the Commission had received 14 additional comments.[11]

II. The Petition

The Petition sets forth evidence and arguments to support each of the four findings the Commission must make before establishing a new generic subclass designation, specifically, that: (1) the fiber has the same general chemical composition as an established generic fiber category; (2) the fiber has distinctive properties that make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well-suited; (3) these properties are important to the general public; and (4) these properties are the result of a new method of manufacture or the fiber's substantially differentiated physical characteristics.[12] The Petition also suggests three subclass names for PTT fiber.

First, Petitioners provided the chemical composition of the PTT polymer to demonstrate that PTT has the same general chemical composition as PET.[13]

Second, Petitioners submitted tests indicating that PTT fibers are superior to PET fibers with respect to durability and resiliency in carpet applications.[14] Specifically, Petitioners submitted the results of Hexapod Wear Tests conducted by Mohawk in its industry certified lab.[15] According to Petitioners, at each of 12, 24, and 36 thousand wear cycles, PTT significantly outperformed PET. For example, PTT outperformed PET by more than one interval in the 36 thousand wear cycle test, receiving a rating of over 3 out of 5.[16] Petitioners also submitted data from Performance Appearance Rating tests (''Performance Test'') conducted by the same lab.[17] According to Petitioners, PTT again significantly outperformed PET at 20, 40 and 60 thousand wear cycles.

Third, Petitioners submitted evidence that consumers consider durability and resiliency to be important attributes of carpet fiber. Specifically, Petitioners relied on a 2004 study commissioned by Mohawk in which 67% of respondents rated the phrase ''the carpet will stand up to years of foot traffic without matting'' as very important.[18]

Fourth, Petitioners contended that this improved durability and resiliency is the result of PTT's unique chemistry and molecular design.[19] Specifically, Petitioners explained that the glycol portion of PTT's chemical chain crystalizes into a coil-like structure while the same portion of PET forms a wire-like structure. Petitioners contended that, as a result of this structural difference, ''PTT fiber can take an additional level of applied strain [over PET] and recover completely.''[20]

Finally, the Petition suggested three new subclass names for PTT fibers: 1) ''triexta''; 2) ''resisoft''; and 3) ''durares.''[21]

III. Comments in Response to the 2007 Notice

Of the 49 comments received in response to the 2007 Notice, 46 came from carpet retailers or dealers, one came from a textile testing service,[22] and two came from textile manufacturers.[23] As noted above, Invista submitted the only comment opposing a new- subclass designation for PTT.

A. Comments Supporting Subclass Designation

Comments supporting the PTT subclass designation focused on PTT's superior qualities. For example, one retailer stated that ''carpet made from PTT definitely is more durable, more stain resistant [and] softer than any 'polyester' fiber I have ever seen.''[24] Another seller commented that PTT ''stands up to wear as well as nylon''[25] and has ''[e]xceptional, long-lasting durability.''[26] Yet another stated that compared to ''polyester,'' the Smartstrand [PTT] fiber ''is substantially more durable . . . , [and] is a gigantic leap forward in technology.''[27]

In addition to the retailer comments, Independent Textile Testing Service, Inc. (''Independent'') explained that for the last 10 years it has conducted extensive testing of PTT carpet fiber including pedestrian traffic, soiling, and staining testing.[28] Based on these tests, Independent asserted: ''[I]t would seem that the test results consistently show a marked difference when compared to PET in regards to performance . . . [and] the significant overall performance of the [PTT] fiber to foot traffic and in use areas is remarkably better.''[29] Independent concluded that, due to performance differences between PET and PTT, a PTT subclass designation is appropriate.[30]

B. Invista's Comment Opposing Subclass Designation

Invista asserted that the Commission should deny the Petition because PTT does not have distinctive properties that are important to the general public.[31] Invista made several arguments in support of this position, and also objected to two of the proposed generic subclass names.

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submitted an additional comment in January 2008, which the Commission has placed on the public record at: (*http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtm*) (''Petitioners' submission of January 2008'').

[10] 73 FR 18727 (Apr. 7, 2008)

[11] The 14 comments can be found at: (*http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtm*). On July 18, 2008, after the close of that comment period, the Commission received an additional comment from Invista, which the Commission has considered and placed on the public record along with these 14 comments.

[12] *See infra* Section V.A.

[13] Petition at 6.

[14] *Id.* at 13-19. Petitioners also submitted testing purporting to show that PTT is superior to PET with respect to carpet and apparel softness, and that PTT fibers in apparel recover from stretching better than PET fibers. Because the Commission finds that Petitioners satisfy the standard for creating a PTT subclass based on carpet durability and resilience alone, the agency does not address these other issues.

[15] This test, endorsed by the Carpet and Rug Institute (''CRI''), measures appearance retention by simulating the most aggressive parts of a walking action through the use of a mechanical device. The test assesses the appearance of samples on a scale from 1 to 5, where a rating of ''5'' shows no change and a rating of ''1'' shows severe change. In this test, a metal hexapod tumbler (steel cube) with six polyurethane studs rolls randomly over the surface of the carpet inside a rotating drum. The mass of the tumbler with six studs is 8.4 pounds, plus or minus 0.2 pounds. *See* Standard Practice for the Operation of the Hexapod Tumble Drum Tester, ASTM D-5252 - 05.

[16] *See* discussion of five point scale, *supra* note 15.

[17] This test measures the appearance of a sample carpet after a certain number of human footsteps (''cycles''). Like the Hexapod Wear Test, the Performance Test relies on the visual appearance of the carpet sample after testing compared to the appearance of carpet in standardized photographs published by the CRI. Appearance is assessed on the same CRI scale, from 1 to 5.

[18] Petition at 3.

[19] *Id.* at 6.

[20] *Id.* at 7.

[21] *Id.* at 1.

[22] Independent Textile Testing Service, Inc.

[23] Filature Miroglio S.p.A. and Invista.

[24] Llewellyn, Kevin.

[25] Nylon fibers are stronger and better able to resist oil-based soiling and staining than ''polyester'' fibers. Invista at 6. Because of these superior attributes nylon carpet has commanded a higher price than ''polyester'' carpet. Invista at 6; and Petition at 3.

[26] Issis & Sons, Inc.

[27] Colonial Floors, Inc.

[28] Independent is a comprehensive testing laboratory for carpets and textiles. Its laboratory is accredited under the National Voluntary Laboratory Accreditation Program that administers the U.S. Department of Commerce/National Institute of Standards and Technology. It conducted some of the tests that Petitioners rely on to support their Petition.

[29] Independent.

[30] *Id.*

[31] Invista at 3. Invista, however, acknowledged that PTT has the same general chemical composition as PET.

First, Invista made three arguments to support its contention that Petitioners' testing was inadequate to demonstrate a significant difference between PTT and PET: (1) Petitioners compared the wrong weight filaments; (2) Petitioners used the wrong test; and (3) the test results were so insignificant that they would not be meaningful to consumers. Invista began by stating that Petitioners unfairly compared heavier PTT filaments (18 dpf) to lighter PET (15 dpf) and nylon (12 dpf) samples.[32] Specifically, Invista explained that although total fiber weight may be equal, the weight and construction of individual filaments determines how carpet fibers perform on tests based on visual appearance.[33] Because both of Petitioners' tests draw conclusions based on visual appearance, Invista concluded that PET's superior performance on these tests did not demonstrate greater durability or resiliency.[34]

Invista next criticized Petitioners' use of the Hexapod Wear Test. Specifically, Invista asserted that this test uses a lighter impact ball than the Vettermann Drum Test,[35] which Invista contended had been the industry standard for more than twenty years and produces more reliable results.[36] Moreover, Invista explained that its own Vettermann Drum Test results showed little difference in the durability of PET and PTT fibers.[37]

Invista's final argument regarding the adequacy of Petitioners' testing was that it yielded differences that are too small to be meaningful to consumers.[38] Specifically, Invista explained that the CRI appearance rating scale (from 1 to 5) used by Petitioners is nonlinear, so that a divergence between 4 and 5 represents a smaller actual difference in appearance than the divergence between 2 and 3.[39] Therefore, Invista explained, differences at the top of the scale have to be large to be meaningful for consumers, and any rating of 3 or above is considered an acceptable appearance.[40] Given this explanation, Invista argued that Petitioners have not met their burden because most of Petitioners' testing shows a difference of less than one full interval at levels over a rating of 3.[41]

Second, Invista asserted that even if Petitioner's testing were adequate, PTT outperformed PET on too small a percentage of carpet performance characteristics to demonstrate the distinctiveness necessary to warrant a new generic fiber subclass.[42] Specifically, Invista explained that PTT fibers performed better on only three of the 14 categories that Petitioners assert are important to consumers, and only two of the top ten.

Finally, Invista stated that two of Petitioners' three suggested generic subclass names for PTT ''appear to be intentionally designed to create confusion with existing INVISTA trademarks.''[43] Specifically, Invista asserted that Petitioners' proposed names ''resisoft'' and ''durares'' are ''alarmingly similar'' to Invista's ResisTech® and DuraTech® brand names.[44]

IV. Comments in Response to the 2008 Notice

In response to Invista's comment, the Commission reopened the record and received 14 additional comments: two from Petitioners[45] and 12 from various manufacturers or sellers of fibers. Eleven of the comments from manufacturers and sellers of fibers favored providing a subclass for PTT. These commenters stated that PTT was softer,[46] had more resilience,[47] and/or had better ability to stretch with recovery than PET.[48] Shaw Industries Group, Inc. (''Shaw''), a carpet manufacturer, opposed the Petition, stating that ''there are no distinctive properties that make PTT suitable for uses which other ''polyester'' fiber products either cannot be used or would be significantly less well suited.''[49]

A. Petitioners' Response to Invista's Comment

Petitioners responded to Invista's comment by arguing that: (1) its testing methodology is sound; (2) its survey demonstrates that PTT's distinctive properties are important to consumers; and (3) ''triexta'' is an acceptable subclass designation.

1. Petitioners' Testing Methodology Is Sound.

Petitioners responded to Invista's assertion that its testing was flawed with four explanations. First, Petitioners asserted that, contrary to Invista's contention, consumers would notice a difference of one full interval on the Hexapod Wear Test and the Performance Test. They contended that carpet photographs on the CRI website showing varying degrees of wear performance demonstrate this fact.[50]

Second, Petitioners explained that Invista's Vettermann Drum Test used carpet with face weights far heavier than that typically purchased by residential consumers.[51] Specifically, Petitioners noted that Invista tested carpet weighing 60 ounces per square yard, while most consumers purchase residential carpeting in the 35-45 ounces per square yard weight range.[52] Petitioners explained that only a small percentage (about 10 percent) purchase carpet weighing 60 ounces and above.[53] Thus, Petitioners asserted that their test results are ''far more relevant to what consumers will experience.''[54] Moreover, Petitioners argued that Invista's results conflict not only with Petitioners', but also with those of Independent and with ''the very favorable real world durability reports submitted by carpet retailers.''[55]

Third, Petitioners noted that the 2007 Petition correctly reported that the tested PET and PTT carpets were of identical fiber weight, but Mohawk incorrectly transcribed the dpf numbers in Appendix A to the Petition. Petitioners explained that the PET and PTT fibers that Mohawk tested both had dpf's of 18, allowing for a meaningful comparison.[56]

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[32] *Id.* at 9-10.

[33] *Id.* at 10.

[34] *Id.*

[35] In this test, a steel ball with 14 rubber studs rolls randomly over the surface of the carpet inside a rotating drum. The mass of the ball with the studs is 16.8 pounds, plus or minus 0.2 pounds. *See* Standard Practice for the Operation of the Vettermann Drum Tester, ASTM D-5417 - 05.

[36] *Id.* at 12-13.

[37] Invista submitted several other tests purporting to show that PTT failed to perform significantly better than PET regarding carpet durability and resilience: a test described as a real-world traffic test involving carpet used in a commercial space; a 5,000 cycle caster chair (60 kg) test; a proprietary test measuring wear on residential stairs; and a test of carpet pile height loss and recovery. Invista did not assert that any of these tests qualify as industry standard tests, either now or in the past. Nor did Invista assert that these tests involved carpet representative of what consumers purchase.

[38] *Id.* at 10-11.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 12.

[42] *Id.* at 8.

[43] *Id.* at 25-26.

[44] *Id.*

[45] DuPont, #535294-00017 and 00018.

[46] Guo, Chen; Gu, Pony; Lee, Xuemei; Shi, Rita; and Tian Lin, Chen.

[47] Lee, Xuemei.

[48] Frankenberg, Paul; Gu, Pony; Lee, Xuemei; and Shi, Rita.

[49] Shaw Industries Group at 2-3.

[50] Petitioners' submission of January 2008, at 11.

[51] Dupont #535294-00017, at 13. Petitioners criticized Invista's other tests results because they were not performed using industry standard testing methods and were performed using carpet weights that consumers rarely purchase. Petitioners' submission of January 2008, at 12.

[52] Dupont #535294-00017, at 13; *see also* Petition at Appendix A. Petitioners tested carpet averaging 43 ounces per square yard. *Id.*

[53] DuPont #535294-00017, at 13 Note 1.

[54] *Id.* at 13.

[55] *Id.* at 13.

[56] *Id.*

Finally, Petitioners asserted that Invista's own website had promoted the superiority of PTT over PET. Specifically, Petitioners referenced a chart on Invista's website that rated the performance of five carpet fibers, including PTT and PET,[57] with respect to nine different carpet performance parameters.[58] Petitioners noted that Invista's chart rated PTT's performance as ''excellent to good'' and PET's performance as ''poor'' with respect to: (1) appearance retention and (2) resistance to foot traffic and furniture weight.[59]

2. Petitioner's Survey Demonstrates that Durability Is Important to Consumers.

Petitioners responded to Invista's assertion that PTT is not sufficiently distinctive in carpet performance characteristics important to consumers by explaining that, in their consumer survey, the top eight-ranked carpet performance characteristics of importance to consumers fell into two subject categories: carpet durability/resiliency, and resistance to staining and soiling.[60] Petitioners asserted that PTT fibers have significant advantages with respect to one of the two most important carpet characteristics—durability/resiliency.[61]

3. ''Triexta'' Is an Acceptable Subclass Designation.

Lastly, Petitioners responded to Invista's objections regarding Petitioners' choice of subclass names by noting that neither Invista, nor any other commenter, challenged the name ''triexta.''[62]

B. Petitioners' Response to the Shaw Comment

Petitioners responded to Shaw's comments by noting that they ''were submitted without factual support.''[63] Moreover, Petitioners commented that, prior to Shaw's business acquisition of Honeywell International Inc.'s nylon fiber business, Shaw had launched a line of carpets made from PTT fibers and promoted them as ''equal [to] nylon in independent walk-test evaluations.''[64] Petitioners also stated that, in a marketing brochure, Shaw published the results of a ''foot step'' study comparing walk performance of PTT and nylon carpets, which concluded that PTT outperformed nylon.[65] Finally, Petitioners provided the following quote from Shaw's brochure: ''[m]ake no mistake, . . . (PTT) produces a totally new fiber, not a variation or enhancement.''[66]

V. Analysis and Conclusion

A. The Commission's Standard for Granting a New Generic Fiber Subclass

On April 15, 1996, in response to Courtaulds Fibers, Inc.'s petition to create a new generic subclass for a rayon fiber, the Commission set forth the standard for creating a new generic subclass fiber name. Specifically, the Commission stated:

> [W]here appropriate, in considering [an] application for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, it may allow such fiber to be designated in required information disclosures by either its generic name, or alternatively, by its ''subclass'' name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited or would be significantly less well suited.[67]

Therefore, a new generic fiber subclass for PTT is appropriate if: (1) PTT has the same general chemical composition as an established generic fiber category; (2) PTT has distinctive properties that make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited; (3) these properties are important to the general public; and (4) these properties are the result of a new method of manufacture or PTT's substantially differentiated physical characteristics.

B. Analysis of the Petition

The Commission now has a factual record sufficient to render a decision. Based on that record, the Commission concludes that Petitioners have met each of the criteria for creating a new generic fiber subclass.

First, the record demonstrates that PTT has the same general chemical composition as the Commission's established ''polyester'' generic fiber category and thus falls within Rule 7(c)'s definition of ''polyester.'' 16 CFR 303.7(c). Using the chemical composition of the PTT polymer provided by Petitioners, a textile expert hired by the FTC confirmed this fact.[68] Moreover, Invista agreed.[69] Accordingly, the Petition satisfies the first criterion for granting a new generic fiber subclass name.

Second, PTT has distinctive properties that make it suitable for uses for which other fibers under the established generic name would be significantly less well suited. Specifically, Petitioners submitted testing demonstrating that PTT is more durable and resilient than ordinary ''polyester'' (PET) in some carpet applications. Petitioners compared PTT and PET carpet using the Hexapod Wear Test, a standard industry appearance retention test that simulates walking action on carpet.[70] Invista agreed that this is a standard industry test for durability, and the Commission's textile expert confirmed that it is a well established protocol.[71] Having reviewed the test results, the Commission's expert confirmed that they demonstrate that carpets made from PTT fibers significantly outperform carpets made from PET.[72]

We reject Invista's argument that the Hexapod Test failed to show that PTT is significantly more durable or resilient. First, even assuming, *arguendo*, Invista's contention that consumers would not notice a difference of only one interval at higher

[57] The carpet fibers were: Stainmaster Nylon (sold by Invista), Nylon, PET, PTT, and Olefin Polypropylene. *Id.* at 10-11.

[58] The parameters were: assortment of colors and styles; appearance retention; resistance to foot traffic and furniture weight; soil resistance; resistance to melting; durability of stain resistance; resistance to fading; resistance to damage from chair casters; and built-in permanent static control. *Id.* at 10.

[59] *Id.* at 10-11.

[60] DuPont #535294-00017 at 11-12.

[61] *Id.*

[62] *Id.* at 16.

[63] DuPont #535294-00018, at 2.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] 61 FR 16385, 16386 (Apr. 15, 1996).

[68] The Commission's textile expert was Martin Bide, Ph.D., Department of Textiles, University of Rhode Island, Kingston, RI 02881. The Commission has placed Dr. Bide's Report Concerning Petition to Establish a New Generic Subclass of ''polyester'' for PTT (July 5, 2006), on the public record at: (*http://www.ftc.gov/os/comments/textilefibernewgeneric/index.shtm*) (''Expert Report'').

[69] Invista at 7.

[70] Petitioners' Performance Tests were consistent with the results from their Hexapod Tests and indicated that PTT carpet performed better than PET and comparable to nylon carpet. Petition at 15-17. The Petition also included the results of additional Hexapod Tests conducted by Independent. The results of these tests were consistent with the results of Petitioners' Hexapod Tests. Petition at 17-19.

[71] Invista at 12-13. *See also*, Expert Report.

[72] Expert Report.

CRI ratings, PTT significantly outperformed PET on the heaviest of the three wear cycles. Specifically, in the vast majority of trials, PET performed below an acceptable rating (*i.e.*, 3) while PTT performed at or above a 3 rating in all trials.[73] Moreover, the central tendency of each data set shows a difference of over one full interval. Second, Petitioners tested carpet weights that consumers typically purchase, whereas Invista's Vettermann Drum testing utilized heavier carpet that only a small percentage of consumers actually buy.[74] Finally, Invista's assertion that Petitioners tested PET and PTT of different fiber weights (dpf) is not at issue because Petitioners did, in fact, test the same weight PET and PTT carpet fibers.[75] Accordingly, the Petition satisfies the second criterion for granting a new generic fiber subclass name.

Third, Petitioners have demonstrated that PTT's distinctive properties are of importance to the general public. As discussed earlier, Mohawk's consumer survey shows that consumers shopping for carpet consider durability/resiliency to be very important attributes. Specifically, a 2004 study that Mohawk commissioned found that 67% of respondents rated carpet durability/resiliency as a very important trait. Thus, the Petition satisfies the third criterion for granting a new generic fiber subclass name.

Finally, PTT's enhanced durability is the result of substantially differentiated physical characteristics. Specifically, Petitioners explained that the molecular structure of PTT is more coil-like than PET's straight-wire structure. Thus, PTT fibers are better able to recover without permanently deforming and developing a crushed appearance.[76] The Commission's textile expert reviewed the material that Petitioners submitted and confirmed this fact.[77] Accordingly, the Petition satisfies the final criterion for granting a new generic fiber subclass name.

Because the Petition meets all the criteria for establishing a new generic subclass fiber name, the Commission amends Rule 7(c) to define the generic subclass ''triexta'' and to allow use of the name ''triexta'' as an alternative to the generic name ''polyester'' for PTT fiber.[78] Because ''triexta'' is the second subclass generic designation for ''polyester,'' we have moved the first subclass designation to its own subsection, (c)(1), for clarity. Finally, based on this decision, the temporary designation ''PTT001'' is revoked as of the effective date of this amendment.

[73] Petition at 14-15.

[74] Invista also submitted the results of several other tests purporting to show that PTT does not perform significantly better than PET. *See supra* note 37. The record does not indicate that any of these tests are current or former industry standard tests. In addition, some of them involved heavier weight PET and PTT carpet than the weight of carpet consumers typically purchase and, for others, the record does not indicate the weight of the carpets tested. Therefore, we accord these test results less weight.

[75] DuPont #535294-00017 at 13.

[76] Petition at 7-8.

[77] Expert Report.

[78] The Commission has selected the name ''triexta'' because it was the one subclass name proposed by Petitioners to which no commenter objected.

VI. Effective Date

The Commission is making the amendment effective today, March 26, 2009, as permitted by 5 U.S.C. 553(d), because the amendment does not create new obligations under the Textile Rules; rather, it merely creates a fiber name and definition that covered companies may use to comply with the Textile Rules.

VII. Regulatory Flexibility Act

In the Request for Public Comment,[79] the Commission tentatively concluded that the provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603-604, did not apply to the Petition's proposal because the amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendment would impose no additional obligations, penalties, or costs. The amendment simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined subclass of fiber, and would impose no additional labeling requirements. To ensure, however, that the Commission did not overlook any substantial economic impact, the Commission solicited public comment in the Request for Public Comment on the effects of the proposed amendment on costs, profits, competitiveness of, and employment in small entities.

The Commission did not receive any comment in response. Accordingly, the Commission hereby certifies, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the amendment promulgated today will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

This amendment does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163, 44 U.S.C. chapter 35 (as amended), and its implementing regulations, 5 CFR 1320 *et seq.* Those procedures for establishing generic names that do constitute collections of information, 16 CFR 303.8, have been submitted to OMB, which has approved them and assigned them control number 3084-0101.

[79] 72 FR 48600 (Aug. 24, 2007).

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

IX. PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

■ 1. The authority citation for part 303 continues to read as follows:

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

■ 2. In § 303.7, in paragraph (c), designate the second sentence, which follows the second chemical description, as paragraph (c)(1) and add new paragraph (c)(2) to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

* * * * *

(c) * * *

(2) Where the glycol used to form the ester consists of at least ninety mole percent 1,3-propanediol, the term ''*triexta*'' may be used as a generic description of the fiber.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–6633 Filed 3–25–09: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 42

[Docket No. RM06–8–002; Order No. 681–B]

Long-Term Firm Transmission Rights in Organized Electricity Markets

Issued March 20, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission is issuing an order on rehearing and clarification of *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681–A, 71 FR 68,440 (November 16,

2006). The order on rehearing affirms, with certain clarifications, the fundamental determinations made in Order No. 681, as clarified by Order No. 681–A.

DATES: *Effective Date:* Order No. 681 became effective on August 31, 2006. This order on rehearing and clarification will become effective April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Roland Wentworth (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8262.

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SUPPLEMENTARY INFORMATION:

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I. Introduction

1. In this order we affirm, with certain clarifications, the fundamental determinations made in Order Nos. 681 and 681–A.[1] In Order No. 681, as reaffirmed and clarified in Order No. 681–A, the Commission required each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of seven guidelines.[2]

2. Under guideline (5), the Commission permits transmission organizations to place reasonable limits on the amount of capacity used to support long-term firm transmission rights.[3] Recognizing that ''transmission capacity is limited and the amount that can reasonably be made available for long-term transmission rights may be lesser still,'' [4] the Commission construed new section 217 of the Federal Power Act (FPA) to provide a general preference for load serving entities to obtain transmission service.[5] On rehearing, in discussing priority when transmission capacity is limited, the Commission declined to draw a broad conclusion that it would always be unreasonable for a transmission organization to treat external and internal load serving entities differently in allocating long-term firm transmission rights.[6] Three parties filed requests for clarification or, in the alternative, rehearing of Order Nos. 681 and 681–A, focusing primarily on issues associated with the allocation of long-term firm transmission rights to load serving entities serving load located outside the transmission organization (external load serving entities). Rehearing was also requested on the Commission's determination that the statute does not require a hedge for marginal loss charges.

3. In this order, we grant certain clarifications concerning allocation of long-term firm transmission rights to external load serving entities and deny requests for rehearing.

II. Background

A. Energy Policy Act of 2005

4. On August 8, 2005, EPAct 2005 [7] was signed into law. Section 1233 of EPAct 2005 added a new section to the FPA, section 217, which provides:

> The Commission shall exercise the authority of the Commission under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.[8]

The statute further required the Commission to implement section 217 of the FPA within one year of the effective date of EPAct 2005.[9]

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[1] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 71 FR 43,564 (Aug. 1, 2006), FERC Stats. & Regs. ¶ 31,226, *reh'g denied*, Order No. 681–A, 117 FERC ¶ 61,201 (2006).

[2] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 1, 23; Order No. 681–A, 117 FERC ¶ 61,201 at P 1.

[3] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 318.

[4] *Id.* P 320.

[5] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 318 (construing EPAct 2005, section 217; Pub. L. 109–58, § 1233, 119 Stat. 594, 957 (2005); 16 U.S.C. 824q (2006)).

[6] Order No. 681–A, 117 FERC ¶ 61,201 at P 81.

[7] Public Law No. 109–58, 119 Stat. 594 (2005).

[8] 16 U.S.C. 824q (2006).

[9] 119 Stat. 594, 960. ''Transmission organization'' is defined in EPAct 2005 as ''a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.'' Public Law No. 109–58, § 1291, 119 Stat. 594, 985. In Order Nos. 681 and 681–A, we adopted this definition with slight modifications for the purposes of the Final Rule.

B. Notice of Proposed Rulemaking

5. As a first step towards implementing FPA section 217, on February 2, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to amend its regulations to require each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy guidelines established by the Commission.[10] The NOPR proposed eight guidelines, and sought comments on various issues raised by the introduction of long-term firm transmission rights in the organized electricity markets.

C. Final Rule: Order No. 681

6. On July 20, 2006, the Commission issued a Final Rule in this proceeding, Order No. 681. Consistent with EPAct 2005, in Order No. 681, the Commission required independent transmission organizations that oversee electricity markets to make available long-term firm transmission rights that satisfy each of the seven guidelines ultimately established by the Commission in that order. The Commission further directed transmission organizations subject to the Final Rule to file, no later than January 29, 2007, either: (1) Tariff sheets and rate schedules that make available long-term firm transmission rights that satisfy each of the seven guidelines; or (2) an explanation of how the transmission organization's tariff and rate schedules already provide for long-term firm transmission rights that satisfy each of the guidelines. The Commission also required entities that subsequently meet the statutory definition of transmission organization after January 29, 2007 to satisfy the requirements of the Final Rule.[11]

7. In issuing Order No. 681, the Commission explained that it sought to provide increased certainty regarding the congestion cost risks of long-term firm transmission service in organized electricity markets in order to facilitate new investments and other long-term power supply arrangements.[12] The guidelines adopted in Order No. 681 were intended to ensure that the long-term firm transmission rights made available by transmission organizations subject to the rule would support long-term power supply arrangements.[13] Moreover, the Commission emphasized that it would not compel transmission organizations to provide rights that are infeasible based on the existing system, nor would the Commission guarantee that a load serving entity will be able to obtain long-term firm transmission rights sufficient to hedge its entire resource portfolio or be able to obtain all of its requested long-term firm transmission rights.[14] Rather, the Commission concluded that transmission organizations and their stakeholders should each have flexibility to determine the level at which a load serving entity may nominate long-term firm transmission rights, as long as that level does not fall below the entity's ''reasonable needs.'' [15] By reasonable needs, the Commission meant that long-term firm transmission rights should be sufficient to hedge the congestion associated with providing baseload service.[16] Once an entity obtains long-term firm transmission rights, Order No. 681 requires these rights to be fully funded over their entire term.[17]

8. Significantly, Order No. 681 adopted guidelines rather than prescriptive requirements for long-term firm transmission rights. While transmission organizations are required to satisfy each guideline, the Commission gave them the flexibility to design long-term firm transmission rights that reflect regional preferences and accommodate regional market designs.[18]

9. Many of the rehearing requests focus on guideline (5), which gives load serving entities priority to transmission rights on the existing system:

> Load serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity. The transmission organization may propose reasonable limits on the amount of existing capacity used to support long-term firm transmission rights.[19]

10. In the preamble to guideline (5), the Commission rejected the NOPR proposal for an absolute preference for load serving entities with long-term power supply arrangements.[20] Instead, the Commission opted for a general preference for load-serving entities over non-load serving entities, although transmission organizations, on a regional basis, are not precluded from giving allocation priority to holders of long-term contracts over other load serving entities when capacity is limited.[21] Further, with respect to priority of eligibility, the Commission explained that ''long-term firm transmission rights should be made available first to those entities that have an obligation to serve load within the transmission organization's service territory and are required to contribute to the embedded cost of the transmission organization's transmission system.'' [22] The Commission concluded that ''[a]ny entity that has neither an obligation to serve load on the transmission organization's transmission system, nor an obligation to pay the embedded costs of that system, should not be given a preference to acquire long-term firm transmission rights supported by the system's existing capacity.'' [23] Further, the Commission explained that ''long-term firm transmission rights must be available to all market participants.'' [24] Guideline (5) ''serves only as a 'tiebreaker' between load serving entities and non-load serving entities when existing transmission capacity is limited.'' [25]

D. Rehearing Order: Order No. 681–A

11. On rehearing, the Commission upheld its determinations in Order No. 681 and offered certain clarifications. Specifically, on the issue of priority for load serving entities with load outside the region, the Commission stated that a load serving entity should receive preference in the allocation of long-term firm transmission rights within a transmission organization's region ''only to the extent that the transmission organization plans and constructs its transmission system to support the load of the load serving entity, and the load serving entity contributes to the cost that the transmission organization incurs for that purpose.'' [26] The Commission found that it would be unreasonable to provide a preference where the load has not contributed to the system's embedded costs, and the transmission organization has not planned and built its system to accommodate the load.[27]

[10] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, NOPR, 71 FR 6,693 (Feb. 9, 2006), FERC Stats. & Regs. ¶ 32,598 (2006).

[11] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 494.

[12] *Id.* P 16.

[13] *Id.*

[14] *Id.* P 17–18.

[15] *Id.* P 323.

[16] *Id.*

[17] *Id.* P 18.

[18] *Id.* P 2. The Commission recognized the possibility that the flexible regional approach adopted in the Final Rule could create seams issues, and directed each transmission organization to explain in its compliance filing how its proposal addresses potential seams issues. *Id.* P 107.

[19] *Id.* P 325; 18 CFR 42.1(d)(5) (2008).

[20] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 318.

[21] *Id.* P 321.

[22] *Id.* P 328.

[23] *Id.*

[24] *Id.* P 329.

[25] *Id.*

[26] Order No. 681–A, 117 FERC ¶ 61,201 at P 78.

[27] *Id.*

12. The Commission provided two examples where external load serving entities should be given a preference in the allocation of long-term firm transmission rights equivalent to the preference accorded to load serving entities with loads that lie within the transmission organization's region. First, the Commission recognized that a load serving entity that has an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region should be entitled to receive this preference.[28] Second, external load-serving entities should qualify for the preference where pancaked rates between the transmission organization and the other transmission provider(s) have been eliminated, as long as the agreement with the load-serving entity provides for cost sharing in accordance with the non-pancaked rates currently in effect.[29]

13. In addition, the Commission stated that, where there is no agreement between an external load serving entity and the transmission organization:

> a load serving entity with load that sinks outside the transmission organization's region is entitled to receive long-term firm transmission rights from existing system capacity to support that load to the extent that capacity is available after the needs of the load serving entities whose loads are within the region have been met. However, in such cases, we expect that the load serving entity would be required to contribute, on a long-term basis, toward the embedded cost of the transmission system, by paying either pancaked or non-pancaked rates, as applicable.[30]

14. The Commission also denied the Sacramento Municipal Utility District (SMUD) request to clarify that it would be unreasonable for a transmission organization to allocate long-term firm transmission rights based on whether load is located in the transmission organization's control area or has agreed to cede control of its transmission facilities to that organization. The Commission noted that it is not unduly discriminatory for a transmission organization to impose additional requirements on external load as a precondition to receiving such rights.[31] The Commission declined to draw a broad conclusion in a rulemaking of general applicability that it may never be reasonable to treat external load differently from internal load for purposes of allocating long-term firm transmission rights.[32]

III. Discussion

A. Procedural Matters

15. Timely requests for rehearing and/or clarification were filed by the following entities: Long Island Power Authority and its wholly-owned operating subsidiary, LIPA (LIPA), Modesto Irrigation District (Modesto), and SMUD.

B. Requests for Rehearing and/or Clarification

1. Contract With Transmission Owner Rather Than Transmission Organization

16. Modesto states that the Final Rule allowed load serving entities that pay the embedded costs of a transmission organization's system to qualify for priority in receiving long-term firm transmission rights, even if located outside of the transmission organization's control area. Modesto argues that in so doing, however, the Commission created ''an unjust and unreasonable and unduly discriminatory condition'' in that such load-serving entities must contract directly with the transmission organization, rather than with entities within the transmission organization's footprint, to pay the embedded cost of the transmission system, in order to qualify for priority in receiving long-term firm transmission rights.[33]

17. Modesto explains that it is a load serving entity located outside of and adjacent to the California Independent System Operator (CAISO). To meet its native load obligations, Modesto states that it often must wheel power over the CAISO-controlled grid from resources located inside and outside of the CAISO control area. Modesto states that one of its pre-existing arrangements through which it facilitates transmission of its electricity through the CAISO control area is with Pacific Gas & Electric Company (PG&E), a participating transmission owner of the CAISO.

18. Modesto asserts that, through its payments to PG&E, it contributes to the embedded costs of the transmission system that is under the CAISO's operational control. Modesto argues that, under Order No. 681–A, it would be denied a priority for obtaining long-term firm transmission rights because its agreement is with a participating transmission owner, PG&E, and not with the CAISO. Modesto argues that conditioning eligibility for allocation of long-term firm transmission rights on whether an agreement is with a transmission organization rather than a participant of that organization unduly discriminates against entities that are similarly situated. Specifically, Modesto complains that entities that are contributing to the embedded costs of the transmission organization's system through pre-existing arrangements with the transmission organization are unduly discriminated against, compared with entities that have pre-existing arrangements with transmission owners who have turned their transmission over to the operational control of the transmission organization.

Commission Determination

19. We grant Modesto's requested clarification. In Order No. 681–A, the Commission did not intend to restrict unnecessarily the types of contractual vehicles by which a load serving entity with load outside a transmission organization's region may demonstrate that it is entitled to receive a preference in the allocation of long-term firm transmission rights supported by the region's existing transmission capacity. The salient issue here is whether the external load serving entity has historically contributed and will continue to contribute on an ongoing basis to the embedded costs of the transmission system.[34] As long as the external load serving entity can demonstrate that it has paid and will continue to pay the embedded costs of the transmission system, the precise vehicle by which this is accomplished is not important. Thus, a commitment to pay an appropriate share of embedded costs could be achieved through a contractual agreement with the transmission organization itself, through a pre-existing agreement with one or more transmission owners that have turned operational control of their transmission system over to the transmission organization, or by some other verifiable means.[35] We further note that, while Modesto's specific contractual issue is beyond the scope of this general rulemaking proceeding, it appears to have been favorably resolved

[28] *Id.* P 79.

[29] *Id.*

[30] *Id.* P 80.

[31] *Id.* P 81 (erroneously citing *New England Power Pool*, 100 FERC ¶ 61,287, at P 85 (2002); correctly citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 766 (2006) (*MRTU Order*), *order on reh'g*, 119 FERC ¶ 61,076 (2007) (*MRTU Rehearing Order*)).

[32] *Id.*

[33] Modesto Rehearing Request at 4–5.

[34] *See, e.g., New England Power Pool*, 100 FERC ¶ 61,287, at P 85 (2002).

[35] *See, e.g., PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,144, at P 40 & n.34, *order on clarification*, 121 FERC ¶ 61,073 (2007) (upholding PJM's proposal to allow an external load serving entity to receive long-term firm transmission rights in stage 1A if it is a transmission customer taking and paying for firm service and if it was serving load from resources within a zone at the time that zone was integrated into PJM).

in the compliance phase of this proceeding.[36]

2. Lack of a Transmission Agreement

20. SMUD asks the Commission to clarify whether a load serving entity outside an ISO/RTO control area could qualify for an allocation priority equivalent to that of a load serving entity within the control area where its lack of an existing long-term firm service arrangement is the transmission organization's ''fault.'' [37] Asserting that this question is not purely ''academic,'' SMUD explains that it had a long-term firm transmission arrangement for more than 35 years, which, according to SMUD, lapsed due to the CAISO's delay in developing long-term firm transmission rights. Pointing out that the CAISO was initially ordered to develop long-term firm transmission rights in 1997, SMUD argues that it would have continued to have a long-term firm transmission agreement in place and would have qualified for a priority equivalent to that accorded load serving entities within the CAISO control area if the CAISO had developed those long-term rights on a timely basis.[38]

21. SMUD states that it is willing to provide assurances to the CAISO that it will continue to pay a share of the fixed costs of the transmission grid operated by the CAISO. SMUD insists that absent clarification, however, Order No. 681–A does not provide a clear opportunity for SMUD and other similarly situated load serving entities to provide such assurances.[39] SMUD asks the Commission to clarify that a load serving entity located outside an ISO/RTO control area that lacks an existing long-term firm transmission agreement can qualify for the same treatment accorded a load serving entity with an existing long-term firm transmission agreement, if it can demonstrate: (1) Its reliance on the ISO/RTO transmission grid; (2) its commitment to continue to contribute to the fixed costs of the system; and (3) that its lack of a long-term transmission agreement with the ISO/RTO was outside of its control.[40]

Commission Determination

22. We grant in part and deny in part the clarification requested by SMUD. First, we decline to adopt SMUD's three-part test for determining whether an external load serving entity should qualify for a preference in the allocation of long-term firm transmission rights.[41] However, we grant clarification regarding the broader issue SMUD raises, which is whether an external load serving entity may qualify for a preference if it contributes to the embedded cost of the regional transmission system, but is not a party to a qualifying agreement for long-term transmission service at the time of its request. We clarify that the lack of an existing long-term service agreement with the transmission organization or a participating transmission owner does not necessarily disqualify an external load serving entity from receiving a preference in the allocation of long-term firm transmission rights that are supported by the existing capacity of the transmission organization's system. If the external load serving entity has maintained a continuous service relationship with the transmission organization or transmission owner, through which it continues to contribute to the embedded costs of the transmission system for the duration of the long-term firm transmission rights it seeks, that entity may be entitled to an allocation of long-term firm transmission rights. However, the entity must also satisfy all of the other eligibility requirements of the transmission organization, and it must provide the transmission organization with appropriate assurances that it will continue to satisfy these requirements going forward.

23. With regard to the status of SMUD's long-term contractual relationship with the CAISO or any of its Participating Transmission Owners, including the question of which party may be at fault for causing a prior agreement to lapse, we note that this is a case-specific matter and, as such, is beyond the scope of this proceeding.[42]

3. Clarification of Paragraph 80 of Order No. 681–A

24. LIPA asks the Commission to clarify that, consistent with paragraph 78 of Order No. 681–A, there should be no distinction between the treatment of internal and external load serving entities when allocating long-term firm transmission rights, where the transmission organization plans and constructs its transmission system to support the external load serving entity's requirements and the load serving entity is obligated to contribute to the costs the ISO/RTO incurs for that purpose. LIPA's concern centers on paragraph 80 of Order No. 681–A, which provides that:

> in cases where [an external load serving entity does not have an existing agreement to pay embedded system costs], a load serving entity with load that sinks outside the transmission organization's region is entitled to receive long-term firm transmission rights from existing system capacity to support that load to the extent that capacity is available after the needs of the load serving entities whose loads are within the region have been met.[43]

In LIPA's view, the allocation preference expressed in paragraph 80 only applies with respect to the initial allocation of long-term firm transmission rights to an external load serving entity that has no existing agreement with the ISO/RTO or does not hold long-term rights for which such ISO/RTO plans and constructs its transmission system.

25. LIPA argues specifically that firm transmission withdrawal rights in PJM meet the standard articulated by the Commission in paragraph 78 of Order No. 681–A and, according to LIPA, these withdrawal rights should entitle external load serving entities to the same rights as internal load serving entities. As LIPA explains, PJM awards firm transmission withdrawal rights for merchant transmission lines that include the right to withdraw energy and capacity from the PJM system up to a specific megawatt level. LIPA explains that PJM first subjects the award of such firm transmission withdrawal rights to system impact studies through the interconnection process and considers any potential system upgrades. Next, according to LIPA, PJM includes such

[36] *See Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at P 188 (2007), *reh'g denied*, 124 FERC ¶ 61,095, at P 42–45 (2008) (accepting MRTU Tariff section 36.9, which establishes an external load serving entity's eligibility for firm transmission rights based on a forward-looking showing of need).

[37] SMUD Rehearing Request at 14. ''ISO'' refers to ''Independent System Operator'' and ''RTO'' refers to ''Regional Transmission Operator.''

[38] *Id.*

[39] *Id.* at 14–15.

[40] *Id.*

[41] *See MRTU Rehearing Order*, 119 FERC ¶ 61,076 at P 373 (rejecting request to give external load serving entities the opportunity to demonstrate reliance on the CAISO grid in order to avoid prepaying for the transmission service necessary to qualify for allocation of congestion revenue rights, which can be converted into long-term firm transmission rights).

[42] We note that the DC Circuit Court upheld the Commission's finding that PG&E's notice of termination of its long-term contract with SMUD was just and reasonable. *Sacramento Municipal District* v. *FERC*, 474 F.3d 797, 801 (DC Cir. 2007). Nevertheless, the CAISO allows an external load serving entity such as SMUD to obtain long-term firm transmission rights through a combination of pre-payment of wheeling access charges and ownership of or contract for generation within the CAISO. *See generally* MRTU Tariff § 36.9. In addition, the MRTU Tariff allows SMUD to rollover a short-term firm transmission right indefinitely and use this to hedge CAISO congestion charges, as long as this does not interfere with the simultaneous feasibility of other allocated rights. *Id.* § 36.9.5.

[43] Order No. 681–A, 117 FERC ¶ 61,201 at P 80.

firm transmission withdrawal rights in its Regional Transmission Enhancement Plan (RTEP) and thereby plans for and constructs its system to ensure the availability of such firm transmission withdrawal rights. LIPA further states that PJM has proposed (and the Commission has agreed) that the costs of RTEP upgrades to support such withdrawal rights may be allocated to merchant transmission lines. LIPA adds that the use of withdrawal rights also requires scheduling of transmission service over the PJM system, for which the customer also then pays a ''Border Rate'' charged to exports from the system, and through which PJM recovers the embedded system costs. LIPA asks the Commission to clarify that the lower allocation priority and potential for reduced allocation of long-term firm transmission rights discussed in paragraph 80 does not apply to holders of long-term firm transmission rights such as firm withdrawal rights. Further, LIPA argues that any reduction contemplated under paragraph 80 should only be triggered when, as part of the evaluation of all internal and external load serving entity requests, there is a binding constraint that does not allow a full allocation of long-term firm transmission rights to qualifying load serving entities. LIPA states that, in such a case, the initial request for long-term firm transmission rights may be prorated downward to ensure that an internal load serving entity or external load serving entity with an existing agreement or long-term rights receives its full allocation of long-term firm transmission rights.

Commission Determination

26. We grant in part and deny in part LIPA's requested clarification. First, we clarify that an external load serving entity may receive the same allocation priority as an internal load serving entity if the external load serving entity can demonstrate that the transmission organization plans and constructs its transmission system to support the external load serving entity's load serving requirements and the external load serving entity contributes to the costs incurred for such purpose. We further clarify that paragraph 80 of Order No. 681–A is intended to apply only to situations where a load serving entity with load external to the region makes an initial request to obtain long-term firm transmission rights. That is, paragraph 80 serves only to establish the initial priority for the allocation of long-term firm transmission rights to an external load serving entity that has not historically contributed to the embedded costs of the transmission system, and for whom the transmission organization has not planned and constructed its transmission system.[44]

27. LIPA also requests clarification of the conditions under which a reduced allocation of long-term firm transmission rights is contemplated under paragraph 80. We clarify that an external load serving entity may be allocated fewer long-term firm transmission rights than it requests in a situation where its initial request for long-term firm transmission rights cannot be accommodated by the system capacity that is available after the needs of the load serving entities whose loads are within the region have been met. This rule would apply to an initial request where the transmission organization has not historically planned and constructed its system to meet the external load serving entity's load serving needs.

28. However, we decline to grant LIPA's requested clarification that its firm transmission withdrawal rights in PJM meet the standard articulated by the Commission in paragraph 78 of Order No. 681–A, such that these rights should entitle external load serving entities like LIPA to be granted the same rights as internal load serving entities. Whether these firm withdrawal rights qualify LIPA for receipt of long-term firm transmission rights in PJM requires a fact-based determination that is outside the scope of a general rulemaking proceeding.[45]

4. Comparable Treatment for External and Internal Load Serving Entities

29. LIPA asks the Commission to clarify that ''qualifying'' external load serving entities are able to participate in the same phase of long-term firm transmission rights allocation as internal load serving entities and receive a long-term firm transmission right of the same length and attributes as an internal load serving entity.[46] LIPA states that, as noted in Order No. 681–A, Order No. 681 provides that transmission organizations must make long-term firm transmission rights available to load serving entities with term lengths and/or renewal rights that are sufficient to meet load serving entities' need to hedge long-term power supply arrangements. LIPA points out that the Commission required long-term firm transmission rights to have a specific term length and/or use of renewal rights to provide firm coverage for at least a 10-year period.[47] LIPA states that a 10-year term length, renewal rights, and firmness of coverage are the ''backbone'' of long-term firm transmission rights, which LIPA argues should not differ regardless whether a load serving entity is internal or external to the ISO or RTO.

30. Also focusing on this issue, SMUD challenges the Commission's ruling that only load serving entities in a transmission organization's control area or those load serving entities with existing long-term firm service contracts would qualify for a first-tier allocation[48] of long-term firm service rights. SMUD argues that this ruling prejudices those load serving entities located outside the CAISO's control area whose long-term firm service agreements lapsed, with no long-term firm service replacement, due to the CAISO's ''history of procrastination'' in developing such rights.

31. Furthermore, SMUD asserts that the Commission failed to engage in reasoned decision-making by inconsistently applying its precedent and suggesting that a transmission organization may give preference to load serving entities located in its own control area over those located outside its control area. SMUD states that the Commission offered no valid grounds for its departure from Order No. 888,

[44] *See Midwest Indep. Transmission Sys. Operator, Inc.,* 121 FERC ¶ 61,062, at P 40–41 (2007), *order on reh'g,* 123 FERC ¶ 61,178 (2008), and *Midwest Indep. Transmission Sys. Operator, Inc.,* 121 FERC ¶ 61,063, at P 53–54 (2007) (finding that stage 2 eligibility for long-term firm transmission rights to cover transmission service obtained after the reference year is not unduly discriminatory).

[45] Indeed, it appears this issue has been appropriately asked and answered in the compliance phase of this rulemaking proceeding. *See PJM Interconnection, L.L.C.,* 119 FERC ¶ 61,144 at P 37–44, *clarified on other grounds,* 121 FERC ¶ 61,073 (denying LIPA's request for preferential allocation of long-term firm transmission rights in PJM because LIPA did not take service from PJM during the historical reference year, nor does it continue to pay the embedded cost of the PJM transmission system). The Commission notes, however, that on Jan. 28, 2009, in Docket No. ER09–585–000, PJM filed tariff revisions that would allow external load-serving entities, including holders of firm withdrawal rights, to obtain long-term firm transmission rights, provided certain conditions are met.

[46] LIPA states that, for purposes of its clarification request, qualifying external load serving entities are those entities for which the transmission organization plans and constructs its transmission system to support the load serving entity's load and the load serving entity contributes to the cost that the transmission organization incurs for that purpose. LIPA Rehearing Request at 3 & n.9.

[47] *Id.* at 4 & n.10.

[48] SMUD refers to the fact that the CAISO, like other ISOs/RTOs, uses nomination tiers to allocate long-term firm transmission rights. In each tier, a load serving entity is allowed to nominate a percentage of the total amount of transmission rights it is eligible to request. The ISO/RTO then runs a simultaneous feasibility test on all nominated rights to determine the feasible set of rights that it can award. Load serving entities typically nominate their most highly-valued rights in the first tier. *See generally Cal. Indep. Sys. Operator Corp.,* 125 FERC ¶ 61,153 (2008).

and cases interpreting Order No. 888, which SMUD argues require transmission providers to offer service to all customers on a non-discriminatory basis.[49] In addition, SMUD argues that the Commission's proposal to distinguish among load serving entities on the basis of control area is inconsistent with section 217 of the FPA. Specifically, SMUD asserts that allowing transmission organizations to impose a prepayment obligation [50] on external load serving entities is unduly discriminatory.

32. First, SMUD argues that the principle that a transmission provider may place preconditions on a customer's right to service based on whether it is located inside or outside of the transmission provider's control area ''turns Order No. 888 on its head.'' [51] Citing the NOPR for Order No. 890,[52] SMUD asserts that the Commission has made clear that transmission organizations covered by Order No. 681 must continue to offer service as good as or superior to that offered under an Order No. 888 Open Access Transmission Tariff (OATT). SMUD states that under Order No. 888, a transmission provider is required to provide customers non-discriminatory access to the grid equivalent to the transmission service it provides itself.[53] SMUD posits that if a transmission owner with a traditional OATT were to treat a customer outside its control area differently than it treats its own control area load, that transmission owner would be engaging in blatantly discriminatory conduct. SMUD insists that the Commission's interpretation of *New England Power Pool* leads to the conclusion that transmission owners with OATTs could turn control of their facilities over to an ISO and then have the ISO discriminate against those same customers, customers still dependent on their transmission, but now located outside the ISO's control area.

33. Next, SMUD argues that the Commission's interpretation of *New England Power Pool* is an ''unexplained departure'' from its holding in *Mid-Continent Area Power Pool,* 87 FERC ¶ 61,075 (1999) (*MAPP*). SMUD quotes *MAPP:*

> Order No. 888 requires that pool compliance tariffs provide service to members and non-members alike. We stated that members of a loose power pool, as well as non-members, must have access to the same transmission services within that power pool on a comparable basis and pay the same or a comparable rate for those services.[54]

SMUD argues that, just as transmission providers within a power pool cannot condition access to transmission service on a customer's willingness to join the pool, it is unduly discriminatory to condition a transmission customer's access to firm transmission service on its location within a transmission provider's control area.

34. Third, SMUD argues that, far from supporting the notion that customers outside the control area should be treated differently, *New England Power Pool* reaffirms the principle that customers outside an ISO's control area that are committed to contributing to the ISO's fixed costs under a long-term firm transmission agreement must be treated on a non-discriminatory basis and that they should not be given lower priority based on their location outside the transmission provider's control area.

Commission Determination

35. In response to the requests of LIPA and SMUD, we clarify that the transmission organization's criteria for determining a load serving entity's eligibility to receive a preference in the allocation of long-term firm transmission rights must not be unduly discriminatory as between internal and external load serving entities. That is, the transmission organization may apply a variety of eligibility criteria that are appropriate for its region, as long as it applies those criteria in a manner that is not unduly discriminatory.[55] For example, to be eligible for an allocation preference, the transmission organization may require a load serving entity to demonstrate that it has a long-term power supply arrangement from a historical point of receipt to a historical point of delivery, and that it will continue to contribute to the embedded cost of the transmission system for the duration of the period for which the load serving entity intends to hold the long-term firm transmission right. Such criteria would not be unduly discriminatory if they are tailored to meet the transmission organization's legitimate need to verify entitlement to allocation of the long-term rights, *i.e.*, that the external load serving entity intends to use these rights to serve its customers. If the transmission organization allocates long-term firm transmission rights using a system of stages or tiers, we would expect all qualified load serving entities to be placed in the same allocation stage or tier without regard to whether its load is internal or external to the region.

36. In response to the assertion by SMUD that the Commission's interpretation of *New England Power Pool* is an unexplained departure from precedent, we clarify that the citation to *New England Power Pool* in footnote 74 of Order No. 681–A was the result of an inadvertent drafting error. Nevertheless, we reiterate our determination that it is not unduly discriminatory for a transmission organization to impose reasonable, additional requirements on customers external to the transmission organization's control area as a precondition to receiving long-term firm transmission rights.[56] It is within the transmission organization's purview to create rules that aim to ensure equitable allocation/distribution of these potentially valuable rights.

37. However, in response to LIPA, we clarify that any differences in the attributes (*e.g.*, length, renewal rights

[49] SMUD Rehearing Request at 6–7 (referencing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002)).

[50] By ''prepayment obligation,'' SMUD refers to the fact that the CAISO, for example, requires an external load serving entity to agree in advance to pay a year's worth of wheeling access charges to be eligible for allocation of long-term firm transmission rights on the same basis as internal load serving entities. *See MRTU Order,* 116 FERC ¶ 61,274 at P 706–15; *MRTU Rehearing Order,* 119 FERC ¶ 61,076 at P 358 (discussing prepayment in connection with short-term firm transmission rights, which may be converted to long-term rights); *Cal. Indep. Sys. Operator Corp.,* 120 FERC ¶ 61,023 at P 266.

[51] SMUD Rehearing Request at 6.

[52] *Id.* (citing *Preventing Undue Discrimination and Preference in Transmission Service,* Notice of Proposed Rulemaking, Docket Nos. RM05–17–000 and RM05–25–000, FERC Stats. & Regs. ¶ 32,603, at P 100 (2006), *order issuing final rule* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g,* Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 73 FR 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008)).

[53] *Id.* (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760).

[54] SMUD Rehearing Request at 7 (citing *MAPP,* 87 FERC ¶ 61,075 at 61,309–10).

[55] *See Regional Transmission Organizations,* Order No. 2000–A, 65 FR 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 at 31,385 (2000) (''We do not agree with the premise of some of the petitioners who conclude that rate differences of any type [between RTO participants and non-participants] would constitute undue discrimination.''), *aff'd sub nom., Public Util. Dist. No. 1 of Snohomish, Wash.* v. *FERC,* 272 F.3d 607 (DC Cir. 2001).

[56] *See MRTU Order,* 116 FERC ¶ 61,274 at P 766 (stating that external load and internal load are not similarly situated with respect to their reliance on the transmission organization's grid); *MRTU Rehearing Order,* 119 FERC ¶ 61,076, at P 377 (2007) (requiring external load serving entities to satisfy additional requirements to verify need for long-term firm transmission rights does not violate Order No. 888 because external load serving entities are not denied transmission service and all customers receive the same service under the MRTU Tariff).

and firmness of coverage) of long-term firm transmission rights that are allocated among load serving entities should not be based on whether a load serving entity is internal or external to the transmission organization.

5. Marginal Losses

38. In Order No. 681, we concluded that section 217(b)(4) does not address marginal loss charges.[57] Noting that each transmission organization that operates an organized electricity market has established methods for refunding marginal loss surpluses that reflect regional preferences, which the Commission has approved, we decided not to overturn those decisions in this proceeding.[58] In Order No. 681–A, we upheld our statutory interpretation that section 217(b)(4) of the FPA does not address marginal loss charges.[59] First, we explained that the issue of hedging long-term marginal loss charges is distinct from the issue of hedging marginal congestion charges. Congestion charges, we said, arise in part due to transmission constraints, and transmission organizations allocate transmission rights to hedge these costs. Marginal loss charges, we noted, are similar to congestion costs because they are a function of locational energy prices and line loadings. However, significantly, ''the development of a financial instrument or other means for hedging of marginal losses has not been accomplished to date in any of the organized electricity markets.'' [60]

39. Next, we parsed the language of the statute and explained that the terms used in section 217(b)(4)—''firm transmission rights'' and ''equivalent tradable or financial rights''—''are consistent with terminology traditionally used to discuss hedging of congestion, rather than marginal losses.'' [61] We further explained that, since we do not interpret EPAct 2005 as requiring transmission organizations to provide long-term firm transmission rights with properties that are fundamentally different from those of the short-term rights that they now offer, we do not interpret the statute as requiring hedging of marginal losses. We emphasized that our interpretation of EPAct 2005 as not *requiring* hedging of marginal losses does not preclude future market design changes that *allow* hedging of losses.[62] Significantly, we encouraged transmission organizations to explore methods to assist load serving entities and others to obtain a hedge for marginal losses.[63]

40. On rehearing, SMUD argues that, in light of FPA requirements and Congress' clear intent that ''financially firm'' transmission service would provide customers the equivalent of firm physical rights, financial rights must include a hedge against marginal losses. SMUD argues that the Commission contravened Order No. 888 and the plain language of the FPA by concluding that long-term firm transmission rights need only be similar to the short-term transmission rights now being offered by most transmission organizations, and that long-term firm transmission rights need not include a hedge against marginal losses because short-term rights do not include such a hedge. SMUD argues that the Commission's conclusion that long-term rights should be similar to short-term rights with respect to their lack of a hedge against marginal losses has no record, logical, or factual basis.

41. According to SMUD, the purpose of section 217(b)(4) of the FPA, reflected in the language of the statute, is to require transmission organizations to provide long-term firm service based on financial rights that is equivalent to long-term service based on ''firm,'' *i.e.*, ''physical'' transmission rights. SMUD argues that, since, as a matter of historical practice, long-term physical rights do not expose customers to marginal losses, then neither should their financial rights counterparts.

42. SMUD reiterates its initial comments in this proceeding, asserting that marginal losses pose at least as big an uncertainty as congestion charges and, without hedges to insulate parties from the risks marginal loss exposure creates, interregional trade will be constrained. SMUD suggests that the Commission's position is unsupported because most transmission organizations did not include marginal losses when they started their organized markets, and PJM only recently began offering them, so the past cannot be a valid prologue for the future. SMUD argues that relying on the possibility that transmission organizations may voluntarily offer hedges for marginal loss exposure is insufficient to ensure equivalence between financial and physical rights-based firm service. SMUD states that on rehearing the Commission should require transmission organizations to either: (1) Offer long-term firm service customers a hedge against marginal losses; or (2) exempt long-term firm customers from those charges and charge actual or estimated system average losses.

Commission Determination

43. We deny SMUD's request for rehearing concerning marginal losses, primarily for the reasons discussed in Order Nos. 681 and 681–A.[64] First, as we explained in Order No. 681–A, the issue of hedging long-term marginal loss charges is distinct from the issue of hedging long-term marginal congestion charges, and the language of section 217 of the FPA is silent regarding marginal losses.[65]

44. We disagree with SMUD's argument that the language of the statute mandates a hedge against marginal losses for long-term firm service customers. SMUD argues that the term ''firm service'' in the statute denotes physical transmission service, and long-term physical rights do not expose customers to marginal losses, so neither should their financial counterparts.[66] However, SMUD ignores the fact that transmission losses and congestion are distinct features of transmission service. While physical rights customers may not have been exposed to marginal losses, they generally had contractual arrangements concerning responsibility for losses on the transmission system.

45. We further object to SMUD's assertion that, in Order No. 681–A, the Commission declared, without record, logical or factual basis, that long-term firm transmission rights should have the same characteristics as short-term rights. Rather, the Commission simply observed that it did not interpret EPAct 2005 as requiring transmission organizations to provide long-term firm transmission rights that are fundamentally different from the short-term rights they now offer.[67] Specifically, transmission organizations with short-term rights do not provide hedges for marginal losses, and EPAct 2005 does not expressly require a hedge for marginal losses.

46. Hedging marginal losses is more complex than hedging congestion costs due to the variable nature of losses. While it is theoretically possible to design a different type of firm transmission right—an unbalanced firm transmission right—to hedge against both congestion and marginal losses, such designs are only in the experimental stage. No transmission

[57] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 478.

[58] *Id.*

[59] Order No. 681–A, 117 FERC ¶ 61,201 at P 105–06.

[60] *Id.* P 105.

[61] *Id.* P 106.

[62] *Id.*

[63] *Id.*

[64] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 478; Order No. 681–A, 117 FERC ¶ 61,201 at P 105–06.

[65] Order No. 681–A, 117 FERC ¶ 61,201 at P 105–06.

[66] SMUD Rehearing Request at 12.

[67] Order No. 681–A, 117 FERC ¶ 61,201 at P 106.

organization has yet to implement a hedge for marginal losses. Accordingly, we decline to order hedging of marginal losses at this time. Nevertheless, we recognize that a marginal loss hedge could provide benefits to certain market participants. The Commission supports development of a marginal loss hedging product if its design progresses beyond the theoretical level and it can be developed cost-effectively.

47. The Commission also denies SMUD's request to exempt long-term firm transmission customers from marginal losses and charge them actual or estimated system average losses. This raises a market design issue that has implications beyond the design of long-term firm transmission rights and is more appropriately resolved by each transmission organization on a case-by-case basis. Moreover, since we find that EPAct 2005 does not address marginal losses, this request is beyond the scope of this rulemaking proceeding.

By the Commission.

Kimberly D. Bose,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 26, 201, 203, 206, 310, 312, 314, 320, and 600

[Docket No. FDA–2009–N–0133]

Change of Addresses and Names; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change of address for the Center for Drug Evaluation and Research's (CDER's) Central Document Room in Beltsville, MD; the relocation of certain CDER offices to the White Oak campus in Silver Spring, MD; and changes of the names of certain CDER organizational units. This action is editorial in nature and is intended to ensure the accuracy and clarity of the agency's regulations.

DATES: This rule is effective March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Wendy Aaronson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 1128, Silver Spring, MD 20993–0002, 301–796–0410.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in parts 1, 26, 201, 203, 206, 310, 312, 314, 320, and 600 (21 CFR parts 1, 26, 201, 203, 206, 310, 312, 314, 320, and 600) to reflect the following changes: (1) Names of certain CDER organizational units; (2) a change of address for CDER's Central Document Room in Beltsville, MD; and (3) the relocation of certain CDER offices to the White Oak campus in Silver Spring, MD. The addresses are locations to which applicants must submit information related to marketing applications or products regulated by CDER or from which the public can request information. Where appropriate, Internet addresses for obtaining information and forms are added and outdated addresses are removed.

The technical amendments made by this document are largely related to paper submissions; however, FDA is committed to adapting its business practices to evolving technology, including using the significant advancements in Web-based, electronic systems. We anticipate that, in future rulemakings, Web-based filing of most submissions will eventually be required. We anticipate that when a change to an electronic submission system is implemented, we will provide guidance to address any technical questions related to such submissions.

The technical amendments, reflected in the regulatory text of this final rule, are as follows:

- In § 1.101(d)(2)(ii), the address to submit notifications for products regulated by CDER exported under section 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 382) is changed to the White Oak campus.
- In Appendix E to subpart A of part 26, the contact information for CDER's Office of Compliance is updated to the White Oak campus.
- In § 201.58, the address to submit requests for waivers of labeling requirements is updated to the Beltsville Central Document Room.
- In § 203.12, the CDER address for notification of an appeal from an adverse decision regarding reimportation of an insulin-containing or prescription drug by a district office is changed to the White Oak campus.
- In § 203.37(e), the address to submit information regarding falsification of drug sample records or loss or theft of samples for prescription drugs and biological products regulated by CDER is changed to the White Oak campus.
- In § 203.70(b)(1), the address to apply for a reward for providing information leading to a criminal proceeding or conviction related to the sale, purchase, or trade of a drug sample is changed to the White Oak campus.
- In § 206.7(b)(1)(i), the address to request exemptions from imprinting requirements for solid oral dosage form drugs is updated to the Beltsville Central Document Room.
- In § 310.6(e), the address for interested parties to submit the names of drug products, and of their manufacturers or distributors, that should be subject to the same purchasing and regulatory policies as those reviewed by the Drug Efficacy Study Group is changed to the White Oak campus.
- In §§ 310.305(c) and 314.98(b), the address to submit postmarketing safety reports is updated to the Beltsville Central Document Room. (Note that applicants and any person other than the applicant whose name appears on the label of an approved drug product as a manufacturer, packer, or distributor may also elect to submit postmarketing safety reports in electronic format.)
- In §§ 310.305(d)(4) and 314.80(f)(4), the address to obtain reporting forms is updated to reflect Internet availability.
- In §§ 310.501(e) and 310.515(d), the name and address to request labeling guidance for estrogen drug products are updated to the Division of Reproductive and Urologic Products and the White Oak campus.
- In § 312.140(b), mailing instructions are updated to ensure submissions are addressed properly.
- In §§ 312.145(b) and 314.445(b), the CDER unit from which to request a list of CDER guidances is updated to the Division of Drug Information. The address is updated to the White Oak campus, and an Internet address is added to reflect the availability of the list on the Internet.
- In § 314.80(d)(2) and (f)(3)(ii), the CDER unit to contact regarding alternative reporting formats is updated to the Office of Surveillance and Epidemiology.
- In § 314.81(b)(3)(i), the address to obtain Form FDA–2253 (Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use) is updated to reflect Internet availability.
- In § 314.200(a)(3), the address to request opinions of the applicability of a notice of opportunity for a hearing published in the **Federal Register** to a specific product that may be identical, related, or similar to a product listed in the notice is changed to the White Oak campus.
- In § 314.440(a), an outdated address to submit applications, abbreviated applications, and related

correspondence is removed and in § 314.440(a)(1), mailing instructions are updated to ensure submissions are addressed properly and the address to obtain folders for binding applications is updated to reflect information available at an Internet address.

• In § 320.30(c)(1), the name and address to submit general inquiries related to bioavailability requirements and methodology are updated to the Office of Clinical Pharmacology and the White Oak campus.

• In § 600.2(b)(1), the address for submitting biological product deviation reports for biological products regulated by CDER is changed to the White Oak campus.

• In § 600.2(b)(3), the address for submitting advertising and promotional labeling supplements required under § 600.12(f) is updated to the Beltsville Central Document Room.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to update names and addresses of CDER organizational units.

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 26

Animal drugs, Biologics, Drugs, Exports, Imports.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 203

Labeling, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 206

Drugs.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1, 26, 201, 203, 206, 310, 312, 314, 320, and 600 are amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for 21 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 333, 334, 335a, 343, 350c, 350d, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

§ 1.101 [Amended]

■ 2. Section 1.101 is amended in paragraph (d)(2)(ii) by removing ''(HFD–310)''; and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

PART 26—MUTUAL RECOGNITION OF PHARMACEUTICAL GOOD MANUFACTURING PRACTICE REPORTS, MEDICAL DEVICE QUALITY SYSTEM AUDIT REPORTS, AND CERTAIN MEDICAL DEVICE PRODUCT EVALUATION REPORTS: UNITED STATES AND THE EUROPEAN COMMUNITY

■ 3. The authority citation for 21 CFR part 26 continues to read as follows:

Authority: 5 U.S.C. 552; 15 U.S.C. 1453, 1454, 1455; 18 U.S.C. 1905; 21 U.S.C. 321, 331, 351, 352, 355, 360, 360b, 360c, 360d, 360e, 360f, 360g, 360h, 360i, 360j, 360l, 360m, 371, 374, 381, 382, 383, 393; 42 U.S.C. 216, 241, 242l, 262, 264, 265.

■ 4. Appendix E to subpart A of part 26 is amended under the heading ''B. Forthe United States:'' in the entry for ''Human Drugs'' by removing ''(HFD–300), 5600 Fishers Lane, Rockville, MD 20857, phone: 301–827–8910, fax: 301–827–8901'' and by adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002, phone: 301–796–3100, fax: 301–847–8747''.

PART 201—LABELING

■ 5. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.58 [Amended]

■ 6. Section 201.58 is amended in the second sentence by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''Central Document Room, 5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

PART 203—PRESCRIPTION DRUG MARKETING

■ 7. The authority citation for 21 CFR part 203 continues to read as follows:

Authority: 21 U.S.C. 331, 333, 351, 352, 353, 360, 371, 374, 381.

§ 203.12 [Amended]

■ 8. Section 203.12 is amended by removing ''(HFD–300)'' both times it appears; and by removing ''5600 Fishers Lane, Rockville, MD 20857'' both times it appears and adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

§ 203.37 [Amended]

■ 9. Section 203.37 is amended in the first sentence of paragraph (e) by removing ''(HFD–330)''; and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

§ 203.70 [Amended]

■ 10. Section 203.70 is amended in paragraph (b)(1) by removing ''(HFD–300)''; and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

■ 11. The authority citation for 21 CFR part 206 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 355, 371; 42 U.S.C. 262.

§ 206.7 [Amended]

■ 12. Section 206.7 is amended in paragraph (b)(1)(i) by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

PART 310—NEW DRUGS

■ 13. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374,

375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

§ 310.6 [Amended]

■ 14. Section 310.6 is amended in the first sentence of paragraph (e) by removing ''HFD–300, 5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

■ 15. Section 310.305 is amended in paragraph (c) by removing ''Division of Pharmacovigilance and Epidemiology (HFD–730)'' and by adding in its place ''Central Document Room''; by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''5901–B Ammendale Rd., Beltsville, MD 20705–1266''; and by revising paragraph (d)(4) to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

* * * * *

(d) * * *

(4) FDA Form 3500A and instructions for completing the form are available on the Internet at *http://www.fda.gov/medwatch/index.html*.

* * * * *

§ 310.501 [Amended]

■ 16. Section 310.501 is amended in paragraph (e) by removing ''Metabolism and Endocrine Drug Products (HFD–510)'' and by adding in its place ''Reproductive and Urologic Products'' and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

§ 310.515 [Amended]

■ 17. Section 310.515 is amended in the second sentence of paragraph (d) by removing ''Metabolism and Endocrine Drug Products (HFD–510)'' and by adding in its place ''Reproductive and Urologic Products'' and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

■ 18. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 371, 381, 383, 393; 42 U.S.C. 262.

§ 312.140 [Amended]

■ 19. Section 312.140 is amended in the second sentence of paragraph (b) by removing ''directed to the appropriate Center and division'' and by adding in its place ''sent to the appropriate center at the address indicated in this section and marked to the attention of the responsible division''.

§ 312.145 [Amended]

■ 20. Section 312.145 is amended in the third sentence of paragraph (b) by removing ''Division of Communications Management, Drug Information Branch (HFD–210)'' and by adding in its place ''Division of Drug Information'' and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 21. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 22. Section 314.80 is amended as follows:

■ a. In the second sentence of paragraph (d)(2), by removing ''Division of Pharmacovigilance and Epidemiology'' and by adding in its place ''Office of Surveillance and Epidemiology''; and

■ b. By revising paragraphs (f)(3)(ii) and (f)(4) to read as follows:

The revisions read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

* * * * *

(f) * * *

(3) * * * (ii) The format is agreed to in advance by the Office of Surveillance and Epidemiology.

(4) FDA Form 3500A and instructions for completing the form are available on the Internet at *http://www.fda.gov/medwatch/index.html*.

* * * * *

■ 23. Section 314.81 is amended by revising the last sentence of paragraph (b)(3)(i) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(3) * * *

(i) * * *Form FDA–2253 is available on the Internet at *http://www.fda.gov/opacom/morechoices/fdaforms/cder.html*.

* * * * *

§ 314.98 [Amended]

■ 24. Section 314.98 is amended in paragraph (b) by removing ''Division of Epidemiology and Surveillance (HFD–730)'' and by adding in its place ''Central Document Room'' and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

§ 314.200 [Amended]

■ 25. Section 314.200 is amended in the second sentence of paragraph (a)(3) by removing ''(HFD–310)''; and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

■ 26. Section 314.440 is amended by revising paragraph (a) introductory text, and paragraph (a)(1) to read as follows:

§ 314.440 Addresses for applications and abbreviated applications.

(a) Applicants shall send applications, abbreviated applications, and other correspondence relating to matters covered by this part, except for products listed in paragraph (b) of this section, to the appropriate office identified below:

(1) Except as provided in paragraph (a)(4) of this section, an application under § 314.50 or § 314.54 submitted for filing should be directed to the Central Document Room, 5901–B Ammendale Rd., Beltsville, MD 20705–1266. Applicants may obtain information about folders for binding applications on the Internet at *http://www.fda.gov/cder/ddms/binders.htm*. After FDA has filed the application, the agency will inform the applicant which division is responsible for the application. Amendments, supplements, resubmissions, requests for waivers, and other correspondence about an application that has been filed should be addressed to 5901–B Ammendale Rd., Beltsville, MD 20705–1266, to the attention of the appropriate division.

* * * * *

§ 314.445 [Amended]

■ 27. Section 314.445 is amended in the third sentence of paragraph (b) by removing ''Division of Communications Management, Drug Information Branch (HFD–210)'' and by adding in its place ''Division of Drug Information'' and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

■ 28. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 371.

§ 320.30 [Amended]

■ 29. Section 320.30 is amended in paragraph (c)(1) by removing ''and Biopharmaceutics (HFD–850), 5600 Fishers Lane, Rockville, MD 20857'' and by adding in its place '', 10903 New Hampshire Ave., Silver Spring, MD 20993–0002''.

PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 30. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.2 [Amended]

■ 31. Section 600.2 is amended as follows:

a. In paragraph (b)(1) by removing ''(HFD–330)''; and by removing ''5600 Fishers Lane, Rockville, MD 20857'' and adding in its place ''10903 New Hampshire Ave., Silver Spring, MD 20993–0002''; and

b. In paragraph (b)(3) by removing ''(HFD–42)''; and by removing ''5600 Fishers Lane, rm. 8B45, Rockville, MD 20857'' and adding in its place ''5901–B Ammendale Rd., Beltsville, MD 20705–1266''.

Dated: March 20, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6795 Filed 3–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds

CFR Correction

In title 21 of the Code of Federal Regulations, part 558, revised as of April 1, 2008, on page 410, in § 558.58 (e)(1)(iii), the entry for Bambermycins 1 to 3, in the column under ''Limitations'' remove ''057926'' and in its place add ''016592''; in the column under ''Sponsors'', add ''016592''.

[FR Doc. E9–6810 Filed 3–25–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 101

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) issues this final rule to amend one provision of its previously issued final rule. Specifically, the Coast Guard is amending its definition of secure area to take into account facilities in American Samoa, whose workers are not required to be authorized to work in the United States under U.S. immigration law when working in American Samoa.

DATES: This final rule is effective March 26, 2009.

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 dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting TSA–2006–24191 or USCG–2006–24196 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LCDR Jonathan Maiorine, Coast Guard; telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS), through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA), published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On September 28, 2007, the Coast Guard and TSA issued a joint final rule (72 FR 55043) that, among other things, revised the definition for ''secure area'' to account for facilities in the Commonwealth of the Northern Mariana Islands (the CNMI), as non-citizen workers at those facilities are not required to have authorization to work in the United States under U.S. immigration law before being allowed to work.

On May 7, 2008, the Coast Guard and TSA issued a joint final rule to realign the compliance date for implementation of the original TWIC final rule (*see* 73 FR 25562). The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels and outer continental shelf facilities must implement access control procedures using TWIC, is April 15, 2009. Owners and operators of facilities that must comply with 33 CFR part 105 are subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e). The Coast Guard announced these rolling compliance dates via notices published in the **Federal Register**. The final compliance date for all COTP Zones is not later than April 15, 2009.

On September 30, 2008, the Coast Guard announced the compliance date for COTP Zone Honolulu would be February 12, 2009 (73 FR 56730). On February 12, 2009, the Coast Guard announced the extension of that compliance date, for the territory of American Samoa only, to April 14, 2009, due to the fact that a large percentage of the maritime workforce is not native to the island, and does not need to be authorized to work in the United States under U.S. immigration law before being allowed to work in American Samoa. In that notice, the Coast Guard stated that the extension was being granted in order to allow time

for the Coast Guard to consult with TSA, DHS, and the Department of State, to determine whether there is an equivalent visa category that these workers could use to qualify for a TWIC, or whether the TWIC requirement for facilities located in American Samoa should be reconsidered. This final rule is the result of those deliberations.

II. Background and Purpose

A complete discussion of the background and purpose of the original TWIC final rule may be found beginning at 72 FR 3494. This final rule is being issued in order to make an amendment to the original TWIC final rule that is necessary to address the fact that non-citizen workers on the island of American Samoa do not meet the immigration eligibility standards to obtain a TWIC, but make up approximately 87% of the maritime workers that would otherwise need a TWIC.

As in the case of the CNMI, while American Samoa is part of the United States, it is not currently included in the definition of ''United States'' for purposes of the Immigration and Nationality Act (8 U.S.C. 110(a)(38)) (Title VII of the Consolidated Natural Resources Act of 2008, Pub. L. 110–229, will change this situation later this year with respect to the CNMI only by bringing the CNMI within U.S. immigration law). Therefore, the work authorization of aliens in American Samoa is a matter of territorial law only, and the U.S. immigration statuses relevant to TWIC eligibility determinations in U.S. jurisdictions subject to the Immigration and Nationality Act do not apply there.

III. Discussion of Change

On September 28, 2007, the Coast Guard and TSA issued a joint final rule (72 FR 55043) that, among other provisions, revised the definition for ''secure area'' to account for facilities in the CNMI, as workers at those facilities are not required to have authorization to work in the United States under U.S. immigration law before being allowed to work in the CNMI.

Similar to the CNMI joint final rule, this final rule amends the definition of ''secure area'' in 33 CFR 101.105, to state that facilities otherwise subject to 33 CFR part 105 located in the territory of American Samoa do not have secure areas for the purposes of the TWIC regulations. This action means that only the facility security officer and facility personnel whose primary employment responsibility is security will be required to obtain a TWIC, per 33 CFR 105.205 and 105.210, respectively.

Note that these facilities must continue to implement their previously approved facility security plans, which include provisions for maintaining access control. Vessels coming from American Samoa to any other port in the United States must continue to go through the same port state control screening required of a vessel coming from a foreign country. Additionally, workers provided unescorted access to facilities in American Samoa would not be eligible for unescorted access to any other part 105 facility outside of American Samoa, nor would they be eligible for unescorted access to any part 104 vessel, unless issued a TWIC.

The rule also takes the opportunity to correct a typographical error in the definition of ''secure area'' that resulted in an incorrect name of a U.S. territory, by changing ''the Commonwealth of Northern Mariana Islands'' to ''the Commonwealth of the Northern Mariana Islands''.

IV. Regulatory Requirements

The Coast Guard has not published a notice of proposed rulemaking (NPRM) for this final rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, because providing opportunity for public comment would be contrary to the public interest. The amendment in this final rule eases a requirement, by removing it completely for an entire class of individuals. This serves the public interest by ensuring that after April 14, 2009, maritime businesses in the territory of American Samoa are able to continue operating without significantly impacting the security risk to the port area. Without this amendment, these businesses would be forced to escort the vast majority of their personnel in secure areas, because 87% of the maritime workforce who would require a TWIC (without this amendment) cannot qualify for one. This would be unduly disruptive to commerce in American Samoa and is therefore contrary to the public interest.

For the same reasons, and because this change is required before the April 14, 2009, TWIC compliance date, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be minimal; therefore a full economic evaluation is unnecessary.

This final rule effectively removes the TWIC requirement for the majority of workers at facilities located in the territory of American Samoa, thus lessening the costs of the regulatory action for the owners of these facilities, and removing it entirely for those workers who will no longer be required to purchase a TWIC.

B. 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.

For the reasons stated above, we expect this final rule to reduce TWIC-related compliance costs, particularly with respect to the costs of providing escorted access to secure areas, for facilities located in American Samoa. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. 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 the rule so that they could better evaluate its effects on them and participate in the rulemaking. 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.

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).

D. 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).

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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 that 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 section 2.B.2, figure 2–1, paragraph (34)(c) of the Instruction. This rule involves regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 101 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.105 [Amended]

■ 2. In § 101.105, in the definition for ''secure area'', remove the words ''Commonwealth of Northern Mariana Islands'' and add, in their place, the words ''Commonwealth of the Northern Mariana Islands and American Samoa''.

Dated: March 19, 2009.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security, and Stewardship.

[FR Doc. E9–6833 Filed 3–24–09; 11:15 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0069]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 23 bridge across the Gulf Intracoastal

Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. This test deviation will allow the draw to open on signal; except that, the draw need not be opened for the passage of vessels from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 7 p.m. Monday through Friday, except Federal holidays.

DATES: This deviation is effective from April 10, 2009 until May 11, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0069 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov.*

(2) 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.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call David Frank, Bridge Administration Branch, telephone (504) 671–2128. 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. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG–2008–0069, indicate the specific section of this document to which each comment applies, and give the reason for each comment. 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. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 81/2 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. We may change this proposed rule in view of them.

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* at any time, click on ''Search for Dockets,'' and enter the docket number for this rulemaking USCG–2008–0069 in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, 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 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Background and Purpose

Plaquemines Parish has requested that a regulation regarding the operation of the SR 23 bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana to allow for the bridge to remain in the closed-to-navigation for an additional 90 minutes in the afternoon to facilitate the movement of vehicular traffic. Presently, the draw need not open for the passage of vessels in the afternoon from 3:30 p.m. until 5:30 p.m. The request from Plaquemines Parish is to add an additional 90 minutes to the closure in the afternoon so that the draw need not open for the passage of vessels from 3:30 p.m. until 7 p.m. The Louisiana Department of Transportation and Development has reviewed their bridge tender logs and have estimated that the change in the schedule affects an average of two vessels. It should be noted that the vertical clearance of the bridge in the closed-to-navigation position is 40 feet above mean high water in the closed-to-navigation position so only vessels with vertical clearance requirements of more than 40 feet will be affected by the proposed change.

This bridge currently opens on signal; except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels. Plaquemines Parish has requested that the bridge remain closed an additional 90 minutes in the afternoon, until 7 p.m. in the evening to minimize the delays to traffic caused by the opening of the bridge. A recent traffic study indicates that between 1500 and 2000 vehicles per hour cross the bridge during weekday afternoons. When the bridge opens for the passage of a vessel at 5:30 p.m., traffic may back up for more than two miles. As SR 23 is the main highway into and out of Plaquemines Parish, the traffic backup severely hampers the ability of emergency responders to transit in the area. Plaquemines Parish Office of Emergency Management has indicated that the increase in times in the afternoon will allow for most of the traffic to clear out of the area. They believe that the request will only cause a minor increase in delays for vessels wishing to use the area. An alternate route via the Harvey Canal is available for vessels with vertical clearances of greater than 40 feet if they do not wish to be delayed.

During this test deviation, a count of the delayed vessels during the closure periods will be taken to ensure a future regulation will not have a significant impact on navigation. This test deviation has been coordinated with the main commercial waterway user group that has vessels transiting in this area, and currently there is no expectation of any significant impacts on navigation.

The deviation period will be from April 10, 2009 until May 11, 2009, and the operating schedule is, the draw shall open on signal; except that, the draw need not be opened from 6 a.m. to 8:30 a.m., and from 3:30 p.m. to 7 p.m.,

Monday through Friday except Federal holidays.

A Notice of Proposed Rule Making, USCG–2008–1158, is being issued in conjunction with this Temporary Deviation to obtain public comments. The Notice of Proposed Rule Making will be in effect for two months from March 26, 2009 until May 26, 2009. The Coast Guard will evaluate public comments from this Temporary Deviation and the above referenced Notice of Proposed Rule Making to determine if a permanent change to the drawbridge operating regulation at 33 CFR 117.451(b) is warranted.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 9, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–6689 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0144]

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor in April 2009. This action is necessary to protect vessels and people from the hazards associated with fireworks displays. This safety zone will restrict vessel traffic from a portion of the Captain of the Port Lake Michigan Zone.

DATES: The regulations in 33 CFR 165.931 will be enforced from 7:30 p.m. through 8:30 p.m. on April 4, 2009, and from 7:30 p.m. through 8:30 p.m. on April 11, 2009.

FOR FURTHER INFORMATION CONTACT: LCDR Bannan, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI, at (414) 747–7154.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone, Navy Pier Southeast, Chicago Harbor, Chicago, IL, 33 CFR 165.931, for the following events:

(1) *Navy Pier Private Party*; on April 4, 2009, from 7:30 p.m. through 8:30 p.m.

(2) *Navy Pier Private Party*; on April 11, 2009, from 7:30 p.m. through 8:30 p.m.

All vessels must obtain permission from the Captain of the Port or designated representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931, Safety Zone, Navy Pier Southeast, Chicago Harbor, Chicago, IL (72 FR 32520, Jun. 13, 2007), and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners and Local Notice to Mariners.

The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on channel 16, VHF–FM.

Dated: March 9, 2009.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E9–6809 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0359–200823(a); FRL8781–7]

Approval and Promulgation of Implementation Plans; Revisions to the Alabama State Implementation Plan; Birmingham and Jackson Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Alabama State Implementation Plan (SIP) for two separate areas: Birmingham nonattainment area and Jackson County nonattainment area for both the 8-hour ozone and the PM2.5 National Ambient Air Quality Standard. On March 7, 2007, and on January 8, 2009, revisions of the transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures were submitted to EPA for approval by the state of Alabama. The intended effect is to update the transportation conformity criteria and procedures in the Alabama SIP.

DATES: This direct final rule is effective May 26, 2009 without further notice, unless EPA receives adverse comment by April 27, 2009 If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0359, by one of the following methods:

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

(b) E-mail: *wood.amanetta@epa.gov*.

(c) Fax: (404) 562–9019.

(d) Mail: ''EPA–R04–OAR–2007–0359,'' Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

(e) Hand Delivery or Courier: Amanetta Wood, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2007–0359.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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

FOR FURTHER INFORMATION CONTACT: Amanetta Wood, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Wood's telephone number is 404–562–9025. She can also be reached via electronic mail at *wood.amanetta@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Transportation Conformity

Transportation conformity is required under section 176(c) of the Clean Air Act (''CAA'' or ''Act'') to ensure that federally supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for the following transportation related criteria pollutants: ozone, particulate matter (e.g., PM2.5 and PM10), carbon monoxide (CO), and nitrogen dioxide (NO_{10}).

Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant criteria pollutants, also known as national ambient air quality standards (NAAQS). The transportation conformity regulation is found in 40 CFR Part 93 and provisions related to conformity SIPs are found in 40 CFR 51.390.

II. Background for This Action

A. Federal Requirements

EPA promulgated the Federal transportation conformity criteria and procedures (''Conformity Rule'') on November 24, 1993 (58 FR 62188). Among other elements, the rule required states to address all provisions of the Conformity Rule in their SIPs, frequently referred to as ''conformity SIPs''. Under 40 CFR 51.390, most sections of the Conformity Rule were required to be incorporated into the SIP verbatim. States were also allowed to tailor all or portions of the following three sections of the Conformity Rule to meet their states' individual circumstances: 40 CFR 93.105 (which addresses consultation procedures); 40 CFR 93.122(a)(4)(ii) (which addresses written commitments to control measures that are not included in a metropolitan planning organization's (MPO's) transportation plan and transportation improvement program that must be obtained prior to a conformity determination, and the requirement that such commitments, when they exist, must be fulfilled); and 40 CFR 93.125(c) (which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination, and the requirement that project sponsors must comply with such commitments, when they exist).

On August 10, 2005, the ''Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users'' (SAFETEA–LU) was signed into law. SAFETEA–LU revised section 176(c) of the CAA's transportation conformity provisions. One of the changes streamlined the requirements for conformity SIPs. Under SAFETEA–LU, states are now required to address and tailor only the following three sections of the Conformity Rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that address the other sections of the Conformity Rule. These changes took effect on August 10, 2005, when SAFETEA–LU was signed into law.

B. Birmingham Conformity SIP

Effective June 15, 2004, EPA designated the entire counties of Jefferson and Shelby in the Birmingham, Alabama Area, as nonattainment for the 1997 8-hour ozone standard. On May 12, 2006, EPA redesignated the 1997 8-hour ozone Birmingham Nonattainment Area to attainment for the 1997 8-hour ozone NAAQS (71 FR 27631). Effective April 5, 2005, EPA designated the entire counties of Jefferson and Shelby, and a portion of the county of Walker in the Birmingham Area, as nonattainment for the PM2.5 standard. The current designation status of the Birmingham PM2.5 Area is nonattainment. For further information, see 40 CFR 81 for Birmingham, Alabama air quality planning areas and designations.

The Birmingham Metropolitan Planning Organization (BMPO) is the MPO for the entire Birmingham 1997 8-hour ozone Area, and for most of the Birmingham PM2.5 Area. BMPO's planning boundary includes Jefferson and Shelby Counties in Alabama. The portion of Walker County, Alabama that is designated nonattainment as part of the Birmingham PM2.5 Nonattainment Area is not within the BMPO planning boundary, and thus is considered a ''donut'' area for the purposes of implementing transportation conformity in this area. Per the Transportation Conformity Rule, the MPO's conformity determination is not complete without a regional analysis that considers the projects in the MPO area as well as the donut areas that are within the

nonattainment/maintenance area. For the purposes of implementing 8-hour ozone and PM2.5 conformity, BMPO serves as the lead agency for the preparation, consultation, and distribution of the conformity determinations. BMPO coordinates with the Alabama Department of Transportation for travel-related information for the portion of Walker County that is included in the PM2.5 Nonattainment Area.

The Birmingham area has previously established a transportation conformity SIP. In 2002, EPA approved the State of Alabama's SIP revision which incorporated by reference 40 CFR part 93, subpart A (67 FR 50808), as well as rules consistent with 40 CFR 93.105, 93.122 (a)(4)(ii), and 93.125(c) for the Birmingham area. In addition, the Birmingham area had established a Memorandum of Agreement (MOA) for implementing the conformity Criteria and Consultation Procedure. The new conformity SIP (the subject of this rulemaking) has removed any incorporation by reference and has revised the MOA to be consistent with the SAFETEA–LU revisions to the CAA (Pub. L. 109–59) and subsequent regulations published on January 24, 2008 (73 FR 4420).

C. Jackson County Conformity SIP

Effective April 5, 2005, EPA designated Hamilton County in Tennessee, and portions of Walker and Catoosa Counties in Georgia, and a portion of Jackson County, Alabama in the Tri-state Chattanooga Area, as nonattainment for the PM2.5 standard. The current designation status of the Tri-state Chattanooga PM2.5 Area is nonattainment (including the portion of Jackson County, Alabama). Thus, this area also has to meet transportation conformity requirements.

The Chattanooga Transportation Planning Organization (CHCNGA TPO) is the MPO for most of the Tri-state Chattanooga PM2.5 Area. CHCNGA TPO's planning boundary includes Hamilton County in Tennessee, and Walker and Catoosa Counties in Georgia. Portions of Walker and Catoosa Counties in Georgia, and Jackson County, Alabama, are not within the CHCNGA TPO planning boundary, and thus are considered ''donut'' areas for the purposes of implementing transportation conformity in this area. CHCNGA TPO coordinates with the Alabama Department of Transportation for travel-related information for the portion of Jackson County that is included in the PM2.5 Nonattainment Area. Additionally, the Georgia Department of Transportation coordinates with the Alabama Department of Transportation for travel-related information for Walker and Catoosa that are included in the PM2.5 Nonattainment Area.

As a newly designated nonattainment area, the portion of Jackson County, Alabama that is a part of the Tri-state Chattanooga PM2.5 Area does not have a previous conformity SIP. The State of Tennessee and the State of Georgia will establish conformity procedures for Hamilton County in Tennessee, and portions of Walker and Catoosa Counties in Georgia for their respective states in their individual conformity SIPs. The SIP revision at issue now includes the conformity procedures for the portion of Jackson County, Alabama that is included as part of the Tri-state Chattanooga PM2.5 Area.

III. State Submittal and EPA Evaluation

On March 7, 2007, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted the State's transportation conformity and consultation interagency Memorandum of Agreement (MOA) to EPA as a revision to the SIP, addressing the 8-hour ozone maintenance area and the PM2.5 Nonattainment Area. The Alabama transportation conformity MOA establishes procedures for interagency consultation and supersedes the April 3, 2003, incorporation into the SIP of Chapter 335–3–17 (which included previous procedures for interagency consultation). Alabama Administrative Code (AAC) Chapter 335–3–17 incorporated EPA regulations found in 40 CFR Part 93, Subpart A (July 1, 1997), and 62 FR 43780 (August 15, 1997), by reference and originally only applied to the 1997 8-hour ozone Birmingham Nonattainment Area. The revision to Chapter 335–3–17 that EPA is approving now no longer incorporates the federal transportation conformity rules by reference, but still includes all the minimum requirements of the federal rules. In addition, consistent with ADEM's SIP submittal, AAC Chapter 335–3–17 will now apply to all nonattainment and maintenance areas in Alabama.

On January 8, 2009, the State of Alabama, through ADEM, submitted a SIP revision to the March 2007 Alabama Administrative Code (AAC) Chapter 335–3–17–.01. This action addresses the March 7, 2007 as well as the January 8, 2009, submission.

The State of Alabama developed its consultation rule (AAC Chapter 335–3–17) based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c) and included it in the MOA. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from: ADEM; the Alabama Department of Transportation (DOT); the Birmingham Regional Planning Commission (BRPC); Birmingham Metropolitan Planning Organization, Federal Highway Administration—Alabama Division; Federal Transit Administration; Jefferson County Department of Health (JCDH); Jefferson County Transit Authority (B–JCTA); and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the consultation MOA. The consultation process developed in this MOA is for the State of Alabama. The MOA is enforceable against the parties by their consent in the MOA to allow the Attorney General for the State of Alabama to sue any or all of the agencies for specific performance or other relief on behalf of the citizens of Alabama. On January 4, 2007, ADEM held a public hearing for the transportation conformity MOA and rulemaking. The final MOA was issued by Alabama on April 3, 2007, and subsequently submitted to EPA as a SIP revision. On October 8, 2008, ADEM held a public hearing for a second revision to the transportation conformity rulemaking. The final rulemaking package for the second revision was issued by Alabama on December 12, 2008, and subsequently submitted to EPA as a SIP revision.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of federal transportation conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. ADEM has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the revision to the Alabama SIP, as well as AAC Chapters 335–3–17–.01 and .02, ''Conformity of Federal Actions to State Implementation Plans.'' EPA's rules requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and U.S. Department of Transportation in consulting with the state and local air quality agencies and

EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the U.S. Department of Transportation.

EPA has reviewed the submittal to ensure consistency with the CAA as amended by SAFETEA–LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and have concluded that the submittal is approvable. Details of our review are set forth in a technical support document (TSD), which has been included in the docket for this action. Specifically, in the TSD, we identify how the submitted procedures satisfy our requirements under 40 CFR 93.105 for interagency consultation with respect to the development of transportation plans and programs, SIPs, and conformity determinations, the resolution of conflicts, and the provision of adequate public consultation, and our requirements under 40 CFR 93.122(a)(4)(ii) and 93.125(c) for enforceability of control measures and mitigation measures.

IV. Public Comment and Final Action

For the reasons set forth above, EPA is taking action under section 110 of the Act to approve the MOA implementing the conformity criteria and consultation procedures revision to the Alabama SIP pursuant to the CAA, as a revision to the Alabama SIP. As a result of this action, the Birmingham area's previously SIP-approved conformity procedures for the Birmingham area (79 FR 7487, April 23, 2003) will be replaced by the procedures adopted by State of Alabama on February 23, 2007, and December 12, 2008, submitted to EPA on March 7, 2007, and January 8, 2009, for approval, and now being approved into the SIP. This action also establishes consultation procedures for the portion of Jackson County designated nonattainment, adopted by the State of Alabama on February 23, 2007, and December 12, 2008, and submitted to EPA on March 7, 2007, and January 8, 2009, for approval. Additionally, this action will approve the revision of Chapter 335–3–1–.14 and the addition of Chapter 335–3–1–.16, in order to fulfill the emission reporting requirements under 40 CFR 51.125.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 26, 2009 without further notice unless the Agency receives adverse comments by April 27, 2009.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 26, 2009 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**; rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may

not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 25, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart (B)—Alabama

■ 2. Section 52.50(e) is amended by adding a new entry at the end of the table for ''Conformity SIP for Birmingham and Jackson County'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Conformity SIP for Birmingham and Jackson County.	Jefferson County, Shelby County, Jackson County.	12/12/2008	3/26/2009 [Insert citation of publication].	

[FR Doc. E9–6647 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2008–0942; FRL–8781–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Other Solid Waste Incinerator Units; Arizona; Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a negative declaration submitted by the Pima County Department of Environmental Quality. The negative declaration certifies that other solid waste incinerator units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: This rule is effective on May 26, 2009 without further notice, unless EPA receives adverse comments by April 27, 2009. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0942, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov*.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California.

While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background

Sections 111(d) and 129 of the Clean Air Act (CAA or the Act) require States to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA also requires EPA to promulgate EG for solid waste incineration units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 16, 2005, (70 FR 74870), EPA promulgated new source performance standards and EG for other solid waste incineration (OSWI) units, located at 40 CFR part 60, subparts EEEE and FFFF, respectively. The designated facility to which the EG apply is each existing OSWI unit, as defined in subpart FFFF, that commenced construction on or before December 9, 2004.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a State, the State must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the State, the State may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the State from the requirements of subpart B for the submittal of a 111(d)/129 plan.

II. Final EPA Action

The Pima County Department of Environmental Quality (PDEQ) has determined that there are no designated facilities subject to the OSWI unit EG requirements in its air pollution control jurisdiction. On April 14, 2008, PDEQ submitted to EPA a negative declaration letter certifying this fact. EPA is amending 40 CFR part 62, subpart D—Arizona, to reflect the receipt of this negative declaration letter.

After publication of this **Federal Register** notice, if an OSWI facility is later found within the PDEQ jurisdiction, then the overlooked facility will become subject to the requirements of the Federal OSWI 111(d)/129 plan, including the compliance schedule. The Federal plan would no longer apply if EPA were to subsequently receive and approve a 111(d)/129 plan from PDEQ.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for State air pollution control agencies under 40 CFR parts 60 and 62. In the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve PDEQ's negative declaration should relevant adverse or critical comments be filed.

This rule will be effective May 26, 2009 without further notice unless the Agency receives relevant adverse comments by April 27, 2009. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a state plan submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7429(b)(2); 40 CFR 62.02(a). Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: February 18, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 62, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

■ 2. Subpart D is amended by adding an undesignated center heading and § 62.660 to read as follows:

Emissions From Existing Other Solid Waste Incineration Units

§ 62.660 Identification of plan—negative declaration.

Letter from the Pima County Department of Environmental Quality, submitted on April 14, 2008, certifying that there are no existing other solid waste incineration units in its jurisdiction subject to 40 CFR part 60, subpart FFFF, of this chapter.

[FR Doc. E9–6641 Filed 3–25–09; 8:45 am]

BILLING CODE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 77, and 78

[EPA–HQ–OAR–2008–0774; FRL–8786–8]

RIN 2060–AP35

Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received an adverse comment, EPA is withdrawing the direct final rule for ''Rulemaking to Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules,'' which was published in the **Federal Register** on December 15, 2008.

DATES: Effective March 26, 2009, EPA withdraws the direct final rule published at 73 FR 75954 on December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at *alpern.dwight@epa.gov*.

SUPPLEMENTARY INFORMATION: Because EPA received an adverse comment, EPA is withdrawing the direct final rule for ''Rulemaking to Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules,'' which was published on December 15, 2008 (73 FR 75954).

EPA stated in that direct final rule that if EPA received adverse comment by January 29, 2009, the direct final rule would not take effect and EPA would publish a timely withdrawal of the direct final rule in the **Federal Register**. EPA subsequently received an adverse comment on the direct final rule.

Because EPA received an adverse comment, EPA is withdrawing the direct final rule for ''Rulemaking to Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules.'' As stated in the parallel proposed rule (73 FR 75983) published on the same day as the direct final rule, EPA will not institute a second comment period in this proceeding concerning the Acid Rain Program rule revisions addressed in the direct final and parallel proposed rules. EPA will address the adverse comment on the direct final rule in a subsequent final rule based on the parallel proposed rule.

The revisions of the Acid Rain Program rules whose promulgation EPA proposed to reaffirm in the parallel proposed rule were described in detail, along with EPA's reasons for such reaffirmation, in the interim final rule (73 FR 75959) that was published on the same day as the direct final and that reaffirmed—on an interim basis pending final action in this proceeding—the promulgation of the Acid Rain Program rule revisions. EPA notes that it is not withdrawing the interim final rule.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 19, 2009.

Elizabeth Craig,

Acting Assistant Administrator.

■ Accordingly, the direct final rule published in the **Federal Register** on December 15, 2008 (73 FR 75954) is withdrawn as of March 26, 2009.

[FR Doc. E9–6764 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[EPA–HQ–SFUND–1998–0002; FRL 8785–3]

RIN 2050–AE17

Hazardous Chemical Reporting; Tier II Inventory Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA issued a final rule in the **Federal Register** on November 3, 2008, amending the Emergency Planning and Emergency Release Notification and Hazardous Chemical Reporting regulations, as well as re-writing the regulations in a plain language format. This document is being issued to correct a technical error to the regulatory text in Hazardous Chemical Reporting, specifically in the Tier II inventory information section.

DATES: This final rule is effective March 26, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–SFUND–1998–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management (OEM), Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20004; *telephone number*: (202) 564–8019; *fax number*: (202) 564–2620; *e-mail address: jacob.sicy@epa.gov*. Also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington, DC metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC metropolitan area). You may wish to visit the OEM Internet site at *http://www.epa.gov/emergencies*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the November 3, 2008 final rule who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does This Correction Do?

This document is being issued to correct a technical error in the regulatory text published in the final rule on November 3, 2008 (723 FR 65452), in 40 CFR 370.42(i)(8) and (9). Specifically, the November 2008 final rule amended 40 CFR parts 355 and 370, as well as rewrote the regulations in a plain language format; the final rule is based on a June 8, 1998 (63 FR 31268) proposed rule in which EPA proposed several revisions to parts 355 and 370, as well as proposed to reorganize and rewrite the regulations in a plain language format. Prior to the November 2008 final rule, the instructions to the Tier II inventory form in 40 CFR 370 allowed facilities to include optional attachments with their inventory form. These optional items include: a site plan with site coordinates, a list of site coordinate abbreviations that correspond to buildings, lots, etc. or a description of dikes and other safeguard measures for storage locations throughout the facility. Although the Agency did not propose any revisions to these specific instructions in the June 1998 proposed rule, the Agency made an error in the November 2008 final rule, while reorganizing the instructions to the Tier II inventory form. The Agency inadvertently listed one of the optional items, description of dikes and other safeguard measures, as a required item in 40 CFR 370.42(i)(9).

This document corrects this error by deleting the phrase, ''a description of dikes and other safeguard measures for each location listed'' from 40 CFR 370.42(i)(9), and re-inserting this phrase into 40 CFR 370.42(i)(8), which has also been re-formatted to provide greater clarity.

III. Authority Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this final rule corrects a technical error, adds clarity, and does not otherwise change the original requirements of the final rule. This section of the regulations was not proposed for any revisions in the June 8, 1998 proposed rule; it was only proposed for a rewrite in a plain language format. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to This Action?

This final rule corrects a technical error and does not otherwise change the requirements in the final rule. As a technical correction, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Section III in the **Federal Register** of November 3, 2008.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq*., generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 370

Environmental protection, Chemicals, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Superfund.

Dated: March 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 370—[AMENDED]

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

Authority: Sections 302, 311, 312, 322, 324, 325, 327, 328, and 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (Pub. L. 99–499, 100 Stat. 1613, 42 U.S.C. 11002, 11021, 11022, 11042, 11044, 11045, 11047, 11048, and 11049).

■ 2. In § 370.42 revise paragraphs (i)(8) and (9) to read as follows:

§ 370.42 What is Tier II Inventory Information?

* * * * *

(i) * * *

(8) (i) Provide a brief description of the precise location of the hazardous chemical at your facility. You may also attach one of the following with your Tier II inventory form.

(A) *A site plan* with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.

(B) *A list of site coordinate abbreviations* that correspond to buildings, lots, areas, etc. throughout your facility.

(C) *A description of dikes and other safeguard measures* for storage locations throughout your facility.

(ii) Under EPCRA section 324, you may choose to withhold from disclosure to the public the location information for a specific chemical. If you choose to withhold the location information from disclosure to the public, you must clearly indicate that the information is ''confidential.'' You must provide the confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.

(9) Provide a brief description of the manner of storage of the hazardous chemical, including container type, temperature and pressure for each location listed. You must use codes that correspond to different storage types and temperature and pressure conditions. The storage codes are in § 370.43. If the specific location for which you are reporting storage conditions is a ''confidential'' location, then you must report the storage conditions on a separate Confidential Location Information Sheet.

[FR Doc. E9–6264 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–412; MB Docket No. 08–26; RM–11418]

Radio Broadcasting Services; Evart and Ludington, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Roy E. Henderson, allots FM Channel 274A at Evart, Michigan, as that community's first local service. In order to accommodate that allotment, the Audio Division also substitutes Channel 249A for vacant FM Channel 242A at Ludington, Michigan. Channel 274A can be allotted at Evart, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.6 km (9.1 miles) north of Evart at the following reference coordinates: 44–01–43 North Latitude and 85–17–51 West Longitude. Channel 249A can be allotted at Ludington, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.0 km (5.6 miles) north of Ludington at the following reference coordinates: 44–01–53 North Latitude and 86–24–57 West Longitude.

DATES: Effective April 13, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–26, adopted February 25, 2009, and released February 27, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it dos not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Evart, Channel 274A, by removing Channel 242A and by adding Channel 249A at Ludington.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E9–6791 Filed 3–25–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XL91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, March 27, 2009, through June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial fishery for the Gulf of Mexico migratory group of king mackerel in the western zone is managed under a commercial quota of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001) for the current fishing year, July 1, 2008, through June 30, 2009.

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached by March 27, 2009. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective noon, local time, March 27, 2009, through June 30, 2009, the end of the fishing year. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in

king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: March 20, 2009.

Emily H. Menashes,

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

[FR Doc. E9–6771 Filed 3–23–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 57
Thursday, March 26, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. # AMS–CN–09–0011; CN–09–001]

User Fees for 2009 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to raise user fees for cotton producers for 2009 crop cotton classification services under the Cotton Statistics and Estimates Act. These user fees also are authorized under the Cotton Standards Act of 1923. The 2008 user fee for this classification service was $2.00 per bale. This proposal would raise the fee for the 2009 crop to $2.20 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: Comments must be received on or before April 10, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Darryl Earnest, Deputy Administrator, Cotton and Tobacco Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *regulations.gov*. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Rm. 2637—South Building, 1400 Independence Avenue, SW., Washington, DC. Comments can also be viewed on: *regulations.gov*. A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Program, AMS, USDA, Room 2637–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The increase above the 2008 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2008 user fee for classification services was $2.00 per bale; the fee for the 2009 crop would be increased to $2.20 per bale; the 2009 crop is estimated at 14,500,000 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2008 crop, 12,740,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2007 crop of 53.50 cents per pound, 500 pound bales of cotton are worth an average of $267.50 each. The proposed user fee increase for classification services, $.20 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This proposed rule would establish the user fee charged to producers for HVI classification at $2.20 per bale for the 2009 cotton crop. The 2009 user fee charged to cotton producers for High Volume Instrument (HVI) classification was calculated using new methodology, as was authorized by section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). In previous years, the fee was determined using a user-fee formula mandated in the Uniform Cotton Classing Fees Act of 1987 (Pub. L. 100–108, 101 Stat. 728) (1987 Act), as amended. This formula used the previous year's base fee that was adjusted for inflation and economies of size (1 percent decrease/increase for every 100,000 bales above/below 12.5 million bales with maximum adjustment being ±15 percent). The user fee was then further adjusted to comply with operating reserve constraints (between 10 and 25 percent of projected operating costs) specified by the 1987 Act.

The 2008 user fee charged to cotton producers for High Volume Instrument

(HVI) classification services under the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) was $2.00 per bale during the 2008 harvest season as determined by using the formula provided in the 1987 Act. The fee covered salaries, costs of equipment and supplies, and other overhead costs, including costs for administration and supervision. Also, the fee structure for the 2007 crop year was incorporated under the authority of the Cotton Standards Act of 1923 (7 U.S.C 51–65), by an interim final rule effective October 1, 2007 (72 FR 56242).

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar per bale classed) is established that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to four months of projected operating costs.

Extensive consultations regarding the establishment of the classification fee with U.S. cotton industry representatives were held during the period from September 2008 through January 2009 during numerous publicly held meetings. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were addressed in various industry-sponsored forums.

The user fee established to be charged cotton producers for High Volume Instrument (HVI) classification in 2009 is $2.20 per bale. This fee is based on the pre-season projection that 14.5 million bales will be classed by the United States Department of Agriculture during the 2009 crop year.

Accordingly § 28.909, paragraph (b) would reflect the increase of the HVI classification fee to $2.20 per bale.

A 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would increase to $2.20 per bale.

The fee for returning samples after classification in § 28.911 would remain at 50 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed changes, if adopted, would be made effective for the 2009 cotton crop on July 1, 2009.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended to read as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: March 23, 2009.

Craig Morris,

Acting Associate Administrator.

[FR Doc. E9–6805 Filed 3–23–09; 4:15 pm]

BILLING CODE

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AD57

Truth in Savings Act Disclosures

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: As required by the Truth in Savings Act (TISA), NCUA is proposing to amend its TISA rule and official staff interpretation to align it with the Federal Reserve Board's Regulation DD. Specifically, the rule would amend the provisions and provide guidance on the electronic delivery of disclosures.

Additionally, NCUA is proposing to amend the rule and the official staff commentary to require all credit unions to disclose aggregate overdraft fees on periodic statements; currently, this disclosure requirement only applies to credit unions that promote the payment of overdrafts. The proposed rule also addresses balance disclosures credit unions provide to members through automated systems.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Part 707 Truth in Savings'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment, weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Moisette I. Green, Staff Attorney, at the address above or telephone: (703) 518–6540. For information regarding the paperwork burden, contact Michael Ryan, Risk Analysis Officer, at the address above or telephone number (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

To comply with the Truth in Savings Act (TISA), NCUA is issuing this proposed rule with request for comments, which is substantially similar to the Federal Reserve Board's (FRB's) October 2007 and December 2008 final rules. *See* 72 FR 63477 (November 9, 2007); 74 FR 5584 (January 29, 2009). TISA requires NCUA to promulgate regulations substantially similar to those the FRB issues within 90 days of the effective date of an FRB rule. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and limitations under which they pay dividends on member accounts. *Id.*

II. Procedural and Substantive Background on Electronic Disclosure Provisions

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.*, enacted in 2000, provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. Under the E-Sign Act, member disclosures, which are required by other laws or regulations to be provided or made available in writing, may be provided or made available in electronic form if a member affirmatively consents after receiving disclosures informing the member of: (1) The right to receive the required information in writing; (2) the consent necessary to receive electronic notices; (3) procedures to withdraw consent; (4) how to receive a paper copy of an electronic record and any fees; and, (5) the equipment needed to receive e-notices. 15 U.S.C. 7001(c).

The E-Sign Act, including the special notice and consent provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, credit unions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the member in writing under Part 707 if the member affirmatively consents to receive electronic disclosures in the manner required by section 101(c) of the E-Sign Act. *Id.*

In April 2001, the FRB published an interim final rule to establish uniform standards for electronic delivery of disclosures under its TISA regulation, Regulation DD, 12 CFR part 230. 66 FR 17795 (April 4, 2001). The interim final rule incorporated the requirements of the E-Sign Act and required depository institutions to obtain consumers' consent to provide TISA disclosures electronically. *Id.* NCUA adopted a substantially similar rule in June 2001. 66 FR 33159 (June 21, 2001).

In October 2007, the FRB adopted final amendments changing some provisions in the interim rule adopted over six years earlier. In brief, some regulatory text was dropped and staff commentary revised in the FRB's Regulation DD to address confusion about electronic disclosure provisions, enhance consumers' ability to shop for deposit account products online, and minimize burdens on consumers and on using electronic disclosures. 72 FR 63477 (November 9, 2007). In accordance with the E-Sign Act as applied to account-opening disclosures, periodic statements, and change-in-terms notices, the FRB required depository institutions to obtain the consumer's consent, to provide the disclosures in electronic form or else provide written disclosures. The FRB deleted certain regulatory text that restated or cross-referenced the E-Sign Act's general rules regarding electronic disclosures, including the consumer consent provisions because the E-Sign Act is a self-effectuating statute. 12 CFR 230.10 (2007) (section removed by October 2007 final rule). Finally, the FRB specified the circumstances under which certain disclosures may be provided in electronic form without obtaining the consumer's consent under section 101(c) of the E-Sign Act. 15 U.S.C. 7001(c). The final rule was effective December 10, 2007, with October 1, 2008 as the compliance date.

NCUA did not issue a substantially similar rule to revise the staff commentary and remove § 707.10 in 2007 but is incorporating those changes now along with other changes the FRB made to its Regulation DD in December 2008. The Board believes the delayed compliance date for credit unions and their members has not negatively affected them because it is unaware of any significant confusion for credit unions or their members about credit unions' obligation to obtain members' consent to provide disclosures electronically, as required by the E-Sign Act.

III. Background on Overdraft Services and Regulatory Action

In recent years, many credit unions have largely automated the overdraft payment process,[1] and use automation to set the criteria for determining whether to honor overdrafts and the limits on overdraft coverage provided. Overdraft services vary among credit unions but often share certain common characteristics. While credit unions generally do not initially underwrite on an individual account basis when enrolling a member in the service, most

[1] NCUA's general lending rule specifically permits a federal credit union to provide overdraft protection to members if it has a written policy addressing certain requirements, such as individual and aggregate limits. 12 CFR 701.21(c)(3).

credit unions will review individual accounts periodically to determine if a member continues to qualify for the service, and the amounts that may be covered.

Most credit unions disclose that the payment of overdrafts is discretionary and that the credit union has no legal obligation to pay any overdraft. In the past, credit unions generally provided overdraft coverage only for check transactions; however, in recent years, the service has been extended to cover overdrafts resulting from non-check transactions, including withdrawals at automated teller machines (ATMs), automated clearinghouse (ACH) transactions, point-of-sale debit card transactions, pre-authorized automatic debits from a member's account, telephone-initiated funds transfers, and online banking transactions. A flat fee is charged when an overdraft is paid, regardless of the overdraft amount. Credit unions commonly charge the same amount for paying an overdraft as they would if they returned the item unpaid. A daily fee also may apply for each day the account remains overdrawn.

In February 2005, NCUA, along with the FRB, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, published guidance on overdraft protection programs in response to concerns about aspects of the growing marketing, disclosure, and implementation of overdraft services. 70 FR 9127 (February 24, 2005) (Joint Guidance). The Joint Guidance addressed three primary areas: (1) Safety and soundness considerations; (2) legal risks; and, (3) best practices.[2] The best practices in the Joint Guidance focused on the marketing of overdraft services and the disclosure and operation of program features, including distinguishing actual available account balances from account balances that include overdraft protection amounts.

In May 2005, the FRB published revisions to Regulation DD and the official staff commentary to address concerns about the uniformity and adequacy of disclosure of overdraft fees generally, and the advertisement of overdraft services in particular. 70 FR 29582 (May 24, 2005). Under the May 2005 final rule, which became effective July 1, 2006, all depository institutions were required to specify in their account disclosures the categories of transactions for which an overdraft fee may be imposed. Depository institutions that promote the payment of overdrafts in an advertisement were required to include in the advertisements certain information about the costs associated with the service and the circumstances under which the credit union would not pay an overdraft.

Depository institutions were also required to disclose separately on their periodic statements the total amount of fees or charges imposed on the account for paying overdrafts and the total amount of fees charged for returning items unpaid. The disclosures were required to be provided for the statement period and for the calendar year-to-date. NCUA adopted a substantially similar rule for credit unions in April 2006. 71 FR 24568 (April 26, 2006).

In May 2008, under its TISA authority,[3] the FRB issued a proposed rule on new disclosure requirements under Regulation DD, which were adopted in final in December 2008. 73 FR 28739 (May 19, 2008); 74 FR 5584 (January 29, 2009). The final rule amended Regulation DD and the official staff commentary to expand the requirement to disclose overdraft fees on periodic statements to apply to all depository institutions, and not just those that promote the payment of overdrafts. The final rule includes format requirements to help make the aggregate fee disclosures more effective and noticeable to consumers. Additionally, the final rule requires an account balance, which is disclosed to consumers by an automated system such as an ATM, Web site, or telephone response system, to exclude additional amounts institutions may provide or which institutions may transfer from another account to cover an item where there are insufficient funds in an account. The rule is designed to ensure consumers are not confused or misled about the available funds in their accounts when they request account balances. The final rule permits an institution to disclose an additional balance that includes funds provided by a discretionary overdraft service or a line of credit, or funds that could be transferred from a consumer's linked individual or joint account, so long as the institution prominently states the balance includes these additional amounts.[4]

The Proposed Rule

The Board is proposing to revise NCUA's TISA rule to adopt the FRB's recent changes to Regulation DD and its accompanying staff commentary. NCUA is required to issue rules substantively similar to those of the FRB within 90 days of the effective date of the FRB's rules. 12 U.S.C. 4311(b). The FRB's most recent final rule will not be effective until January 1, 2010, and the Board wants to permit credit unions to comment on the proposed changes to the TISA rule and allow sufficient time for necessary operational adjustments. To ensure uniformity in disclosure requirements for financial institutions, the Board intends for the provisions dealing with electronic disclosure to be effective within 30 days of a final rule but, for the provisions changing disclosure requirements for overdraft programs, to issue provide the same effective date as the FRB's recent final amendments to Regulation DD, namely, January 1, 2010. The Board encourages interested parties to submit comments on this proposal but commenters should keep in mind that NCUA's TISA regulation must be substantially similar to the FRB's rule and vary only to the extent necessary to address unique credit union differences. A section-by-section discussion of the proposed revisions follows below.

IV. Section-by-Section Analysis

Section 707.3 General Disclosure Requirements

Section 707.3(a) prescribes the form of disclosures required for member accounts and generally requires credit unions to provide the disclosures in writing and in a form a member or potential member may keep. The proposed rule would revise § 707.3(a) to clarify that credit unions may provide disclosures to members or potential members in electronic form, subject to compliance with the consent and other applicable provisions of the E-Sign Act.

[2] The Office of Thrift Supervision published similar guidance focusing on safety and soundness considerations and best practices. *See* 70 FR 8428 (February 18, 2005).

[3] In May 2008, NCUA, the FRB, and the Office of Thrift Supervision (OTS) jointly proposed substantive consumer protections under the Federal Trade Commission Act, the so-called unfair and deceptive acts and practices (UDAP) rule that, among other matters, addressed concerns that consumers may not adequately understand the costs of overdraft services or how overdraft services operate generally. 73 FR 28904 (May 19, 2008). Among other provisions, the proposed rule would have required consumers to have the right to opt out of the payment of overdrafts but the provision was dropped from UDAP when it was finalized in December based on the agencies' decision to address disclosures on overdraft services through TISA regulations. NCUA adopted the UDAP provisions in its Credit Practice Rule in Part 706.

[4] The FRB has proposed opt-out requirements for overdraft programs using its authority under the Electronic Fund Transfer Act and Regulation E. 74 FR 5212 (January 29, 2009). As an alternative, the Regulation E proposal would also require financial institutions to provide customers an opt-in to payment of overdrafts for ATM and debit transactions, and includes a proposed model opt-in notice. The Regulation E proposal would apply to all financial institutions, including credit unions.

Some credit unions may provide disclosures to members or potential members both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those credit unions, the proposal would permit the duplicate electronic form of the disclosures to members or potential members without regard to the consent or other provisions of the E-Sign Act because the electronic form of the disclosure would not be used to satisfy the regulation's disclosure requirements. The proposed revisions to § 707.3(a) would also permit credit unions to provide the disclosures required by §§ 707.4(a)(2) (disclosures provided upon request) and 707.8 (advertising) in electronic form, under the circumstances in those sections, without regard to the consent or other provisions of the E-Sign Act.

Section 707.8 currently requires that, if certain information is stated in an advertisement, or if an advertisement promotes the payment of overdrafts, the advertisement must also include specified disclosures. The Board believes that, for an advertisement accessed by a member or potential member in electronic form, permitting credit unions to provide the required disclosures in electronic form without regard to the consent and other provisions of the E-Sign Act will eliminate a potential, significant burden on electronic commerce without increasing the risk of harm to members or potential members. This approach will facilitate shopping for deposit products by enabling members or potential members to receive important disclosures at the same time they access an advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring members or potential members to follow the consent procedures in the E-Sign Act in order to access an online advertisement is potentially burdensome and could discourage members from shopping for deposit products online. Moreover, because the members or potential members are viewing the advertisement online, there appears to be little, if any, risk that a member or potential member will be unable to view the disclosures online as well.

Similarly, the current § 707.4(a)(2) requires credit unions to provide disclosures with account terms and conditions upon request. If a member or potential member is not present at the credit union and requests the account disclosures, it appears unnecessary and burdensome to require the member or potential member to go through the E-Sign consent procedures before the request could be satisfied, as long as the member or potential member agrees the disclosures can be provided electronically. Applying the E-Sign consent procedures in this context could actually discourage members or potential members from requesting the disclosures.

Currently, § 707.3(g) contains a cross-reference to § 707.10 for rules governing the delivery of electronic disclosures. NCUA is proposing to delete § 707.3(g) for the same reasons it proposes to delete § 707.10, as discussed below.

Section 707.4 Account Disclosures

Credit unions generally must provide account-opening disclosures to members or potential members before an account is opened or a service is provided. Credit unions may delay delivering disclosures if a member or potential member is not present at the credit union when the account is opened or service is provided. Section 707.4(a)(1) provides that, in such cases, account-opening disclosures must be mailed or delivered within ten business days. The rationale underlying the ten-day grace period is credit unions cannot provide written disclosures immediately when, for example, an account is opened by telephone. The proposed rule would clarify credit unions opening accounts by electronic communication, for example, on the internet, may not delay providing disclosures under § 707.4(a)(1). The difficulties in providing disclosures for accounts opened by mail or telephone do not exist for requests to open accounts received by electronic communication using visual text; disclosures can be provided at the same time. Thus, the proposed rule would amend paragraph (ii) to § 707.4(a)(1) and require disclosures must be provided before accounts are opened using electronic communication.

Section 707.4(a)(2)(i) provides that, if a member or potential member is not present at the credit union when a request for account disclosures is made, the credit union must mail or deliver the disclosures within a reasonable time after the credit union receives the request. The Board believes ten days is a reasonable time. The rule in § 707.4(a)(2)(i) allows credit unions to mail or deliver disclosures either in paper form or electronically to members or potential members who are not present at the credit union when they make their request. Under the proposal, to provide the requested disclosures electronically, the credit union must send the disclosures to the member or potential member's e-mail address, or send a notice alerting the member or potential member to the location of the disclosures, such as on the credit union's internet Web site.

Staff Interpretation—Section 707.8 Advertising

The current § 707.8 addresses requirements for advertisements for member accounts, including the requirement that, if an advertisement includes certain ''trigger terms'' such as a bonus or the annual percentage yield, the advertisement must also include certain disclosures. Section 707.8 requires that, if an advertisement includes trigger terms, the advertisement itself must ''state'' the required disclosures ''clearly and conspicuously.'' Therefore, under the existing regulation, providing paper disclosures for an advertisement in electronic form, or vice versa, would not comply because the disclosures would not be stated in the advertisement itself.

Comment 8(a)–9 provides that in an electronic advertisement, the required disclosures need not be shown on each page where a ''trigger term'' appears, as long as each page includes a cross-reference to the page where the required disclosures appear. For example, if a ''trigger term'' appears on a particular web page, the additional disclosures may appear on another Web page if there is a clear reference to that page, which may be accomplished, for example, by including a link.

The proposed rule would add a new comment 8(a)–11 to clarify that rules regarding advertising disclosures provided in electronic form would also apply to the disclosures described in § 707.11(b), which are incorporated by reference in § 707.8(f). Section 707.8(b) permits credit unions to state a rate of return in addition to an annual percentage yield (APY), as long as the rate is stated in conjunction with, but not more conspicuously than, the APY.

Comment 8(b)–4 states that, in an advertisement using electronic communication, a member must be able to view both rates simultaneously and this requirement is not satisfied if the member can view the APY only by use of a link that takes the member to another web location. The proposed rule would delete Comment 8(b)–4. The regulatory requirement is to state the rate of return in conjunction with, but not more conspicuously than, the APY, and this rule applies in the electronic context as well. The Board believes the rule can be applied with some flexibility to account for variations in devices members may use to view electronic advertisements. Therefore, using scrolling or links would not necessarily fail to comply with the regulation;

however, credit unions should ensure electronic advertisements comply with the equal conspicuousness requirement. As for the electronic devices members might use to conduct financial transactions, for example, personal digital assistants, Internet-enabled cell phones, and other small hand-held devices, the Board believes disclosures would comply with the ''clear and conspicuous'' requirement as long as they are provided in a manner that would be clear and conspicuous if viewed on a typical home personal computer monitor.

Section 707.8(e) exempts from some disclosure requirements advertisements made through broadcast or electronic media, such as television and radio or outdoor billboards. Proposed Comment 8(e)(1)(i)–1 would provide this exemption would not apply to advertisements using electronic communication, such as internet advertisements, which do not have the same time and space constraints as radio or television advertisements.

Section 707.10 Electronic Communication

The proposed rule would delete § 707.10 that addresses the general requirements for electronic communications. The proposed deletion does not change applicable legal requirements under the E-Sign Act and has no impact on the general applicability of the E-Sign Act to TISA disclosures. The E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions it sets.

Sections 707.10(d) and (e) have addressed specific timing and delivery requirements for electronic disclosures, such as the requirement to send disclosures to a member's e-mail address or post the disclosures on a Web site and send a notice alerting the member to the disclosures. Section 707.10(e) has required credit unions to take reasonable steps to attempt to redeliver returned electronic disclosures. Tracking the FRB's rule, the Board believes these provisions are no longer necessary or appropriate. Electronic disclosures have evolved as credit unions and members have gained experience with them. The Board notes, however, increased risks to members with the use of electronic mail related to data security, identity theft, and phishing. Accordingly, the Board believes it is preferable not to mandate use of any particular means of electronic delivery of disclosures, but instead to allow credit unions to use whatever method may be best suited to particular types of disclosure, for example, account-opening, periodic statements, or change in terms.

Regarding the general disclosure requirement in § 707.3(a), credit unions would satisfy the requirement for providing electronic disclosures in a form a member can retain if they are provided in a standard electronic format that can be downloaded and saved or printed on a home personal computer. Typically, any document that can be downloaded by a member can also be printed. In a situation where the member is provided electronic disclosures through equipment under the credit union's control, such as a terminal or kiosk in the credit union's offices, the credit union could, for example, provide a printer that automatically prints the disclosures.

While the Board is not requiring disclosures to be maintained on an internet Web site for any specific time period, the general requirements of the rule continue to apply to electronic disclosures, such as the requirement to provide disclosures to members at certain specified times and in a form a member may keep. The Board expects credit unions to maintain disclosures on Web sites for a reasonable period of time, which may vary depending upon the particular disclosure, so that members have an opportunity to access, view, and retain the disclosures.

Section 707.11 Additional Disclosure Requirements Regarding Overdraft Services

11(a) Disclosure of Total Fees on Periodic Statements

Applicability of Aggregate Fee Disclosures

Although periodic statements are not required under TISA, credit unions that provide periodic statements must disclose fees or charges imposed on a member account during the statement period. 12 CFR 707.6(a)(3). Currently, § 707.11(a) requires credit unions that promote the payment of overdrafts in an advertisement to provide on periodic statements the aggregate dollar amount totals for overdraft fees and, for returned item fees, the aggregate totals for both the statement period and the calendar year-to-date.

To inform members about the fees charged for using discretionary overdraft services and to help them better understand the costs associated with their accounts, this proposed rule would expand § 707.11(a) to require all credit unions, regardless of whether they promote the payment of overdrafts, to disclose the aggregate fee information for the statement period and calendar year-to-date. The rule would also add format requirements to help make the aggregate fee disclosures more effective and noticeable to members. The proposed rule would delete examples of communications that would not trigger the aggregate fee disclosure requirement in existing § 707.11(a)(2). Additionally, the proposed commentary would clarify that the aggregate fee total does not include fees for transferring funds from another member account to avoid an overdraft, or fees charged under a service subject to 12 CFR part 226 (Regulation Z).

The intent of the proposed rule is to provide members who use discretionary overdraft services information to help them better understand the overdraft and returned item costs associated with their accounts. The aggregate fee disclosures would benefit members who overdraw their accounts with some frequency, but do not currently receive aggregate fee disclosures because their credit union does not promote its overdraft service. The Board believes the proposed rule would promote greater transparency about the terms and costs of overdraft services for all credit unions. Under the current rule, credit unions that do not promote their overdraft service may be reluctant to provide information about the service out of concern that these disclosures might trigger the aggregate fee disclosure requirements. The Board believes the rule will create consistency in disclosures and will eliminate compliance challenges inherent in a regulatory scheme based on a ''promoting'' or ''marketing'' distinction.

Additionally, the Board believes this requirement is appropriate because overdraft and returned item fees are not as predictable as many other types of account fees.

Members cannot always know when settlement on any one item will occur, particularly relative to other transactions, where a credit union processes items using different methods. Therefore, and balance inquiries may not always contain real-time balance information. Therefore, members may not realize that one overdrawn item could trigger overdrafts on other transactions and, thus, may not be able to predict the total fees that will be charged for any one overdraft occurrence. When there are multiple overdrafts, fee amounts may be significant, even though each item may represent a relatively small dollar amount. The aggregate fee disclosures would benefit members by showing the total expenditures on overdraft fees for the statement period and year, which may encourage members to explore alternatives that might be less costly.

The Board further notes some members are already receiving year-to-date totals from credit unions currently subject to the rule; thus, requiring year-to-date disclosures for all credit unions will promote consistency of disclosure across credit unions. Because the proposed rule would expand the applicability of the aggregate fee disclosures to all credit unions, the existing comment 11(a)(3)–1 would be revised, and comment 11(a)(5)–1 would be deleted.

Format of Aggregate Fee Disclosures

The proposed final rule would add proximity and format requirements to enhance the effectiveness of the disclosures and make them more noticeable. Aggregate fee disclosures must be provided in close proximity to the fees identified under § 707.6(a)(3). The Board believes uniform proximity requirements are necessary to enable members to find fee information easily so they better understand the costs of using the service. Aggregate fee disclosures would be provided using a format substantially similar to proposed Sample Form B–10.

The proposed rule would revise comment 11(a)(1)–3 to clarify that credit unions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe the fees for returning items unpaid. It also would redesignate comment 11(a)(1)–6 as comment 11(a)(1)–4 and address the issue where a credit union provides a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. The comment would provide that, in these circumstances, credit unions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if a credit union assesses a fee in January and refunds the fee in February, the credit union could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. However, because some credit unions may assess and then waive and credit a fee within the same statement cycle, the comment is revised to clarify that, in such a case, the credit union may reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. If the credit union assesses and waives the fee in February, the February fee total could reflect a total net of the waived fee.

11(b) Advertising Disclosures for Overdraft Services

Section 707.11(b)(2) lists the types of communications about the payment of overdrafts not subject to additional advertising disclosures under § 707.11(b)(1). The proposed rule would expand the list in § 707.11(b)(2) to include an opt-out or opt-in notice regarding the credit union's payment of overdrafts or provision of discretionary overdraft services.

11(c) Disclosure of Account Balances

Section 707.11(b)(1) currently requires credit unions that promote the payment of overdrafts to include certain disclosures in their advertisements about the service to avoid confusion between overdraft services and traditional lines of credit. In particular, the commentary stated that a credit union must include the additional advertising disclosures if it ''discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the credit union's internet site.'' 70 FR 72895, 72901 (December 8, 2005) (adopted without change at 71 FR 24568 (April 26, 2006)).

To facilitate responsible use of overdraft services and ensure that members receive accurate information about their account balances, the proposed rule would provide that the balance credit unions disclose may not include: Any funds it may provide to cover an overdraft; funds that will be paid by the credit union under a service subject to Regulation Z; or funds transferred from another member account. The proposed rule would permit a credit union to disclose another balance that includes these additional funds, so long as the credit union prominently states the balance includes them.

Under § 707.11(c) of the proposed rule, if a credit union discloses balance information through an automated system, it would be required to disclose an account balance that excludes funds the credit union may provide to cover an overdraft in its discretion, funds that will be paid by the credit union under a service subject to Regulation Z, or funds transferred from another member account. For example, although a credit union may add a $500 cushion to the member's account balance when determining whether to pay an overdrawn item, under the proposed rule, the additional $500 would not be included in the balance provided to the member through an automated system. The Board believes the requirement to provide a balance not supplemented by overdraft funds should apply equally in these circumstances to ensure members are given an accurate account balance. Thus, the proposed rule would delete the reference to the member's inquiry.

Funds Included in and Excluded From Balance

The rule is not intended to define what funds are available under 12 CFR Part 229 (Regulation CC). Accordingly, to avoid ambiguity, the proposed rule would add § 707.11(c). As discussed below, the proposed rule would not require disclosures of real-time balances nor otherwise affect what funds a credit union considers to be available.

Additionally, the proposed rule would not permit credit unions to include amounts available under a member's overdraft line of credit with the credit union or funds from a linked account, such as a share savings account, in the balance disclosure. The Board is concerned that permitting a balance to include funds available under a member's overdraft line of credit or through a transfer from a member's share savings or other linked account would cause confusion regarding the amount a member may withdraw or spend without incurring an overdraft. Thus, the proposal would revise § 707.11(c) to clarify that a credit union must disclose a balance that does not include: additional amounts the credit union may provide in its discretion to cover an overdraft; funds that will be paid by the credit union under a service subject to Regulation Z; or funds transferred from another member account.

Proposed Comment 11(c)–1 would clarify a credit union may, but need not, include in the balance funds deposited in the member's account, such as from a check, but that are not yet made available for withdrawal in accordance with the funds availability rules under Regulation CC. Similarly, the comment states the balance may, but need not, include any funds a credit union holds to satisfy a prior obligation of the member, for example, to cover a hold for an ATM or debit card transaction that has been authorized but not settled. Section 707.11(c) would not require credit unions to provide a ''real-time'' balance, but would only prohibit credit unions from including additional overdraft funds such as a discretionary overdraft cushion in the disclosed balance.

Additional Balances

The Joint Guidance stated that, if more than one balance is provided, a

credit union should ''separately (and prominently) identify the balance without the inclusion of overdraft protection.'' 70 FR at 9132. The proposed rule would permit, but does not require, disclosure of an additional balance that includes these additional overdraft funds, which may be useful to some members. For example, members may wish to receive a balance disclosure indicating how much overdraft coverage they have available, so they can make an informed decision regarding a transaction. The proposed rule would permit an additional balance to be disclosed, so long as the credit union prominently states the balance contains additional overdraft funds.

To address concerns that members would be confused if multiple balances are disclosed to them on an automated system, new comment 11(c)–2 would provide guidance on how credit unions can appropriately identify that an additional balance includes overdraft funds. Comment 11(c)–2 would explain the credit union may not simply state, for instance, that the second balance is the member's ''available balance,'' or contains ''available funds.'' Rather, the credit union would provide enough information to convey that the second balance includes the overdraft amounts. For example, the credit union may state that the balance includes ''overdraft funds.''

Further, the Board notes proposed § 707.11(c) would not affect the existing application of the advertising disclosure rules of § 707.11(b). Thus, to the extent a credit union includes the dollar amount of a discretionary overdraft limit in a disclosed balance on an automated system, the disclosure would continue to be considered an advertisement promoting the payment of overdrafts. Therefore, credit unions would provide the disclosures required by the current § 707.11(b)(1), including the amount of overdraft fees. The existing exemption in § 707.11(b)(2) from these disclosures for ATM receipts would also continue to apply. Any receipt containing a second balance including overdraft funds, however, would be required to prominently state that those funds are included and may not simply label the second balance as the member's ''available balance'' or ''available funds.''

Many credit unions currently provide members the ability to opt out of or opt into their overdraft service. Where a member has opted out of the credit union's overdraft service, or where a credit union offers an opt-in and the member has not opted in, proposed comment 11(c)–2 would also clarify that any additional balance disclosed may not include funds provided under a credit union's overdraft service because, presumably, the member would not have access to those funds. For example, if a member has $200 in his or her account and has opted out of the credit union's overdraft service, a second balance could not reflect the additional $100 the credit union might otherwise have provided under the service. If the member is not enrolled in the credit union's overdraft service, but has a line of credit or other overdraft alternative, the additional balance could continue to include funds available pursuant to that other alternative.

Similarly, some credit unions may provide members the ability to opt out of overdraft services for ATM and debit card transactions. In this instance, a credit union would continue to offer the overdraft service for other transactions, such as check transactions. Because the credit union's overdraft service would be available for some, but not all transactions, proposed comment 11(c)–2 states that, if a credit union discloses an additional balance where a member has opted out of some but not all of the credit union's overdraft services, the credit union may choose whether to include the overdraft funds in the balance. If the credit union chooses to include the overdraft funds in the additional balance, however, it would be required to indicate the additional overdraft funds are not available for all transactions.

Automated Systems

Proposed comment 11(c)–3 explains the balance disclosure requirement would apply to any automated system through which the member requests a balance, including but not limited to, a telephone response machine, such as an interactive voice response system, at an ATM, both on the ATM screen and on receipts, or on a credit union's internet site, other than live chats with an account representative. The balance disclosure requirements would apply to account balances a credit union discloses through any ATM. Because account-holding credit unions have discretion with respect to the balances they provide to an ATM network, they ultimately determine what additional funds, whether from the credit union's discretionary overdraft service, an overdraft line of credit, or a linked account, are included in those balances. In other words, the credit union has the discretion to provide to the network only balances that exclude overdraft funds. Thus, the Board believes it is appropriate to include the information that account-holding credit unions disclose through foreign ATMs within the scope of the rule.

The proposed rule would apply only when a credit union chooses to provide balance information, or when an ATM or other electronic terminal has the capability to provide a balance only to the extent balance information is offered on an automated system. It would not require credit unions or other automated systems owners to provide balance information on automated systems available to members. The Board believes the compliance burden and enforcement challenges associated with monitoring individual conversations and responses would outweigh the benefits provided by such a rule. Therefore, the proposed rule would apply only to balance information disclosed through an automated system.

V. Regulatory Procedures

Regulatory Flexibility Analysis

The Board has prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. These disclosures allow consumers to make meaningful comparisons between different financial institutions and also allow consumers to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is proposing revisions to part 707 to address the uniformity and adequacy of credit union disclosure of fees associated with overdraft services.

There are other laws credit unions must consider when administering an overdraft protection program. Although other laws and regulations may apply to credit union payment of overdrafts, the proposed revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the proposed revisions to part 707 is consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

Approximately 3,318 of the credit unions in the United States that must comply with TISA have assets of $10 million or less and, thus, are considered small entities for purposes of the Regulatory Flexibility Act, based on 2008 call report data. The Board

believes almost all small credit unions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts, although the number of small credit unions that promote their overdraft services is unknown. For those credit unions that do not promote the payment of overdrafts in an advertisement, periodic statement disclosures would need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small credit unions will have to review and perhaps revise account-opening disclosures and marketing materials.

NCUA's Office of Small Credit Union Initiatives (OSCUI) reviewed the proposed rule and concluded the rule will have minimal impact on small credit unions. OSCUI stated small credit unions have adequate vendor processing assistance to comply with the proposed delivery, disclosure, and notice requirements in the rule. It also stated the proposed rule would result in greater efficiencies and ensure members and potential members are not confused or misled by account disclosures.

The proposed revisions to part 707 would require all credit unions to provide more complete information to members regarding overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. Credit unions that provide overdraft services would be required to separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount for returning items unpaid. These disclosures would be required for the statement period and for the calendar year to date for each account to which the service is provided. Certain advertising practices would be prohibited, and additional disclosures on advertisements of overdraft services would be required.

The Board is soliciting comment on how the burden of disclosures on credit unions could be minimized. The proposed rule would limit the requirement to disclose aggregate totals for overdraft and returned-item fees for the statement period and the calendar year to date to credit unions that provide *ad hoc* payments of overdrafts or promote the payment of overdrafts in an advertisement, thereby encouraging the routine use of the service. It would also specify certain practices that would not trigger the new overdraft disclosures. The safe harbors would provide additional certainty to credit unions in determining whether compliance with the rule is required in particular circumstances. Consistent with the rule requiring periodic statement disclosures, the proposed rule would also provide safe harbors to specify circumstances when a credit union would not be required to provide additional advertising disclosures.

Under the proposed rule, credit unions would be permitted to provide an illustrative list of categories by which overdrafts may be created to generally eliminate the need to provide a change-in-terms notice each time a new channel for creating overdrafts is added. The proposed rule would also provide additional guidance regarding the types of fees that should be included in the total dollar amount of fees and charges imposed on the account for paying overdrafts and in the total dollar amount for returning items unpaid.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Board has submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB). The NCUA may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The current OMB control number for the Truth in Savings program is 3133–0134. This information collection will be revised to address the requirements of this proposed rule.

The collection of information that would be revised by this rulemaking is found in 12 CFR part 707 and Appendix C. This collection is mandatory to evidence compliance with the requirements of part 707 and TISA. 15 U.S.C. 4301 *et seq.* Credit unions must retain records for twenty-four months. This regulation applies to all types of credit unions, not just federally-insured credit unions.

Under the proposed rule, credit unions offering certain overdraft payment services would be required to provide more complete information regarding those services. Account-opening disclosures and other marketing materials would describe more completely how fees may be triggered. Credit unions that offer the payment of overdrafts would be required to separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount of fees charged to the account for returning items unpaid. Credit unions would provide these disclosures for the statement period and for the calendar year to date for each account to which an overdraft payment is applied. Certain advertising practices would be prohibited, and additional disclosures in advertisements for the payment of overdrafts would be required. Although the proposed rule would add these requirements, it is expected these revisions would not significantly increase the ongoing paperwork burden of credit unions. Respondents would have a one-time burden to reprogram and update their systems to include these new notice requirements.

There are an estimated 7,990 credit unions.[5] NCUA estimates it will take the respondents, on average, 8 hours or one business day to make these one-time system changes. NCUA estimates respondents will incur a burden of 63,920 hours meeting the requirements of this proposed rule. NCUA estimates that the total, continuing annual burden for the Truth in Savings program to be 12,064,677 hours. Before this proposed rule, NCUA estimated the annual burden to be 12,076,057 hours. The annual burden under this proposed rule would decrease 11,380 burden hours due to the decrease in the number of credit unions.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collection;

(2) Ways to minimize the burden of the information collection on credit unions, including the use of automated collection techniques or other forms of information technology; and

(3) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Interested parties may submit comments regarding the information collection requirements in this proposed rule. Comments should be mailed to Jeryl Fish, Paperwork Clearance Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428; faxed to (703) 518–6319; or sent by e-mail to *regcomments@ncua.gov*. Please include ''Comments on Part 707 Truth in Savings Act Disclosures'' in the comments header and send them to NCUA using one of the methods described above and to:

NCUA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6974.

[5] As of December 31, 2008, there are 7,860 federally-insured credit unions. Privately-insured credit unions must also comply with Part 707, and NCUA estimates there are approximately 130 of them.

NCUA will post comments on its Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html*. Interested persons may inspect the comments at NCUA, 1775 Duke Street, Alexandria, Virginia 22314, by appointment. To make an appointment, call (703) 518–6540, send an e-mail to *ogcmail@ncua.gov*, or send a facsimile transmission to (703) 518–6667.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. The Board requests your comments on whether the rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit Unions, Reporting and recordkeeping requirements, Truth in Savings.

For the reasons set forth in the preamble, NCUA amends 12 CFR Part 707 and the Official Staff Commentary as set forth below:

PART 707—TRUTH IN SAVINGS

1. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

2. Section 707.1 is amended by revising paragraph (a) to read as follows:

§ 707.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority*. This regulation is issued by the National Credit Union Administration to implement the Truth in Savings Act of 1991 (TISA), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 3201 *et seq*., Public Law 102–242, 105 Stat. 2236. Information collection requirements in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3133–0134.

* * * * *

3. Section 707.3 is amended by revising paragraph (a), to read as follows, and removing paragraph (g):

§ 707.3 General disclosure requirements.

(a) *Form*. Credit unions must make the disclosures required by §§ 707.4 through 707.6 of this part, as applicable, clearly and conspicuously, in writing, and in a form the member or potential member may keep. Credit unions may provide the disclosures required by this part to a member or potential member in electronic form, subject to compliance with the consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq*. Credit unions may provide the disclosures required by §§ 707.4(a)(2) and 707.8 to a member or potential member in electronic form without regard to the consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. Disclosures for each account offered by a credit union may be presented separately or combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member or potential member's account.

* * * * *

4. Section 707.4 is amended by republishing paragraph (a)(1)(i) and revising paragraphs (a)(1)(ii) and (a)(2)(i), to read as follows:

§ 707.4 Account disclosures.

(a) *Delivery of account disclosures*—

(1) *Account opening*—(i) *General*. A credit union must provide account disclosures to a member or potential member before an account is opened or a service is provided, whichever is earlier. A credit union is deemed to have provided a service when a fee required to be disclosed is assessed. Except as provided in paragraph (a)(1)(ii) of this section, if a member or potential member is not present at the credit union when the account is opened or the service is provided and has not already received the disclosures, the credit union must mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(ii) *Timing of electronic disclosures*. If a member or potential member who is not present at the credit union uses electronic means, for example, an Internet Web site, to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before the account is opened or the service is provided.

(2) *Requests*. (i) A credit union must provide account disclosures to a member or potential member upon request. If a member or potential member who is not present at the credit union makes a request, the credit union must mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form or electronically if the member or potential member agrees.

* * * * *

§ 707.10 [Removed and Reserved]

4. Section 707.10 is removed and reserved.

5. Section 707.11 is amended by revising the heading, paragraphs (a), (b)(2)(x) and (b)(2)(xi), and adding paragraphs (b)(2)(xii) and (c) to read as follows:

§ 707.11 Additional disclosure requirements for overdraft services.

(a) *Disclosure of total fees on periodic statements*—(1) *General*. A credit union must separately disclose on each periodic statement, as applicable:

(i) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn; and

(ii) The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

(2) *Totals required*. The disclosures required by paragraph (a)(1) of this section must be provided for the statement period and for the calendar year-to-date.

(3) *Format requirements*. The aggregate fee disclosures required by paragraph (a) of this section must be disclosed in close proximity to fees identified under § 707.6(a)(3), using a format substantially similar to Sample Form B–10 in appendix B.

(b) *Advertising disclosures for overdraft services.* * * *

(2) * * *

(x) A notice provided to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service; or

(xii) An opt-out or opt-in notice regarding the credit union's payment of overdrafts or provision of discretionary overdraft services.

* * * * *

(c) *Disclosure of account balances.* If a credit union discloses balance information to a member through an automated system, the balance may not include additional amounts that the credit union may provide to cover an item when there are insufficient or unavailable funds in the member's account, whether under a service provided in its discretion, a service subject to part 226 of this title (Regulation Z), or a service to transfer funds from another member account. The credit union may, at its option, disclose additional account balances that include such additional amounts, if the credit union prominently states that any such balance includes such additional amounts and, if applicable, that additional amounts are not available for all transactions.

6. Amend Appendix B to part 707, by adding B–12 to read as follows:

Appendix B to Part 707—Model Clauses and Sample Forms

* * * * *

B–12—AGGREGATE OVERDRAFT AND RETURNED ITEM FEES SAMPLE FORM

	Total for this period	Total year-to-date
Total Overdraft Fees	$60.00	$150.00
Total Returned Item Fees	0.00	30.00

7. In Appendix C to Part 707, the following amendments are made:

a. In *Section 707.4—Account disclosures*, under (a)(2)(i), paragraphs 3. and 4. are revised.

b. In *Section 707.8—Advertising*, under (a) *Misleading or inaccurate advertisements*, paragraph 9. is revised and new paragraph 11. is added.

c. In *Section 707.8—Advertising*, under *(b) Permissible rates*, paragraph 4. is removed.

d. In *Section 707.8—Advertising*, under (e)(1)(i), paragraph 1. is revised.

e. *Section 707.10—Electronic Communication* is removed and reserved.

f. In *Section 707.11*, the heading is revised, (a) heading and (a)(1) heading are revised, and paragraphs (a)(1)–1. and (a)(1)–2. are removed.

g. In *Section 707.11*, paragraphs (a)(1)–3. through (a)(1)–8. are redesignated as paragraphs (a)(1)–1. through (a)(1)–6, respectively.

h. In *Section 707.11*, new paragraphs (a)(1)–2. through (a)(1)–4 are revised.

i. In *Section 707.11*, paragraph (a)(3)–1. is revised.

j. In *Section 707.11*, paragraph (a)(5)–1. is removed.

k. In *Section 707.11*, new paragraphs (c)–1. through (c)–3. are added.

The amendments read as follows:

Appendix C to Part 707—Official Staff Interpretations

* * * * *

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

* * * * *

(a)(2) Requests

(a)(2)(i)

* * * * *

3. *Timing for response.* Ten business days is a reasonable time for responding to requests for account information that members or potential members do not make in person, including requests made by electronic means, such as by electronic mail.

4. *Use of electronic means.* If a member or potential member who is not present at the credit union makes a request for account disclosures, including a request made by telephone, e-mail, or via the credit union's Web site, the credit union may send the disclosures in paper form or, if the member or potential member agrees, may provide the disclosures electronically, such as to an e-mail address that the member or potential member provides for that purpose, or on the credit union's Web site, without regard to the consent or other provisions of the E-Sign Act. The regulation does not require a credit union to provide, nor a member or potential member to agree to receive, the disclosures required by § 707.4(a)(2) in electronic form.

* * * * *

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

* * * * *

9. *Electronic advertising.* If an electronic advertisement, such as an advertisement appearing on an Internet Web site, displays a triggering term, such as a bonus or annual percentage yield, the advertisement must clearly refer the member to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the member to the additional information.

* * * * *

11. *Additional disclosures in connection with the payment of overdrafts.* The rule in § 707.3(a), providing that disclosures required by § 707.8 may be provided to the member in electronic form without regard to E-Sign Act requirements, applies to the disclosures described in § 707.11(b), which are incorporated by reference in § 707.8(f).

* * * * *

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(i)

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements posted on the Internet or sent by e-mail.

* * * * *

Section 707.11 Additional Disclosures Regarding the Payment of Overdrafts

(a) Disclosure of Total Fees on Periodic Statements

(a)(1) General

* * * * *

2. *Fees for paying overdrafts.* Credit unions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The credit union must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another member account to avoid an overdraft, or fees charged under a service subject to part 226 of this title (Regulation Z).

3. *Fees for returning items unpaid.* The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The credit union must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Credit unions may use terminology such as ''returned item fee'' or ''NSF fee'' to describe fees for returning items unpaid.

4. *Waived fees.* In some cases, a credit union may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Credit unions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if a credit union assesses a fee in January and refunds the fee in February, the credit union could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the

February statement period, because the fee was not assessed in the February statement period. If a credit union assesses and then waives and credits a fee within the same cycle, the credit union may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the credit union assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

* * * * *

(a)(3) Time Period Covered by Disclosures

1. *Periodic statement disclosures.* The disclosures under § 707.11(a) must be included on periodic statements provided by a credit union starting with the first statement period that begins after January 1, 2010. For example, if a member's statement period typically closes on the 15th of each month, a credit union must provide the disclosures required by § 707.11(a)(1) on subsequent periodic statements for that member beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

* * * * *

(c) Disclosure of Account Balances

1. *Balance that does not include additional amounts.* For purposes of the balance disclosure requirement in § 707.11(c), if a credit union discloses balance information to a member through an automated system, it must disclose a balance that excludes any funds the credit union may provide to cover an overdraft pursuant to a discretionary overdraft service that will be paid by the credit union under a service subject to part 226 of this title (Regulation Z) or that will be transferred from another account held individually or jointly by a member. The balance may, but need not, include funds that are deposited in the member's account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under part 229 of the title (Regulation CC). In addition, the balance may, but need not, include funds that are held by the credit union to satisfy a prior obligation of the member, for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the credit union has not settled.

2. *Additional balance.* The credit union may disclose additional balances supplemented by funds that may be provided by the credit union to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to part 226 of this title (Regulation Z), or a service that transfers funds from another account held individually or jointly by the member, so long as the credit union prominently states that any additional balance includes these additional overdraft amounts. The credit union may not simply state, for instance, that the second balance is the member's ''available balance,'' or contains ''available funds.'' Rather, the credit union should provide enough information to convey that the second balance includes these amounts. For example, the credit union may state that the balance includes ''overdraft funds.'' Where a member has opted out of the credit union's discretionary overdraft service, any additional balance disclosed should not include funds credit unions provide under that service. Where a member has opted out of the credit union's discretionary overdraft service for some, but not all transactions, *e.g.*, the member has opted out of overdraft services for ATM and debit card transactions, a credit union that includes funds from its discretionary overdraft service in the balance should convey that the overdraft funds are not available for all transactions. For example, the credit union could state that overdraft funds are not available for ATM and debit card transactions.

3. *Automated systems.* The balance disclosure requirement in § 707.11(c) applies to any automated system through which the member requests a balance, including, but not limited to, a telephone response system, the credit union's internet site, or an ATM. The requirement applies whether the credit union discloses a balance through an ATM owned or operated by the credit union or through an ATM not owned or operated by the credit union, including an ATM operated by an entity that is not a financial institution. If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

* * * * *

By the National Credit Union Administration Board, on March 19, 2009.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E9–6728 Filed 3–25–09; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741, 748, and 749

RIN 3133–AD56

Credit Union Reporting

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is modernizing the way insured credit unions submit reports and other important information and has developed an online, Web-based system to make reporting more efficient and cost effective. The new system will also enhance the accuracy of information by providing a means for updating certain data outside the financial reporting cycle. NCUA is proposing revisions to its regulations involving reporting procedures and record retention requirements to conform regulatory provisions to the new online system. The proposal incorporates into the regulation a statutory requirement on reporting changes in senior officials resulting from election or appointments and would clarify requirements on when credit unions file reports with NCUA online. The proposal also includes provisions that provide alternative reporting methods for credit unions unable to submit online reports.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule—Parts 741, 748 and 749'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/comments.html* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *ogcmail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Amber Gravius, Risk Management Officer, Office of Examination and Insurance, (703) 518–6360; George Curtis, Corporate Program Specialist, Office of Corporate Credit Unions, (703) 518–6640; or Moisette Green, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION: NCUA is modernizing the way insured credit unions submit reports and other important information. The current software used to submit the Report of Officials and financial reports will be replaced with an integrated, Web-based information management system. The online system will make reporting more

efficient and cost effective, and enhance the accuracy of credit union data. As discussed below, the new online system will require revisions to current regulations on reporting. Final amendments will not become effective until the online system is implemented.

Legal Authority and Current Regulations

The Federal Credit Union Act (Act) grants NCUA broad authority to require federally-insured credit unions (FICUs), including corporate credit unions, to submit financial data and other information as required by the NCUA Board (Board). 12 U.S.C. 1761, 1766, 1781, and 1782. Federal credit unions must file the names and addresses of senior management officials and volunteer officials with NCUA within 10 days after their election or appointment. 12 U.S.C. 1761(b).

NCUA has implemented this authority in various regulatory provisions. NCUA requires FICUs to submit financial reports, reports of officials, and other reports. 12 CFR 704.1, 741.6, and 748.1. Section 741.6(a) prescribes the requirements for financial, statistical, and other reports and, currently, requires natural person credit unions to file a Financial and Statistical Report quarterly, also referred to as a Call Report and identified as NCUA Form 5300. The provisions in § 741.6 currently do not specify the form corporate credit unions use; corporate credit unions file Call Reports monthly using NCUA Form 5310. Further, FICUs must file a Report of Officials, NCUA Form 4501, with NCUA annually after the election of officials. 12 CFR 748.1(a). In addition to information about a credit union's main location and branches, hours of operation, and identity of and contact information for senior officials, NCUA Form 4501 also contains a certification of FICU compliance with the requirements of part 748, which includes catastrophic act reporting, suspicious activity reporting, and security program and Bank Secrecy Act requirements. *Id.* The front page of the NCUA Form 4501 states the Report of Officials must be filed with the regional director no later than 10 days after the election of officials.

Appendix A to Part 749 set out guidelines for record retention and identifies key operational records FICUs should retain permanently. 12 CFR Part 749, Appendix A, para. E.2. NCUA Form 5300 or its equivalent is currently identified as an example of these key operational records. *Id.* at para. E(2)(b).

Current Reporting Process

The NCUA Call Report System, including the Report of Officials, is the primary means by which NCUA collects, validates, stores, and reports financial and operational data for FICUs. NCUA provides internally developed software to all FICUs for preparing their Call Report submission. The software contains calculation features and data entry controls to help minimize errors in reporting. Natural person credit unions submit Call Report data quarterly and corporate credit unions submit their data monthly.

NCUA also provides internally developed software for FICUs to submit their Report of Officials and certify compliance with the requirements of part 748 in the Report of Officials. A credit union may submit the Call Report and Report of Officials data one of four ways: (1) Transmit via the internet using the eSend feature in the software; (2) Send via e-mail as an attachment; (3) Save the file to CD–Rom; or, (4) Complete and forward the hardcopy form to NCUA.

NCUA currently makes a substantial amount of financial data and other information about individual credit unions available on the agency Web site. The agency Web site generates Financial Performance Reports and users can obtain these reports on individual credit unions or aggregate data on multiple credit unions. In addition, NCUA publishes a report on Federally Insured Credit Unions Financial Trends.

Online Process

The genesis for change comes from NCUA's interest in increasing efficiency, reducing costs, enhancing accuracy of data, and providing a secure, single access portal where credit unions can submit, edit, and view data NCUA collects. NCUA has developed a new information management tool allowing FICUs to submit financial reports, information regarding officials, and other information to NCUA through a secure, Web-based system. Credit unions will access the online system via the internet from NCUA's Web site at *http://www.ncua.gov*. For credit unions to use the online system, they must have a computer, Internet connectivity, Internet Explorer 6.0 or higher, and a valid e-mail address. All users of the online system will have a login and password they can self-manage and change, and credit union users will only have access to their own credit union's confidential information. The public will continue to have access to non-confidential information without the need for a login or password.

To ensure information is protected, users will identify themselves using an authentication process requiring a unique login and password. Once identified, authenticated users will only be able to access information they are authorized to view. In addition, all communication of sensitive information between the credit union's browser and NCUA's Web servers will be encrypted using the industry-standard Secure Sockets Layer (SSL) technology to prevent others from intercepting and accessing confidential credit union information.

NCUA will no longer issue software to submit data; the online system will permit credit unions to submit data to NCUA from any computer. Additionally, the online system will eliminate mailing and printing delays, missing pieces to the Call Report packet, and damaged software CDs. Similar to the current process, the online system will provide real-time warnings throughout the input process to ensure data integrity. NCUA projects implementing the new system during the third quarter of 2009 for natural person credit unions. The system will be implemented for corporate credit unions in 2010.

The Report of Officials and Call Report software will be eliminated, and all data will be submitted and viewed through an online Credit Union Profile and Call Report. The online profile will include information NCUA maintains about a credit union that infrequently changes, for example, the credit union address(es), phone number(s), list of officials, hours of operation, etc. It will also contain some information currently collected on the Call Reports, including disaster recovery information, and information systems and technology information, to eliminate the requirement for credit unions to report redundant information each Call Report cycle. NCUA will provide a real-time environment for updating information. After profile data is entered, subsequent input will only be required for additions, deletions, or changes to the data.

For efficiency and to make reporting less burdensome, credit unions will be able to have multiple users to enhance the likelihood that profile information is accurate and updated when necessary and the Call Report is submitted timely. Additionally, multiple users will be able to access the system and complete different sections of the Call Report and profile simultaneously. Credit unions unable to use the online system will use a process similar to current practice and submit their information on a paper form.

Periodically, the system will require users to verify the accuracy of FICU information and complete a series of edit checks to ensure all required information has been entered into the profile. If any information is missing or is incomplete, the user will receive an error message. To assist credit unions with this process, all required areas of the profile will be outlined in the online instructions as well as the paper form instructions.

NCUA has been providing information about the transition to the online system since early 2008. These initiatives include presentations at trade association conferences, credit union workshops, credit union league events, an NCUA Newsletter article, an alert on the NCUA Credit Union Data Web page, and a Frequently Asked Questions posted on NCUA's Web site at *http://www.ncua.gov/OnlineFAQ.pdf*. Additionally, NCUA has consulted with the National Association of State Credit Union Supervisors while developing the online system. NCUA intends to conduct presentations about the online system throughout 2009 similar to the 2008 initiatives.

The Proposal

To clarify reporting procedures and record retention requirements, NCUA is proposing revisions to §§ 741.6 and 748.1, and Appendix A to part 749. Section 741.6 would clarify when FICUs must update their Credit Union Profiles and add a provision addressing corporate credit unions and the NCUA Form 5310. Additionally, the proposed rule would amend § 748.1 to clarify the compliance report filing requirements for FICUs using the online system and for FICUs filing reports manually. FICUs that cannot certify compliance online would certify compliance in writing on the new Credit Union Profile form, NCUA Form 4501A. Finally, the proposed rule would update the record retention guidelines in Appendix A of Part 749 and include the new Credit Union Profile form as a key operational record that should be retained permanently.

Natural person and corporate credit unions will continue to file Call Report data in the same time frames as they currently do, and credit unions with access to the internet will submit their data online. If a credit union has computer interruptions or does not have access to the internet, it will be required to complete paper forms and return them to NCUA or, for federally insured state chartered credit unions, their State Supervisory Authority, for input into the online system. If submitted Call Report data is not accurate, credit unions will be required to submit a corrected Call Report upon notification or the discovery of a need for correction. Credit unions with access to the internet will make these submissions in the online system. Credit unions filing manually will complete the paper form.

The proposal requires credit unions to update the information in the profile within 10 days of the election or appointment of senior management or volunteer officials or within 30 days of any change of information in the profile. After the Credit Union Profile data is initially entered, subsequent input will only be required for additions, deletions, or changes to the data. The Act requires federal credit unions to file a record of the names and addresses of the executive officers, loan officers, and supervisory and credit committee members with NCUA within 10 days after their election or appointment. 12 U.S.C. 1761(b). This requirement has been part of the Report of Officials; however, the proposed rule would incorporate the requirement expressly in the regulation. Additionally, to ensure the accuracy of the information when there is a change in the profile information unrelated to an election or appointment of officials, the proposal would require FICUs to update their Credit Union Profile within 30 days of any change to its contents. Credit unions with access to the internet will make these corrections using the online system, and credit unions filing manually will complete the paper form.

FICUs will continue to certify compliance with Part 748. Under the current § 748.1(a), the president or other managing official of a FICU must sign and date the compliance statement in the Report of Officials. NCUA adopted this requirement to improve the detection, investigation, and prosecution of fraud in FICUs. 50 FR 53294 (December 31, 1985). The proposed rule retains this requirement and clarifies compliance reporting will be completed within the Credit Union Profile. A president or managing official may direct any of the FICU's online system users to certify the compliance statement; the Board notes, however, the president or managing official is personally responsible for ensuring and certifying the FICU has complied with the security program, disaster recovery, Bank Secrecy Act, and other requirements in Part 748.

Finally, the proposed rule would address the record retention guidelines. Appendix A to Part 749 set out guidelines for record retention and identifies the Call Report as a key operational record that FICUs should retain permanently. 12 CFR Part 749, Appendix A, para. E.2(b). The record retention guidelines do not list the Report of Officials as a key operational record, but the proposed would include the Credit Union Profile as a record that FICUs should retain permanently.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under $10 million in assets as small entities. Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003). As of December 31, 2008, NCUA estimates there are approximately 7,860 federally-insured, natural person credit unions. Approximately 3,318 of them have less than $10 million in assets. NCUA estimates out of 28 corporate credit unions, one is a small entity. This proposed rule would directly affect all small FICUs. Therefore, NCUA has determined this proposed rule will have an impact on a substantial number of small entities.

NCUA has determined, however, the economic impact on entities affected by the proposed rule will not be significant. The proposed rule will reduce the regulatory burden on FICUs that submit their financial reports, Credit Union Profile, and other information online. NCUA is also proposing alternate methods, similar to the current practices, for FICUs without internet access to submit information. Additionally, NCUA's Office of Small Credit Union Initiatives has reviewed the proposal and concluded it would have a moderate impact on small credit unions, but contained sufficient provisions to mitigate the impact and would result in greater efficiencies for all credit unions. Accordingly, NCUA certifies the proposed rule would not have a significant economic impact on small entities, but invites comment on the proposal's economic impact and suggestions on how to minimize it.

Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed

rule have been submitted to OMB for review and approval under section 3507 of the PRA and § 1320.11 of OMB's implementing regulations. 5 CFR 1320.11. The requirements are found in 12 CFR 741.6, 748.1, and Appendix A to Part 749. Comments are invited on:

a. Whether the collection of information is necessary for the proper performance of the NCUA's functions, including whether the information has practical utility;

b. The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Comments should be addressed to Jeryl Fish, Paperwork Clearance Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428; send a facsimile to (703) 518–6319; or send an e-mail to *regcomments@ncua.gov*. Please submit information collection comments by one method. NCUA will post comments on its Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html*.

Interested persons may inspect the comments at NCUA, 1775 Duke Street, Alexandria, Virginia 22314, by appointment. To make an appointment, call (703) 518–6540, send an e-mail to *ogcmail@ncua.gov*, or send a facsimile transmission to (703) 518–6667.

Under the Act, FICUs must submit certain reports and information to NCUA, as required by the Board. 12 U.S.C. 1761, 1766, 1781, and 1782. The information collections in the proposed rule involve financial reports, Credit Union Profiles containing names and addresses of volunteer and management officials, a regulatory compliance certification, and record retention guidelines. These information collections have previously been approved by OMB, but will require revisions due to this rulemaking.

Call Reports. The information collection in Call Reports for natural person credit unions, NCUA Form 5300, is currently approved under OMB Control Number 3133–0004. Credit unions with access to the internet would submit the Call Report quarterly using a Web-based information management system. For efficiency, credit unions can have multiple users to ensure the Call Report is submitted timely. A one-time training burden is added for training employees or volunteers on the online system. Credit unions unable to use the online system would submit the NCUA Form 5300 in accordance with the form's instructions. The burden associated with this information collection is summarized as follows:

	Current	Estimate	Difference
Respondents	8,871	7,860 (7,100 online; 760 manually)	−1,011
Annual responses	35,484	31,440	−4,044
Time per response (hours)	6.6	3 (online) 6.6 (manual)	−3.6
Total time per respondent (hours)	26.4	14–26.4	−12.4
Total annual burden (hours)	234,194	20,064–99,400	−134,794
Total annual cost ($)	5,548,000	2,670,000	−2,878,000
One-time training (hours)	2		

The change in burden is due to a decrease in the number of natural person credit unions and the use of online methods to submit the NCUA Form 5300.

The information collection in Call Reports for corporate credit unions, NCUA Form 5310, is currently approved under OMB Control Number 3133–0067. Corporate credit unions would submit the Call Report monthly using the Web-based, information management system beginning in 2010. For efficiency, credit unions can have multiple users to ensure the Call Report is submitted timely. A one-time training burden is added for training employees or volunteers on the online system. If a corporate credit union is unable to use the online system, it would submit the NCUA Form 5310 in accordance with the form's instructions. The burden associated with this information collection is summarized as follows:

	Current	Estimate	Difference
Respondents	30	28	−2
Annual responses	360	336	−24
Time per response (hours)	2	1	−1
Total time per respondent (hours)	24	12	−12
Total annual burden (hours)	720	336	−384
Total annual cost ($)	10,800	5,400	−5,400
One-time training (hours)	2		

The change in burden is due to the decrease in the number of corporate credit unions due to mergers.

Report of Officials/Credit Union Profile. The Report of Officials, NCUA Form 4501, is currently approved under OMB Control Number 3133–0053. The NCUA Form 4501 will be revised to include all information collected in the online Credit Union Profile. The Credit Union Profile Form, NCUA Form 4501A, will replace NCUA Form 4501 when the corporate credit unions begin using the online system in 2010. To enhance the accuracy of critical information NCUA maintains and comply with the statutory requirement, all FICUs with access to the internet would update the new Credit Union Profile within 10 days of an election or appointment of volunteer officials or 30 days of any profile information changes. NCUA is unable to know exactly how often FICUs will update the Credit Union Profile and estimates FICUs will update the profile information no more than four times a year.

Currently, the Report of Officials contains a statement of compliance regarding the security requirements in part 748. The Credit Union Profile will contain a similar certification, and the president or managing official of each FICU will be required to complete the certification annually.

For efficiency, credit unions can have multiple users to ensure profile information is updated. A one-time training burden is added for training employees or volunteers on the online system and a one-time initial input burden is added for credit unions to enter their officials, main office and branch information, and other required data. FICUs that are unable to update the profile online could submit the NCUA Form 4501 or its equivalent in accordance with the instructions. The credit union president or managing official would be required to sign and date the NCUA Form 4501 or its equivalent. The burden associated with this information collection is summarized as follows:

	Current	Estimate	Difference
Respondents	8,871	7,888 (7,128 online; 760 manually)	−983
Annual responses	8,871	31,552	22,681
Time per response (hours)	1	.5–1	−.5
Total time per respondent (hours)	8,871	15,776–31,552	6,905–22,681
Total annual burden (hours)	8,871	35,496–102,544	26.625–93,673
One-time training (hours)	.5–1		
One-time input (hours)	2–8		

The change in burden is due to the frequency credit unions will submit and update Credit Union Profile information and the time required for initial input of data into the system. NCUA estimates it will take the majority of credit unions two hours or less to enter their profile data. To enhance the accuracy of critical information NCUA maintains, credit unions would be required to update profile information within 10 days of an election or appointment of volunteer officials, or 30 days of any change.

Records Preservation. Part 749 requires all FICUs to have a records preservation program. Appendix A to Part 749 contains guidelines for the retention of key operating records. FICUs should permanently retain certain key operating records, including one copy of each NCUA 5300, 5310, or its equivalent. The current information collection is approved under OMB Control Number 3133–0032. The proposed rule would add the Credit Union Profile, NCUA Form 4501 or its equivalent, to the list of key operational records and update the guidelines in Appendix A to clarify that FICUs should permanently retain one copy of each Credit Union Profile report quarterly. FICUs are not required to submit any information to NCUA under the records preservation program, but may incur a cost for storage of information. NCUA estimates the cost of storage is $10—$25 per credit union. The burden associated with this information collection is summarized as follows:

	Current	Estimate	Difference
Respondents	8,420	7,888	−532
Time for recordkeeping (hours)	2	1–2	−1
Total annual burden (hours)	16,930	7,888–15,776	−9,042– −1,154
Total annual cost ($)	84,200	78,880–197,200	113,000

The change in burden is due to a change in the number of FICUs and the cost of storing vital and key operating records. The annual cost will vary per institution based on the cost to store these records electronically or hard-copy. NCUA estimates the majority of credit unions will store these records electronically and there will be no additional burden on credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive, if implemented as proposed.

List of Subjects

12 CFR Part 741

Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 749

Archives and records, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, on March 19, 2009.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR parts 741, 748, and 749 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

2. Amend § 741.6 by removing paragraph (d) and revising paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Upon written notice from the Board, Regional Director, or Director of the Office of Corporate Credit Unions, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Credit unions with the capacity to do so must use NCUA's information management system to submit their data online. If a credit union is unable to use the information system, it must file written reports in accordance with the instructions.

(1) *Credit Union Profile.* Insured credit unions must submit to NCUA a Credit Union Profile, NCUA Form 4501 or its equivalent, within 10 days after an election or appointment of senior management or volunteer officials or within 30 days of any change of the information in the profile.

(2) *Financial and statistical report.* Natural person credit unions must file a Call Report with NCUA quarterly in accordance with the instructions in the NCUA Form 5300. Corporate credit unions must file a Corporate Credit Union Call Report with NCUA monthly in accordance with the instructions in the NCUA Form 5310. Credit unions must submit a corrected Call Report upon notification or the discovery of a need for correction.

* * * * *

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

3. The authority for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

4. Amend § 748.1 by revising paragraph (a) to read as follows:

§ 748.1 Filing of reports.

(a) The president or managing official of each federally-insured credit union must certify compliance with the requirements of this Part in its Credit Union Profile annually. Credit unions that cannot update their profile online must certify compliance in writing in accordance with the instructions on NCUA Form 4501 or its equivalent. The credit union president or managing official must sign and date the written certification.

* * * * *

PART 749—RECORDS PRESERVATION PROGRAM AND APENDICES—RECORD RETENTION GUIDELINES; CATASTROPHIC ACT PREPAREDNESS GUIDELINES

5. The authority for part 749 continues to read as follows:

Authority: 12 U.S.C. 1766, 1783, and 1789; 15 U.S.C. 7001(d).

Appendix A to Part 749 [Amended]

6. Amend Appendix A to Part 749 by revising paragraph E.2.(b) to read as follows:

* * * * *

E. * * *

2. * * *

(b) One copy of each financial report, NCUA Form 5300 or 5310, or their equivalent, and the Credit Union Profile report, NCUA Form 4501, or its equivalent as submitted to NCUA at the end of each quarter.

* * * * *

[FR Doc. E9–6727 Filed 3–25–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0262; Directorate Identifier 2008–NM–208–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. 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 MCAI describes the unsafe condition as:

> During receipt of spare parts at the final assembly line, it was discovered that lugs of the assembly nut * * * had been inverted (wrong orientation of the braking pin) during manufacturing process at the supplier.
>
> * * * This lug inversion could give the illusion of correct torque whereas the affected parts are not properly connected.
>
> Loose connection could lead to loss of the fire extinguishing system integrity and therefore inability to ensure the adequate agent concentration. In combination with an engine fire event, it could result in a temporary uncontrolled engine fire, which constitutes an unsafe condition.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 27, 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 W12–40, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330–A340@airbus.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 Operations office 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 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

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–2009–0262; Directorate Identifier 2008–NM–208–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0196, dated October 27, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During receipt of spare parts at the final assembly line, it was discovered that lugs of the assembly nut, part number (P/N) A2621005000200, had been inverted (wrong orientation of the braking pin) during manufacturing process at the supplier.
>
> The assembly nut P/N A2621005000200 is part of the engine fire-extinguishing piping assembly. It connects the extinguisher discharge head with the piping. The lugs function is to prevent the connection untwisting once it has been hand-tightened with the correct torque. This lug inversion could give the illusion of correct torque whereas the affected parts are not properly connected.
>
> Loose connection could lead to loss of the fire extinguishing system integrity and therefore inability to ensure the adequate agent concentration. In combination with an engine fire event, it could result in a temporary uncontrolled engine fire, which constitutes an unsafe condition.
>
> To restore connection integrity, this Airworthiness Directive (AD) requires a one-time general visual inspection of the affected nut assembly to detect and correct any wrong orientation of lugs.

The corrective actions include a temporary repair (restoration) and replacing the fire extinguisher bottle nut assembly with the braking pin in the inverted position, if necessary.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–26–3043, including Appendices 01, 2, and 3, dated October 7, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. 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 the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,880, or $720 per product.

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 a regulatory 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:

Airbus: Docket No. FAA–2009–0262; Directorate Identifier 2008–NM–208–AD.

Comments Due Date

(a) We must receive comments by April 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category; having serial numbers 0845, 0850, 0851, 0852, 0853, 0854, 0855, 0857, 0858, 0859, 0860, 0861, 0862, 0863, 0865, 0866, 0867, 0868, 0869, 0871, 0873, 0875, 0876, 0877, 0879, 0881, 0882, 0883, 0884, 0885, 0887, 0888, 0889, 0890, 0892, 0893, 0895, 0896, 0898, 0899, 0900, 0901, 0903, 0904, 0905, 0906, 0907, 0908, 0909, 0911, 0913, 0914, 0915, 0916, 0918, 0919, 0920, 0922, 0923, and 0951.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire Protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During receipt of spare parts at the final assembly line, it was discovered that lugs of the assembly nut, part number (P/N) A2621005000200, had been inverted (wrong orientation of the braking pin) during manufacturing process at the supplier.

The assembly nut P/N A2621005000200 is part of the engine fire-extinguishing piping assembly. It connects the extinguisher discharge head with the piping. The lugs function is to prevent the connection untwisting once it has been hand-tightened with the correct torque. This lug inversion could give the illusion of correct torque whereas the affected parts are not properly connected.

Loose connection could lead to loss of the fire extinguishing system integrity and therefore inability to ensure the adequate agent concentration. In combination with an engine fire event, it could result in a temporary uncontrolled engine fire, which constitutes an unsafe condition.

To restore connection integrity, this Airworthiness Directive (AD) requires a one-time general visual inspection of the affected nut assembly to detect and correct any wrong orientation of lugs.

The corrective actions include a temporary repair (restoration) and replacing the fire extinguisher bottle nut assembly with the braking pin in the inverted position, if necessary.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 900 flight hours after the effective date of this AD, perform a general visual inspection to detect any wrong orientation of the lugs of the fire extinguisher bottle nut assembly of both engines, and do all applicable corrective actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–26–3043, dated October 7, 2008.

(i) Before further flight, if the correct nut assembly is available, replace the fire extinguisher bottle nut assembly.

(ii) Before further flight, if the correct nut assembly is not available, do the temporary repair; and within 900 flight hours after doing the repair, replace the fire extinguisher bottle nut assembly with the correct one.

(2) Submit a report of the findings of the inspection required by paragraph (f)(1) of this AD using Appendix 01 of Airbus Mandatory Service Bulletin A330–26–3043, dated October 7, 2008, at the applicable time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD. Send the report to Airbus Department SEEE6, Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, ATTN: SDC32 Technical Data and Documentation Services; fax: 33 5 61 93 28 06; e-mail: *sb.reporting@airbus.com.*

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. 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, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0196, dated October 27, 2008; and Airbus Mandatory Service Bulletin A330–26–3043, including Appendices 01, 2, and 3, dated October 7, 2008, for related information.

Issued in Renton, Washington, on March 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6739 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0263; Directorate Identifier 2008–NM–137–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. 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 MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is issued following the discovery of hot air leaks when operating the wing anti-icing system. The seals Part Number (P/N) MS29513–325, near the de-icing valves (12H1) and (12H2) in frame 33 area, do not have the proper temperature rating. The consequences, in the area of the hot air leak, are risks of ignition of potential hydraulic leaks.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 27, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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 Operations office 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 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

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–2009–0263; Directorate Identifier 2008–NM–137–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0123, dated July 2, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is issued following the discovery of hot air leaks when operating the wing anti-icing system. The seals Part Number (P/N) MS29513–325, near the de-icing valves (12H1) and (12H2) in frame 33 area, do not have the proper temperature rating.

The consequences, in the area of the hot air leak, are risks of ignition of potential hydraulic leaks.

The purpose of this AD is to verify that seals with correct temperature rating have been installed on Mystere-Falcon 20–( )5 airplanes.

The corrective action includes replacing the left and right seals near de-icing valves (12H1) and (12H2) in frame area 33. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Service Bulletin F20–766, dated October 31, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. 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 the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 187 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of

this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,960, or $80 per product.

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 a regulatory 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:

Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Docket No. FAA–2009–0263; Directorate Identifier 2008–NM–137–AD.

Comments Due Date

(a) We must receive comments by April 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, without Dassault Service Bulletin F20–766 implemented.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This Airworthiness Directive (AD) is issued following the discovery of hot air leaks when operating the wing anti-icing system. The seals Part Number (P/N) MS29513–325, near the de-icing valves (12H1) and (12H2) in frame 33 area, do not have the proper temperature rating.

The consequences, in the area of the hot air leak, are risks of ignition of potential hydraulic leaks.

The purpose of this AD is to verify that seals with correct temperature rating have been installed on Mystere-Falcon 20-( )5 airplanes.

The corrective action includes replacing the left and right seals near de-icing valves (12H1) and (12H2) in frame area 33.

Actions and Compliance

(f) Unless already done, within 7 months after the effective date of this AD, perform an inspection for a red line marking on each of the Wiggins couplings that are located near the de-icing valves (12H1) and (12H2), in accordance with Dassault Service Bulletin F20–766, dated October 31, 2005. If a red line is not found, prior to further flight, replace the seals to the left and right Wiggins couplings, in accordance with Dassault Service Bulletin F20–766, dated October 31, 2005.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0123, dated July 2, 2008; and Dassault Service Bulletin F20–766, dated October 31, 2005; for related information.

Issued in Renton, Washington, on March 18, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6735 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0264; Directorate Identifier 2008–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–300, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. 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 MCAI describes the unsafe condition as:

> One Long Range operator experienced a failure of one spoiler servo-control, associated with surface deflection in flight and hydraulic leak. On ground, this servo-control Part Number (P/N) MZ4306000–02X was found with the maintenance cover broken. Investigations showed that the rupture of the maintenance cover was due to pressure pulse fatigue.
>
> * * * The rupture of the maintenance cover in flight may result in the deflection of the associated spoiler surface up to the null-hinge position (loss of the hydraulic locking). It may also result in the loss of the associated hydraulic system (external leakage). In the worst case, the three hydraulic systems may be affected, which constitutes an unsafe condition.
>
> * * * * *
>
> Loss of the three hydraulic systems could result in reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 27, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330–A340@airbus.com*; Internet *http://www.airbus.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 Operations office 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 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

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–2009–0264; Directorate Identifier 2008–NM–174–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0160, dated August 22, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One Long Range operator experienced a failure of one spoiler servo-control, associated with surface deflection in flight and hydraulic leak. On ground, this servo-control Part Number (P/N) MZ4306000–02X was found with the maintenance cover broken. Investigations showed that the rupture of the maintenance cover was due to pressure pulse fatigue.
>
> The maintenance cover allows switching the servo-control from ''Operational'' to ''Maintenance'' modes. The same cover is installed on all standard MZ spoiler servo-controls except on P/N MZ4339390–12 and MZ4306000–12, which have a reinforced maintenance cover. The rupture of the maintenance cover in flight may result in the deflection of the associated spoiler surface up to the null-hinge position (loss of the hydraulic locking). It may also result in the loss of the associated hydraulic system (external leakage). In the worst case, the three hydraulic systems may be affected, which constitutes an unsafe condition.
>
> For the reasons described above, this EASA AD requires the identification and the modification of all standard MZ spoiler servo-controls with initial maintenance cover (P/N MZ4339390–01X, –02X, –10X for position 1 and P/N MZ4306000–01X, 02X, –10X for positions 2 to 6) into standard MZ servo-controls with reinforced maintenance cover (P/N MZ4339390–12 for position 1 and P/N MZ4306000–12 for positions 2 to 6).

Loss of the three hydraulic systems could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the service information described in the following table. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

SERVICE INFORMATION

Service Bulletin	Revision level	Date
Airbus Mandatory Service Bulletin A330–27A3154	01	July 25, 2008.
Airbus Service Bulletin A330–27–3110	02	March 2, 2007.
Airbus Mandatory Service Bulletin A340–27A4154	01	July 25, 2008.
Airbus Service Bulletin A340–27–4115	01	March 2, 2007.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. 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 the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect 16 products of U.S. registry. We also estimate that it would take between 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,280, or $80 per product.

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 a regulatory 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:

Airbus: Docket No. FAA–2009–0264; Directorate Identifier 2008–NM–174–AD.

Comments Due Date

(a) We must receive comments by April 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–300, A340–200, and A340–300 series airplanes; certificated in any category, except those identified in paragraph (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, manufacturer serial numbers (MSNs) up to and including MSN 588, except those on which Airbus Service Bulletin A330–27–3110 has been embodied in service.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, MSNs up to and including MSN 598, except those on which Airbus Service Bulletin A340–27–4115 has been embodied in service.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One Long Range operator experienced a failure of one spoiler servo-control, associated with surface deflection in flight and hydraulic leak. On ground, this servo-control Part Number (P/N) MZ4306000–02X was found with the maintenance cover broken. Investigations showed that the rupture of the maintenance cover was due to pressure pulse fatigue.

The maintenance cover allows switching the servo-control from ''Operational'' to ''Maintenance'' modes. The same cover is installed on all standard MZ spoiler servo-controls except on P/N MZ4339390–12 and MZ4306000–12, which have a reinforced maintenance cover. The rupture of the maintenance cover in flight may result in the deflection of the associated spoiler surface up to the null-hinge position (loss of the hydraulic locking). It may also result in the loss of the associated hydraulic system (external leakage). In the worst case, the three hydraulic systems may be affected, which constitutes an unsafe condition.

For the reasons described above, this EASA AD requires the identification and the modification of all standard MZ spoiler servo-controls with initial maintenance cover (P/N MZ4339390–01X, –02X, –10X for position 1 and P/N MZ4306000–01X, 02X, –10X for positions 2 to 6) into standard MZ servo-controls with reinforced maintenance cover (P/N MZ4339390–12 for position 1 and P/N MZ4306000–12 for positions 2 to 6).

Loss of the three hydraulic systems could result in reduced controllability of the airplane.

Actions and Compliance

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

(1) For airplanes that have accumulated more than 8,500 total flight cycles since first flight as of the effective date of this AD: Do the actions required by paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, as applicable.

(i) Within 3 months after the effective date of this AD: Identify the part number of spoiler servo-controls installed on the airplane at all positions in order to determine the number of affected hydraulic circuits in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–27A3154, Revision 01; or Airbus Mandatory Service Bulletin A340–27A4154, Revision 01; both dated July 25, 2008, as applicable. If there is no spoiler servo-control installed with a part number

identified in Table 1 of this AD, no further action is required by this paragraph.

(ii) If there is any spoiler servo-control installed with a part number identified in Table 1 of this AD, do all applicable actions required by paragraph (f)(2), (f)(3), or (f)(4) of this AD.

TABLE 1—SPOILER SERVO-CONTROL PART NUMBERS

Position 1	Positions 2 through 6
MZ4339390–01X	MZ4306000–01X.
MZ4339390–02X	MZ4306000–02X.
MZ4339390–10X	MZ4306000–10X.

(2) If three affected hydraulic circuits are identified during the inspection required by paragraph (f)(1) of this AD, do the actions required by paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this AD, at the time specified.

(i) Before the accumulation of 10,400 total flight cycles since first flight, or within 3 months after accomplishing the requirements of paragraph (f)(1)(i) of this AD, whichever occurs later: Modify the affected spoiler servo-controls on one hydraulic circuit in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(ii) Before the accumulation of 10,800 total flight cycles since first flight, or within 6 months after accomplishing the requirements in paragraph (f)(1)(i) of this AD, whichever occurs later: Modify the affected spoiler servo-controls on the second hydraulic circuit in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(iii) Within 18 months after the effective date of this AD: Modify the remaining affected spoiler servo-controls in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(3) If two affected hydraulic circuits are identified during the inspection required by paragraph (f)(1) of this AD, do the actions required by paragraphs (f)(3)(i) and (f)(3)(ii) of this AD, at the time specified:

(i) Before the accumulation of 10,800 total flight cycles since first flight, or within 6 months after accomplishing the requirements in paragraph (f)(1)(i) of this AD, whichever occurs later: Modify the affected spoiler servo-controls on one hydraulic circuit in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(ii) Within 18 months after the effective date of this AD: Modify the remaining affected spoiler servo-controls in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(4) If one affected hydraulic circuit is identified during the inspection required by paragraph (f)(1) of this AD: Within 18 months after the effective date of this AD, modify the affected spoiler servo-controls in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(5) For airplanes that have accumulated less than or equal to 8,500 total flight cycles since first flight as of the effective date of this AD: Do the actions required by paragraphs (f)(5)(i) and (f)(5)(ii) of this AD, as applicable.

(i) Within 9 months after the effective date of this AD: Do the actions specified in paragraph (f)(1)(i) of this AD. If there is no spoiler servo-control installed with a part number identified in Table 1 of this AD, no further action is required by this paragraph.

(ii) If there is any spoiler servo-control installed with a part number identified in Table 1 of this AD: Within 18 months after the effective date of this AD, modify all the affected spoiler servo-controls in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(6) As of the effective date of this AD, no person may install any spoiler servo-control with a part number identified in Table 1 of this AD on any aircraft as a replacement part, unless the part has been modified in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3110, Revision 02; or Airbus Service Bulletin A340–27–4115, Revision 01; both dated March 2, 2007, as applicable.

(7) Actions accomplished before the effective date of this AD in accordance with the service bulletins specified in Table 2 of this AD are considered acceptable for compliance with the corresponding requirements of this AD.

TABLE 2—CREDIT SERVICE INFORMATION

Service Bulletin	Revision level	Date
Airbus Service Bulletin A330–27–3110	Original	November 28, 2003.
Airbus Service Bulletin A330–27–3110	01	March 26, 2004.
Airbus Service Bulletin A340–27–4115	Original	November 28, 2003.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. 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, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to European Aviation Safety Agency Airworthiness Directive 2008–0160, dated August 22, 2008, and the service bulletins specified in Table 3 of this AD, for related information.

TABLE 3—SERVICE INFORMATION

Service Bulletin	Revision level	Date
Airbus Mandatory Service Bulletin A330–27A3154	01	July 25, 2008.

TABLE 3—SERVICE INFORMATION—Continued

Service Bulletin	Revision level	Date
Airbus Service Bulletin A330–27–3110	02	March 2, 2007.
Airbus Mandatory Service Bulletin A340–27A4154	01	July 25, 2008.
Airbus Service Bulletin A340–27–4115	01	March 2, 2007.

Issued in Renton, Washington, on March 18, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–6734 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. PL09–4–000]

Smart Grid Policy

Issued March 19, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed policy statement and action plan.

SUMMARY: This proposed policy statement and action plan provides guidance to inform the development of a smarter grid for the Nation's electric transmission system focusing on the development of key standards to achieve interoperability of smart grid devices and systems. The Commission also proposes a rate policy for the interim period until interoperability standards are adopted. Smart grid investments that demonstrate system security and compliance with Commission-approved Reliability Standards, the ability to be upgraded, and other specified criteria will be eligible for timely rate recovery and other rate treatments. This rate policy will encourage development of smart grid systems.

DATES: Comments on the proposed policy statement and action plan are due May 11, 2009.

FOR FURTHER INFORMATION CONTACT:

David Andrejcak, Office of Electric Reliability, 888 First Street, NE., Washington, DC 20426 (202) 502–6721, *david.andrejcak@ferc.gov.*

Elizabeth H. Arnold, Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8818, *elizabeth.arnold@ferc.gov.*

Ray Palmer, Office of Energy Market Regulation, 888 First Street, NE., Washington, DC 20426, (202) 502–6569, *ray.palmer@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Acting Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Proposed Policy Statement and Action Plan

Issued March 19, 2009.

1. The Commission is issuing this proposed policy statement to articulate its policies and near-term priorities to help achieve the modernization of the Nation's electric transmission system, one aspect of which is ''Smart Grid'' development. Smart Grid advancements will apply digital technologies to the grid, and enable real-time coordination of information from generation supply resources, demand resources,[1] and distributed energy resources (DER).[2] This will bring new efficiencies to the electric system through improved communication and coordination between utilities and with the grid, which will translate into savings in the provision of electric service. Ultimately the smart grid will facilitate consumer transactions and allow consumers to better manage their electric energy costs. These technologies will also enhance the ability to ensure the reliability of the bulk-power system. The Commission's interest and responsibilities in this area derive from its authority over the rates, terms and conditions of transmission and wholesale sales in interstate commerce, its responsibility for approving and enforcing mandatory reliability standards for the bulk-power system in the United States, and a recently enacted law [3] requiring the Commission to adopt interoperability standards and protocols necessary to ensure smart-grid functionality and interoperability in the interstate transmission of electric power and in regional and wholesale electricity markets. The development and implementation of these interoperability standards is a challenging task, which requires the efforts of industry, the states and other federal agencies, in addition to the Commission. The Commission intends to use its authority, in coordination and cooperation with other governmental entities, to help achieve interoperability in a timely manner. Achievement of interoperability will not only increase the efficiency of the bulk-power system, with the goal of achieving long-term consumer savings, but will also enable demand response and other consumer transactions and activities that give consumers the tools to better control their electric energy costs. Reaching this goal will also help promote the integration of significant new renewable power into the transmission system and help state and federal initiatives to promote greater reliance on renewable power and meet future demand growth to satisfy the Nation's energy needs.

2. The purpose of the policy statement the Commission ultimately adopts will be to prioritize the development of key interoperability standards, provide guidance to the electric industry regarding the need for full cybersecurity for Smart Grid projects, and provide an interim rate policy under which jurisdictional public utilities may seek to recover the costs of Smart Grid deployments before relevant standards are adopted through a Commission rulemaking. Specifically, development of interoperability standards for inter-system communication, system security, wide-area situational awareness, demand response, electric storage, and electric transportation should be prioritized and accelerated. The work done on certain standards will provide a foundation for development of many other standards.

3. In addition, as further explained below, for the near term we propose certain rate treatments to encourage investment in Smart Grid technologies that advance efficiency, security, reliability and interoperability in order to address potential challenges to the

[1] For purposes of this proposed policy statement, ''demand resources'' refers to the set of demand response resources and energy efficiency resources and programs that can be used to reduce demand or reduce electricity demand growth.

[2] DER comprises dispersed generation devices and dispersed storage devices, including reciprocating engines, fuel cells, microturbines, photovoltaics, combined heat and power, and energy storage. *See* International Electrotechnical Commission, International Standards IEC 61850–7–420.

[3] Energy Independence and Security Act of 2007, Public Law No. 110–140, 121 Stat. 1492 (2007) (EISA).

bulk-power system. We recognize that a key consideration of public utilities in deciding whether to invest in Smart Grid technologies may involve the potential for stranded costs associated with legacy systems that are replaced by Smart Grid equipment. Additionally, as the electric system may require several of the new capabilities of the Smart Grid before interoperability standards have been developed, we recognize the need for guidance for jurisdictional entities. Thus, to offer some rate certainty and guidance regarding cost recovery issues, the Commission is proposing a rate policy for the interim period until final interoperability standards are adopted. The Commission also proposes that smart grid investments that demonstrate system security and compliance with Commission-approved Reliability Standards, the ability to be upgraded, and other specified criteria will be eligible for timely rate recovery and other rate treatments. For now, we propose as an interim rate policy to accept single-issue rate filings submitted under FPA section 205 by public utilities to recover the costs of Smart Grid deployments involving jurisdictional facilities provided that certain showings are made. In other words, we propose to consider Smart Grid devices and equipment, including those used in a Smart Grid pilot program or demonstration project, to be used and useful for purposes of cost recovery if an applicant makes the certain showings, as described below.

4. We seek comments from the industry on these and other steps the Commission can take to encourage and expedite the development of interoperability standards and implementation of Smart Grid projects. In the near future, we may convene a technical conference for further public input on these issues.

I. Background

5. Under the Federal Power Act (FPA), the Commission has jurisdiction over the transmission of electric energy in interstate commerce by public utilities, and over the reliable operation of the bulk-power system in most of the Nation.[4] The Commission also was given a new responsibility under the EISA, discussed further below, to issue a rulemaking to adopt standards and protocols to ensure Smart Grid functionality and interoperability in interstate transmission of electric power and in regional and wholesale electric markets.

6. Section 1301 of the EISA states that it is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of several goals and characteristics, which together characterize a Smart Grid.[5] These goals and characteristics are:

(1) Increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid. (2) Dynamic optimization of grid operations and resources, with full cyber-security. (3) Deployment and integration of distributed resources and generation, including renewable resources. (4) Development and incorporation of demand response, demand-side resources, and energy efficiency resources. (5) Deployment of ''smart'' technologies (real-time, automated, interactive technologies that optimize the physical operation of appliances and consumer devices) for metering, communications concerning grid operations and status, and distribution automation. (6) Integration of ''smart'' appliances and consumer devices. (7) Deployment and integration of advanced electricity storage and peak-shaving technologies, including plug-in electric and hybrid electric vehicles, and thermal storage air conditioning. (8) Provision to consumers of timely information and control options. (9) Development of standards for communication and interoperability of appliances and equipment connected to the electric grid, including the infrastructure serving the grid. (10) Identification and lowering of unreasonable or unnecessary barriers to adoption of smart grid technologies, practices, and services.[6]

7. Section 1305(a) of EISA directs the National Institute of Standards and Technology (the Institute) ''* * * to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems.'' [7] A helpful description of interoperability is ''the ability of a system or a product to work with other systems or products without special effort on the part of the customer * * *'' [8] In order to achieve the Smart Grid characteristics and functions listed in EISA section 1301, interoperability of Smart Grid equipment will be essential.

8. Finally, pursuant to the EISA, once the Commission is satisfied that the Institute's work has led to ''sufficient consensus'' on interoperability standards, we are directed to ''institute a rulemaking proceeding to adopt such standards and protocols as may be necessary to insure smart-grid functionality and interoperability in interstate transmission of electric power, and regional and wholesale electricity markets.'' [9]

9. The Commission appreciates the Institute's work to assess current Smart Grid standards and infrastructure to identify gaps, and is aware of its plans to create a knowledge base to enable effective communication among stakeholders and a roadmap to lay out a recommended course toward a highly interoperable grid.[10] In general, we expect that the Institute will recommend standards to the Commission that have resulted from the Institute's coordination with standards development organizations and technical experts. The Commission will initiate rulemakings as individual or suites of standards [11] achieve sufficient consensus. The Commission will consider the most effective and efficient ways to interact with the Institute and standards development organizations between the issuance of a notice of proposed rulemaking on submitted standards and a final rule adopting standards. We invite comment on this proposed approach.

10. The Commission will continue to take an active role in helping to ensure that the participants in the Institute's process effectively prioritize and sequence future standards development efforts. We invite comments on what factors the Commission should consider in determining when the Institute's work has led to ''sufficient consensus'' on interoperability standards to warrant instituting a rulemaking proceeding. We

[4] 16 U.S.C. 824, 824o.

[5] EISA sec. 1301, to be codified at 15 U.S.C. 17381.

[6] *Id.*

[7] EISA sec. 1305(a), to be codified at 15 U.S.C. 17385(a).

[8] Testimony of Patrick D. Gallagher, PhD, Deputy Director, National Institute of Standards and Technology, before the Committee on Energy and Natural Resources, United States Senate, March 3, 2009, *available at: http://www.nist.gov/director/ocla/nist%20pgallagher%20smart%20grid%20testimony%20senate%20e&nr%203-3-09.pdf.* According to the GridWise Architecture Council, the term ''interoperability'' refers to the ability to: (1) Exchange meaningful, actionable information between two or more systems across organizational boundaries; (2) assure a shared meaning of the exchanged information; (3) achieve an agreed expectation for the response to the information exchange; and (4) maintain the requisite quality of service in information exchange (i.e., reliability, accuracy, security). *See* GridWise Architecture Council, *Interoperability Path Forward Whitepaper* at 1–2, 2005, *available at: http://www.gridwiseac.org/pdfs/interoperability_path_whitepaper_v1_0.pdf.* The GridWise Architecture Council was formed by the U.S. Department of Energy to promote and enable interoperability among the many entities that interact with the Nation's electric power system. *See http://www.gridwiseac.org/about/mission.aspx.*

[9] EISA sec. 1305(d), to be codified at 15 U.S.C. 17385(d).

[10] *See* Testimony of Patrick D. Gallagher, PhD, *infra* n.8.

[11] A suite of standards would consist of a group of related standards.

also seek comment and ideas on how to identify and stage the adoption of successive waves of interoperability standards. Finally, we seek comment as to whether there should be some formal process for parties to seek Commission guidance if negotiations on certain interoperability standards reach an impasse.

II. Discussion

A. Urgency of Achieving Certain Smart Grid Functionalities

11. As noted above, rather than directing the Institute to develop interoperability standards of its own, Congress charged the Institute with coordinating such development. The EISA specifically requires the Institute to solicit input from, among others, a range of existing standards development organizations that rely on extensive negotiation in order to achieve broad industry consensus on proposed standards.[12]

12. The EISA contains no specific deadline for the creation of interoperability standards; instead, it provides for a consensus-based process. However, there is a sense of urgency within industry and government for the development of standards for and deployment of smart grid technologies generally. The Commission is particularly interested in the development of Smart Grid functions and characteristics that can help address challenges to the Commission-jurisdictional bulk-power system. These include the cross cutting issues of cybersecurity and the further development of common information models to allow useful exchange of electric system information (e.g., standard definitions). Broad policy goals also need to be addressed such as optimizing the transmission system to reduce congestion and improve reliability, security and efficiency; encouraging increased reliance on demand response; state and possibly national climate change initiatives such as Renewable Portfolio Standards and other efforts that result in increased reliance on variable renewable resources; and the potential for increased and variable electricity loads from the transportation sector. We discuss in turn the importance of each of these in driving the need for Smart Grid capabilities and the standards to achieve interoperability of smart grid devices with the electric grid and its associated users and infrastructure.

Cybersecurity and Reliability

13. Absent any consideration of the Smart Grid concept, other activities and events currently taking place in various regions raise physical and cybersecurity concerns for the electric industry. For example, utilities have already taken advantage of the existing communications infrastructure and capabilities of the Internet to aid their marketing operations. While typically not connecting their more sensitive control center systems directly to the Internet, many entities have nevertheless upgraded those systems to use Internet-based protocols and technologies. This, coupled with the fact that the non-Internet-connected control center operations may be connected to the same corporate network as the Internet-connected marketing systems, means that there may be an indirect Internet vulnerability to those sensitive control systems. Accordingly, without adequate protections, these preexisting utility efforts potentially increase the exposure of the bulk-power system to cybersecurity threats. Cybersecurity and physical security have been ongoing concerns for the Commission and the electric industry with the advent of the mandatory and enforceable federal bulk-power system reliability regime in place in most of the United States under the oversight of the Commission pursuant to FPA section 215.[13] Pursuant to this section 215 authority, the Commission recently approved eight cyber and physical protection related reliability standards.[14]

14. The fact that a smarter grid would permit two-way communication between the electric system and a much larger number of devices located outside of controlled utility environments commands that even more attention be given to the development of cybersecurity standards. Therefore, the Commission proposes to advise the Institute to undertake the necessary steps to assure that each standard and protocol that is developed as part of the Institute's interoperability framework is consistent with the overarching cybersecurity and reliability mandates of the EISA as well as existing reliability standards approved by the Commission pursuant to section 215 of the FPA. The Commission proposes to make consistency with cybersecurity and reliability standards a precondition to its adoption of Smart Grid standards. We seek comment on these proposals.

15. In order to fully incorporate measures to protect against cyber and physical security threats, we also propose to advise the Institute to take the necessary steps to assure that its process for the development of any interoperability standards and protocols leaves no gaps in cyber or physical security unfilled. We are concerned that this could be a particular problem where separate groups of interested industry members independently develop and advocate select standards or protocols for the Institute's consideration. We seek comment on this proposal.

Inter-System Communication and Coordination

16. There is an urgent need to further develop a common semantic framework (*i.e.*, agreement as to meaning) and software models for enabling effective communication and coordination across inter-system interfaces. Such standards could play an important role in the movement to a smarter grid that is capable of addressing challenges to the operation of the bulk-power system. The bulk-power system can be thought of as a system of systems.[15] In order to enable a smarter grid, particularly one capable of addressing the bulk-power system challenges discussed below, effective interfaces must be developed between and among all of these systems (*i.e.*, inter-system interfaces) and common information model standards appear to be powerful tools to enable such inter-system interfaces. The Commission proposes to identify standards for common information models for inter-system interfaces as a high priority for accelerated development. We seek comment on this proposal.

Integrating Renewable Resources Into the Electric Grid

17. Several groups of states have been working on aggressive regional carbon control measures,[16] and one regional effort has already begun operation in the

[12] The EISA specifically names the IEEE (formerly known as the Institute of Electrical and Electronics Engineers), and the National Electrical Manufacturers Association. Other relevant existing standards development organizations could include the International Electrotechnical Commission (IEC), the American National Standards Institute (ANSI), the German Standards Institute (actually Deutsches Institut für Normung), the International Organization for Standardization, and the International Telecommunication Union.

[13] 16 U.S.C. 824o.

[14] *See Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 73 FR 7368 (Feb. 7, 2008), 122 FERC ¶ 61,040, *reh'g denied and clarification granted*, Order No. 706–A, 123 FERC ¶ 61,174 (2008). Notably, section 215(a) of the FPA, 16 U.S.C. 824o(a), defines the terms ''reliability standard,'' ''reliable operation,'' and ''cybersecurity incident.''

[15] *See* Appendix A for a graphic representation of the various systems.

[16] *See, e.g.*, the Western Climate Initiative (*http://www.westernclimateinitiative.org/*) and the Midwestern Greenhouse Gas Reduction Accord (*http://www.midwesternaccord.org/*).

form of the Regional Greenhouse Gas Initiative.[17] Federal legislation addressing carbon control and other environmental and climate related matters may follow. These initiatives point toward a shift in the mix of fuels that will be used to generate electricity, and an associated shift in where new generation resources are located. Additional transmission capacity to ensure deliverability of those new generating resources will be needed in the form of new transmission lines and more efficient use of existing infrastructure. Also, additional demand resources, generation resources, and DER will be needed to reliably integrate variable generation into the electric grid. Efforts to address these challenges could benefit from the enhanced capabilities associated with certain aspects of the Smart Grid; among them, the ability to maximize the capability and use of existing and new transmission capacity,[18] and foster the deployment and integration of demand resources, generation resources and DER.

18. As of December 2008, the Nation had 25,170 MW of wind generation based on nameplate capacity.[19] According to the 2008 Long-Term Reliability Assessment by the North American Electric Reliability Corporation (NERC), an additional 145,000 MW of wind power projects are planned or proposed over the next ten years.[20] Accordingly, it is evident that in a relatively short period of time, some parts of the bulk-power system may face the need to effectively integrate unprecedented amounts of variable generation resources. This is significant because operators of variable generation have less control over when the resource is available to produce electricity, in contrast with more conventional fossil and nuclear generation.

19. Large amounts of variable generation raise several important operational and planning issues, including: (1) Resource adequacy (potential loss and unavailability of variable resources at peak periods and other critical times such as loss of other generators or transmission lines); (2) resource management (potential for over-generation by variable resources during off-peak periods when there is insufficient load to accommodate such generation); and (3) reduced system inertia (potential loss of system stability due to the high penetration of variable resources with low inertia properties).[21] Given sufficient time and resources, a variety of solutions to these concerns may be feasible. For example, investment in large amounts of electricity storage could ultimately address both the resource adequacy and resource management concerns,[22] although technical and economic issues remain to be addressed before such investment is likely to become significant. In the meantime, Smart Grid-enabled demand response capabilities [23] could add important new tools to deal with both resource adequacy and resource management concerns.[24] Demand response reductions in load can help address the resource adequacy concerns surrounding unexpected loss of variable generation, and EISA envisions, among other things, the development of large new pools of demand response resources.[25]

20. With respect to the resource management concerns surrounding potential over-generation, this situation tends to arise during off-peak periods when load is at its lowest and system operators have already turned off all traditional generation except their large conventional units that, for primarily operational reasons, must be operated in a nearly steady state around the clock.[26] If large amounts of variable generation begin producing power during such periods, then the supply of electricity would exceed the demand for electricity and risk unbalancing the bulk-power system. In order to bring the system back into balance in a situation where easily dispatchable generation or demand resources are not available, system operators may have to require variable generation to reduce output. However, at such times this variable generation may be producing the lowest priced energy on the system, so reducing or eliminating its output would not be economically efficient. If a system existed whereby entities [27] could receive a timely signal to temporarily shift their demand from peak to off-peak, and if such load shifts could be controlled by the system operator, then such ''dispatchable'' demand response could alleviate to some degree the resource management concerns associated with over-generation from the other side of the supply/demand equation. Again, the urgency to develop and implement those aspects of a smarter grid that can enable such demand response capability is clear.[28]

21. The future potential for a large and variable new class of electric load, specifically electricity-powered vehicles, also presents challenges that

[17] *See http://www.rggi.org/home.*

[18] For example, a smarter grid could enable an increase in transmission capacity through a switch from static to dynamic transmission line ratings enabled by the advanced sensor, communications, and information technology capabilities associated with a smarter grid.

[19] Source, American Wind Energy Association's Web site: *http://www.awea.org/projects/.*

[20] North American Electric Reliability Corporation, 2008 Long-Term Reliability Assessment at 12.

[21] Inertia is the physical property which allows an object in motion to continue to stay in motion, absent other forces. Traditional dispatchable generating units (such as thermal and hydro power plants) utilize large rotary generators which have large amounts of inertia. This property has a tendency to stabilize the bulk-power system with an output response in the event of a disturbance. Variable resources, such as wind and solar, have less or no inertia and, as such, cut back more quickly in response to disturbances (*e.g.*, frequency excursions), which may contribute to power system instabilities.

[22] The Electricity Advisory Committee, which was formed by the Department of Energy to provide it with advice on a number of electricity issues, recently issued a report, *Bottling Electricity: Storage as a Strategic Tool for Managing Variability and Capacity Concerns in the Modern Grid,* December 2008. This report asserts that there are many benefits to deploying energy storage technologies into the Nation's grid: (1) A means to improve grid optimization for bulk power production; (2) a way to facilitate power system balancing in systems that have variable renewable energy sources; (3) facilitation of integration of plug-in hybrid electric vehicle power demands with the grid; (4) a way to defer investments in transmission and distribution infrastructure to meet peak loads (especially during outage conditions) for a time; and (5) a resource providing ancillary services directly to grid/market operators.

[23] The Smart Grid concept envisions a power system architecture that permits two-way communication between the grid and essentially all devices that connect to it, ultimately all the way down to large consumer appliances. Efforts at realizing this concept focus on standardization to enable all of this new equipment to be manufactured economically in support of widespread adoption by consumers. Once that is achieved, a significant proportion of electric load could become an important resource to the electric system, able to respond automatically to customer-selected price or dispatch signals delivered over the Smart Grid infrastructure without significant degradation of service quality. For purposes of this proposed policy statement we will refer to such new demand response capability as Smart Grid-enabled demand response capability.

[24] A recent NERC Draft Special Report recognizes that ''[d]emand response has already been shown in some balancing areas to be a flexible tool for operators to use with wind generation [footnote omitted] and is a potential source of flexibility equal to supply-side options.'' NERC, *Special Report Accommodating High Levels of Variable Generation* at 45; *available at http://www.nerc.com/docs/pc/ivgtf/IVGTF_Reporta_17Nov08.pdf.*

[25] *See, e.g.*, EISA sec. 1301(4), (5), (6), (8), and (9), to be codified at 15 U.S.C. 17381(4), (5), (6), (8), and (9).

[26] There can also be an economic justification for around-the-clock operation because large conventional units tend to have relatively higher capital costs and lower running costs. However, their generally slow and difficult start-up and cool-down sequences are the main reason why they cannot be started and stopped easily to address over-generation situations.

[27] Such entities would need to have invested in the equipment necessary to reliably measure and control either their own load or the load of clients that they manage under contract.

[28] *See, e.g.*, EISA sec. 1301(4), (5), (6), (8), and (9).

may deserve special attention and priority in the consensus-based interoperability process being coordinated by the Institute. In addition to the plans of major automobile manufacturers to roll out plug-in hybrid vehicles starting in 2010, it is possible that large numbers of pure electric vehicles, sometimes known as neighborhood electric vehicles, could be purchased as second cars for short-haul daily commuting or for other purposes.[29] Judging by the observed intensity of electric utility and state government interest in this area,[30] the potential for a significant shift in personal transportation technology to electric power in the near future cannot be discounted.

22. The timing of vehicle charging activities is an illustration of the effect electric vehicles can have on the operation of the electric grid. If charging takes place during peak periods it could require a large investment in new generation, demand response resources and/or transmission capacity to meet the resulting higher peak loads. However, charging off-peak could actually improve the operation of the electric system, for example by improving existing generation asset utilization or by providing an electricity storage solution to address the potential for over-generation by variable resources in off-peak periods. Ultimately, large numbers of plug-in electric vehicles have the potential to provide some ancillary services like distributed energy storage or, when aggregated, regulation service. In all cases, however, the enhanced information processing and high-speed communications and control capabilities of the Smart Grid would be extremely helpful, perhaps necessary, in dealing with the challenges and opportunities associated with large numbers of new electric vehicles on the bulk-power system.

23. Additionally, these and other changing patterns of electricity generation and use are increasing the frequency with which congestion on transmission facilities becomes binding and raises costs for consumers. The Smart Grid concept includes the deployment of advanced sensors and controls throughout the electric system that should maximize the capability and use of existing and new transmission capacity.

24. For all of the reasons discussed above, which may represent direct challenges to the reliable operation of the bulk-power system and wholesale power markets, the fact that many utilities are already beginning to deploy Smart Grid related systems, and the substantial funding for Smart Grid in the American Recovery and Reinvestment Act,[31] the Commission herein proposes a targeted acceleration of certain aspects of the interoperability standards process as described further below.[32]

B. Development of Key Interoperability Standards

25. As discussed above, several important trends indicate a strong national interest in expediting the development and deployment of the types of technologies and capabilities associated with a smarter grid. To achieve these types of capabilities, Smart Grid technologies must be interoperable.[33] The Commission understands that a consensus-based interoperability standards development process typically requires time to reach consensus, but also recognizes that recent efforts by the Institute and several industry groups, including the OpenSG Subcommittee of the Utility Communication Architecture International User Group (OpenSG Subcommittee) and the GridWise Architecture Council, have developed concepts to prioritize the large set of potential standards, and have suggested principles for expediting development of a set of transmission and distribution systems standards that will facilitate many other important standards development activities. The Commission is committed to identifying these key transmission and distribution standards and working with the Institute to expedite their adoption. The Commission believes that focusing on the priorities identified below will help to remove uncertainty for developers of standards applicable to all levels of the grid.

26. The Institute has issued for comment a ''Smart Grid Issues Summary'' that will act as an interim roadmap, starting with high priority standards that are largely based on existing broadly accepted standards.[34] Leveraging existing standards to the greatest extent practical should shorten the time required to finalize needed interoperability standards.

27. The Commission proposes to prioritize the development of standards for two cross-cutting issues and four key grid functionalities involving interfaces between utilities (*e.g.*, regional transmission organizations (RTO) to utilities outside the RTO), utilities and customers, and utilities and other systems (*e.g.*, energy management systems). These cross-cutting issues and key functionalities are proposed as the first level of work to be accomplished in the interoperability standards-setting process. Swift progress on adopting standards for these cross-cutting issues and key functionalities is necessary for the transmission operator/RTO to address the bulk-power system challenges identified above.

28. The two cross cutting issues are first, cybersecurity (and physical security to protect equipment that can give access to Smart Grid operations) and second, a common semantic framework and software models for enabling effective communication and coordination at the boundaries of utility systems where these interface with customer and other systems (and hence provide ''inter-system'' functionality).[35] The four key grid functionalities are wide-area situational awareness, demand response, electric storage, and electric transportation.

System Security

29. We propose two initial overarching principles regarding security that Smart Grid applications must address in order to comply with the need for full cybersecurity and with the Commission's bulk-power system concerns, consistent with our authority under section 215 of the FPA.[36] First, we believe that a responsible entity subject to Commission-approved

[29] *See, e.g.*, Kris Osborn, *Services Plan to Buy Electric Cars,* Federal Times, November 17, 2008, at 3 (noting that Army, Navy, and Air Force plan to purchase a total of 30,000 neighborhood electric vehicles for use on military bases).

[30] *See, e.g.*, John S. Adams, *Bill benefits 'medium-speed' electric cars,* Great Falls Tribune, January 9, 2009 (reporting on efforts in the Montana legislature to ease restrictions and ownership and use requirements on ''medium speed'' electric vehicles, which could include electric vehicles of up to 5,000 pounds gross vehicle weight), *available at http://www.greatfallstribune.com/article/20090109/NEWS01/901090337.*

[31] *See American Recovery and Reinvestment Act,* Public Law No. 111–5, Title IV, Subpart A, ____ Stat. ____, ____(2009) (ARRA).

[32] This is consistent with the Institute's approach of prioritizing standards and functionalities that may impact reliability. *See* NIST Smart Grid Issues Summary, March 10, 2009, *available at: http://www.nist.gov/smartgrid/* (in case link is temporarily unavailable at this Web site, please request it via e-mail at: *smartgrid@nist.gov*).

[33] *See* Gridwise Architecture Council, *Interoperability Path Forward Whitepaper, infra* n.8.

[34] *See infra* n.32.

[35] The concept of the Smart Grid as a ''system of systems'' and the importance of the need of first focusing on the inter-system interfaces are presented in a paper by the OpenSG Subcommittee and Smart Grid Executive Working Group entitled *Smart Grid Standards Adoption: Utility Industry Perspective* (Utility Perspective Paper), *available at: http://osgug.ucaiug.org/Shared%20Documents/Forms/AllItems.aspx.* A graphic that illustrates these concepts is found in Appendix A.

[36] 16 U.S.C 824o.

reliability standards, such as the Critical Infrastructure Protection Reliability Standards, must ensure that it maintains compliance with those standards during and after the installation of Smart Grid technologies. Indeed, many Smart Grid installations will need to be included on a responsible entity's list of critical assets to be protected under the Commission-approved NERC Critical Infrastructure Protection Reliability Standards.

30. Second, to the extent that they could affect the reliability of the bulk-power system, Smart Grid technologies must address, the following considerations: (1) The integrity of data communicated (whether the data is correct); (2) the authentication of the communications (whether the communication is between the intended Smart Grid device and an authorized device or person); (3) the prevention of unauthorized modifications to Smart Grid devices and the logging of all modifications made; (4) the physical protection of Smart Grid devices; and (5) the potential impact of unauthorized use of these Smart Grid devices on the bulk-power system.

31. To the extent that any of the new Smart Grid standards or extensions to relevant existing standards require adaptation or extension in order to address these security-related concerns, such considerations should be given the highest priority. The Institute has suggested that beyond the NERC Critical Infrastructure Protection Reliability Standards, additional security standards to be investigated include ISA99/IEC 62443, NIST Special Publication (SP) 800–53, and the work of AMI–SEC.[37] The Institute also suggests examining harmonization of several of these standards in order to provide additional protection to the bulk-power system. Commission staff will monitor Institute activities with respect to Smart Grid cybersecurity and physical security in order to fully coordinate the Commission's regulatory objectives and responsibilities in this arena. The Commission seeks comments on this proposed approach to maintaining bulk-power system reliability and security as smart grid technologies are deployed and integrated.

[37] ISA99/IEC 62443 represents a suite of standards for industrial automation and control system security. NIST Special Publication (SP) 800–53 involves security controls for federal agencies, including those who are part of the bulk-power system (*e.g.*, Tennessee Valley Authority, Bonneville Power Authority). The Advanced Metering Infrastructure (AMI) Security Task Force (AMI-SEC), is defining common requirements and standardized specifications for securing AMI system elements.

Communication

32. The second cross-cutting issue is the need for a common semantic framework (i.e., agreement as to meaning) and software models for enabling effective communication and coordination across inter-system interfaces. An interface is a point where two systems need to exchange data with each other; effective communication and coordination occurs when each of the systems understands and can respond to the data provided by the other system, even if the internal workings of each system are quite different. A core group of standards initiated by the Electric Power Research Institute provide the basis for addressing this issue—these standards are IEC 61970 and IEC 61968 (together often referred to as the ''Common Information Model'' standards) and IEC 61850. These standards have been cited by both the Utility Perspective Paper, as well as the Institute's recent Smart Grid Issues Summary.[38] This group of standards was designed to allow different systems to talk to one another as well as to provide software development tools for more efficient system integration. This suite of standards is already in use by a number of utilities for enterprise system integration (enabling integration across ''intra-system'' interfaces). Indeed, while additional work on these standards will also help intra-system communication and coordination, we agree with the OpenSG Subcommittee and the Institute that inter-system interfaces should be a priority.

33. The Commission is not mandating that these particular standards be further developed. Rather, we identify them here to establish priorities for further development by the Institute and industry. The group of standards initiated by the Electric Power Research Institute serves as a foundation for developing a complete set of communications standards. These standards require some level of harmonization with one another and other standards, and extensions to these standards will be required for additional interoperability and functionality. Efforts to coordinate and/or harmonize these standards with others intended to promote interoperability should be encouraged. For example, ongoing efforts to coordinate IEC 61968 with ''MultiSpeak'' developed by the National Rural Electrical Cooperative Association should be continued. But these standards represent the best work to date and will be an essential building block in realizing the most significant early benefits for the bulk-power system. These standards are also key to the attainment of renewable power and climate policy goals and can help enable customers to manage their energy usage and cost. The Commission seeks comments on this proposed approach.

[38] *See infra* n.32.

Four Priority Functionalities

34. In addition to the cross-cutting issues discussed above, the Commission seeks comments on the four Smart Grid functionalities that the Commission's preliminary analysis indicates will be most helpful in addressing the bulk-power system challenges and should be given priority in the standards development process.

Wide-Area Situational Awareness

35. Wide-area situational awareness is the visual display of interconnection-wide system conditions in near real time at the reliability coordinator level and above. The wide-area situational awareness efforts, with appropriate cybersecurity protections, can rely on the NASPInet work undertaken by the North American SynchroPhasor Initiative (NASPI) and will require substantial communications and coordination across the RTO and utility interfaces. We encourage the RTOs to take a leadership role in coordinating the NASPI work with the member transmission operators.

36. Regarding the potential Smart Grid role in addressing transmission congestion and optimization of the system, increased deployment of advanced sensors like Phasor Measurement Units will give bulk-power system operators access to large volumes of high-quality information about the actual state of the electric system that should enable a more efficient use of the electric grid, for example through a switch from static to dynamic line ratings. However, such large volumes of data present challenges in the form of information processing and management. Advanced software and systems will be needed to manage, process, and render this data into a form suitable for human operators and automated control systems. The Institute's process should strive to identify the core requirements for such software and systems that would be most useful to system operators in addressing transmission congestion and reliability.

Demand Response

37. Smart Grid-enabled demand response is a priority because of its potential to help address several of the bulk-power system challenges identified

above. Further development of key standards would enhance interoperability and communications between system operators, demand response resources, and the systems that support them. In order to achieve an appropriate level of standardizations, a series of demand response ''use cases'' should be developed using readily available tools.[39] In this regard, we encourage a particular focus on use cases for the key demand response activities discussed earlier: dispatchable demand response load reductions to address loss or unavailability of variable resources and the potential for dispatchable demand response to increase power consumption during over-generation situations.

38. It also appears that achieving such demand response capabilities will require additional standardization of the interfaces between systems on the customer premises and utility systems, including addressing data confidentiality issues. The Institute notes that considerable work has been done to develop demand response standards. One standard, Open Automated Demand Response (OpenADR) (developed for the interface between the utility and large commercial customers) has already been referred to the Organization for the Advancement of Structured Information Systems (OASIS). OpenADR has been developed by the Lawrence Berkeley National Laboratory, and is now going through a formal standards development process being coordinated between OASIS and the Utility Communication Architecture International User Group.[40] Accordingly, we would encourage a focus in this area as well.

39. Specifications for customer meters are within the jurisdiction of the States, but it is clear that communication and coordination across the interfaces between the utility and its customers can have a significant impact on the bulk-power system, particularly as new renewable power and climate policy initiatives introduce the need for more flexibility in the electricity grid, which creates the need for increased reliance on demand response and electricity storage. A large portion of electricity storage may ultimately be located on customer premises. As noted in the Institute's Smart Grid Issues Summary, an appropriate starting point for further standards development would be the harmonization of IEC Standard 61850 and several meter standards, namely ANSI C12.19 and C12.22, and we encourage the Institute and industry to work together on this suggestion. The Commission seeks comment from States and other parties on the optimal approach to develop standards in this area, and we will pursue direct communications with the States on this topic through the NARUC–FERC Smart Grid Collaborative and other NARUC Committees.

Electric Storage

40. The third key grid functionality is electric storage. If electricity storage technologies could be more widely deployed, they would present another important means of addressing some of the difficult issues facing the electric industry. To date, the only significant bulk electricity storage technology has been pumped storage hydroelectric technology. However, we are aware that new types of storage technologies are under development and in some cases are being deployed, and could also potentially provide substantial value to the electric grid. While further research and development appears necessary before any widespread deployment of such newer technologies can take place, it may nevertheless be appropriate to encourage the identification and standardization of all possible electricity storage use cases at an early stage. There are existing standards that can be the starting point for interoperability standards development for DER. IEC 61850 addresses communications for DER, and IEEE 1547 has been designated as a federal standard for interconnection.[41]

Electric Transportation

41. The fourth key grid functionality is electric transportation. As indicated above, to the extent that new electric transportation options become widely adopted in the near future, maintaining the reliable operation of the bulk-power system will require some level of control over when and how electric cars draw electricity off of the system. At the most basic level, this could be accomplished by providing an ability for distribution utilities to facilitate vehicle charging during off-peak periods so that this new electric load would not increase peak loads and require the development of new peak generation, demand response and/or more transmission to urban load centers that are being targeted for these vehicles. A more advanced implementation could offer vehicle owners the option to voluntarily limit their charging to times when variable renewable generation is producing power or to permit utilities the limited use of the aggregated capabilities of these vehicles for various grid-related purposes such as bulk power storage or ancillary services.

42. Ultimately we would hope for a smarter grid to accommodate a wide array of advanced options for electric vehicle interaction with the grid, including full vehicle-to-grid capabilities. However, assuming full vehicle-to-grid capabilities cannot be achieved immediately, we would encourage the Institute's process to focus on the development of appropriate standards, or extensions to relevant existing standards, to provide at least the minimum communications and interoperability requirements that are necessary to permit some ability for distribution utilities to facilitate vehicle charging during off-peak load periods. The Institute's Smart Grid Issues Summary notes that the Society of Automotive Engineers (SAE) has developed two draft standards, SAE J2836 and SAE J2847, which address communications and price signals/demand response respectively. These standards are on the SAE 2009 Ballot. Looking forward to the potential provision of ancillary services to the grid by electric vehicles, electrical interconnection issues must be dealt with along with potential expansion of communications ability. To this end, we urge the SAE and the automobile industry to plan data communications systems between electric vehicles and the grid that are able to be upgraded. We also urge the Institute to include electric vehicles in its DER standards development.

43. Several of the preceding paragraphs discuss the development of use cases or other standards that appear similar to business practice standards development, in order to help shape and identify the functional needs that the Institute's technical interoperability standards development process will address. Since the North American Energy Standards Board (NAESB) has a great deal of experience in helping the electric and natural gas industries successfully negotiate business practice standards, it may be helpful to the

[39] The ''use case'' is a concept from the software and systems engineering communities whereby a developer, usually in concert with the end user, attempts to identify all of the functional requirements of a system. Each ''use case'' essentially describes how a user will interact with a system to achieve a specific goal.

[40] The Utility Communication Architecture International User Group has also been developing OpenHAN, a specification for the energy services interface between the home area network (HAN) and the utility. Both OpenHan and OpenADR will benefit from the planned extensions of IEC 61850 and the common information model standards described above.

[41] *See* Energy Policy Act of 2005, Public Law No. 109–58, sec. 1254, 110 Stat. 594, 970 (2005), adding a new subsection 111(d)(15) to the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)).

Institute to engage NAESB resources in the development of these use cases and other business practice-like standards. We seek comment as to whether the Institute would be helped by the incorporation of resources from other organizations such as NAESB into the development of these various business practice-like standards.

44. The Commission seeks comment on whether the priorities and reliability principles articulated above are appropriate, and whether there are other priorities or reliability principles that should be included in order to address potential challenges to the operation of the bulk-power system.

C. Interim Rate Policy: Guidance for Smart Grid-Related Filings by Jurisdictional Entities

45. Given the trends discussed above, Smart Grid policies should encourage utilities to deploy systems in the near term that advance efficiency, security, and interoperability in order to address potential challenges to the bulk-power system. A key consideration for utilities when determining whether to adopt such systems will be whether they are able to recover the costs of these deployments in regulated rates. Another key consideration may involve the potential for stranded costs associated with legacy systems that are replaced by Smart Grid equipment. Additionally, as the electric system may require several of the new capabilities of the Smart Grid before interoperability standards have been developed, we recognize the need for guidance for jurisdictional entities. Thus, to offer some rate certainty and guidance regarding cost recovery issues, the Commission is proposing a rate policy for the interim period until final interoperability standards are adopted.

46. FPA section 205 requires that all rates for the transmission or sale of electric energy subject to the Commission's jurisdiction be just and reasonable.[42] In evaluating expenses for which cost recovery is appropriate, one of the criteria the Commission relies on is whether the facilities are ''used and useful.'' [43] Once interoperability standards are completed, the Commission will consider making compliance with those standards a mandatory condition for rate recovery of jurisdictional Smart Grid investments. For now, we propose as an interim rate policy to accept rate filings, including single issue rate filings, submitted under FPA section 205 by public utilities to recover the costs of Smart Grid deployments involving jurisdictional facilities provided that certain showings are made. In other words, we propose to consider Smart Grid devices and equipment, including those used in a Smart Grid pilot program or demonstration project, to be used and useful for purposes of cost recovery if an applicant makes the following showings.

47. We propose that an applicant must show that the reliability and security of the bulk-power system will not be adversely affected by the deployment at issue. Second, the filing must show that the applicant has minimized the possibility of stranded investment in Smart Grid equipment by designing for the ability to be upgraded, in light of the fact that such filings will predate adoption of interoperability standards. Finally because it will be important for early Smart Grid deployments, particularly pilot and demonstration projects, to provide feedback useful to the interoperability standards development process, we propose to direct the applicant to share information with the Department of Energy Smart Grid Clearinghouse, provided for in the ARRA.[44]

48. In order to satisfy our first concern about reliability and security, we propose that applicants will be required to address the security concerns discussed in the previous section on the development of key standards. Accordingly, an applicant must show how its proposed deployment of Smart Grid equipment will maintain compliance with Commission-approved reliability standards, such as the Critical Infrastructure Protection Reliability Standards, during and after the installation and activation of Smart Grid technologies so the reliability and security of the bulk-power system will not be jeopardized. An applicant must also address: (1) The integrity of data communicated (whether the data is correct); (2) the authentication of the communications (whether the communication is between the intended Smart Grid device and an authorized device or person); (3) the prevention of unauthorized modifications to Smart Grid devices and the logging of all modifications made; (4) the physical protection of Smart Grid devices; and (5) the potential impact of unauthorized use of these Smart Grid devices on the bulk-power system.

49. Regarding the second concern about stranded Smart Grid investment, we propose to require a showing that the applicants have made good faith efforts to adhere to the vision of a Smart Grid described in Title XIII of the EISA, including optimizing asset utilization and operating efficiency. In general, applicants should attempt to adhere to the principles of the Gridwise Architecture Council Decision-Maker's Interoperability Checklist.[45] In practice, we will place the most weight on an applicant's adherence to the following principles: (1) Reliance to the greatest extent practical on existing, widely adopted and open [46] interoperability standards; and (2) where feasible, reliance on systems and firmware that can be securely upgraded readily and quickly. Adherence to these two key principles should minimize the possibility of stranded smart grid investment by making it less likely that equipment replacement will be required once final standards are approved.

50. Regarding the information sharing concern, the following information should be shared with the Department of Energy Smart Grid Clearinghouse: (1) Any internal or third party evaluations, ratings, and/or reviews including all primary source material used in the evaluation; (2) detailed data and documentation explaining any improvement in the accurate measurement of demand response resources; (3) detailed data and documentation explaining the expansion of the quantity of demand response resources that resulted from the project and the resulting economic effects; (4) detailed data and documentation for any improvements in the ability to integrate variable renewable generation resources; (5) detailed data and documentation that

[42] 16 U.S.C. 824d.

[43] The general rate-making principle is that expenditures for an item may be included in a public utility's rate base only when the item is ''used and useful'' in providing service. *See NEPCO Municipal Rate Committee* v. *FERC*, 668 F.2d 1327, 1333 (DC Cir. 1981).

[44] ARRA sec. 405(3).

[45] *See* Gridwise Architecture Council Decision-Maker's Interoperability Checklist Draft Version 1.0, available at *http://www.gridwiseac.org/pdfs/gwac_decisionmakerchecklist.pdf* (Interoperability Checklist).

[46] An open architecture is publicly known, so any and all vendors can build hardware or software that fits within that architecture, and the architecture stands outside the control of any single individual or group of vendors. In contrast, a closed architecture is vendor-specific and proprietary, and blocks other vendors from adoption. An open architecture encourages multi-vendor competition because every vendor has the opportunity to build interchangeable hardware or software that works with other elements within the system. *See* Gridwise Architecture Council Decision-Maker's Interoperability Checklist Draft Version 1.0, available at *http://www.gridwiseac.org/pdfs/gwac_decisionmakerchecklist.pdf*. We note that Congress recently made utilization of open protocols and standards, if available and appropriate, a condition of receiving funding from the Department of Energy for demonstration projects and grants pursuant to EISA sections 1304 and 1306. *See American Recovery and Reinvestment Act*, Public Law No. 111–5, sec. 405(3) and 405(8),____Stat.____,____(2009).

shows any achievement of greater system efficiency through a reduction of transmission congestion and loop flow; (6) detailed data and documentation showing how the information infrastructure supports DER such as plug-in electric vehicles; and (7) detailed data and documentation that shows how the project resulted in enhanced utilization of energy storage. To the extent that the Department of Energy specifies additional criteria for making grants under the ARRA for Smart Grid demonstration and pilot projects, the Applicant should agree to share information relevant to those criteria as well.

51. Finally, consistent with the policy of supporting the modernization of the Nation's electric system announced in EISA section 1301, the Commission also proposes to permit applicants to file for recovery of the otherwise stranded costs of legacy systems that are to be replaced by smart grid equipment. However, an appropriate plan for the staged deployment of smart grid equipment, which could include appropriate upgrades to legacy systems where technically feasible and cost-effective, could help minimize the stranding of unamortized costs of legacy systems. Accordingly, we propose that any filing for the recovery of stranded legacy system costs must demonstrate that such a migration plan has been developed.

52. The Commission will also entertain requests for rate treatments such as accelerated depreciation and abandonment authority (whereby an applicant is assured of recovery of abandoned plant costs if the project is abandoned for reasons outside the control of the public utility) specifically tied to Smart Grid deployments under our FPA section 205 authority. Any requests for such rate treatments for Smart Grid deployments will need to address all of the concerns discussed above for rate recovery and make the same showings described in that section. We would also consider applying these rate treatments to the portion of a smart grid pilot or demonstration project's cost that is not already paid for by Department of Energy funds, such as those authorized by EISA sections 1304 and 1306.[47] To the extent that such showings are made, we propose to consider permitting abandonment authority to apply to any Smart Grid investments that, despite reasonable efforts, could not be made upgradeable and must ultimately be replaced if found to conflict with the final standards to be approved under the Institute's standards development process.

53. The Commission invites comments on all aspects of this proposed interim rate policy.

III. Comment Procedures

54. The Commission invites comments on this proposed policy statement May 11, 2009.

[47] To be codified at 42 U.S.C. 17384, 17386.

IV. Document Availability

55. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

56. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

57. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

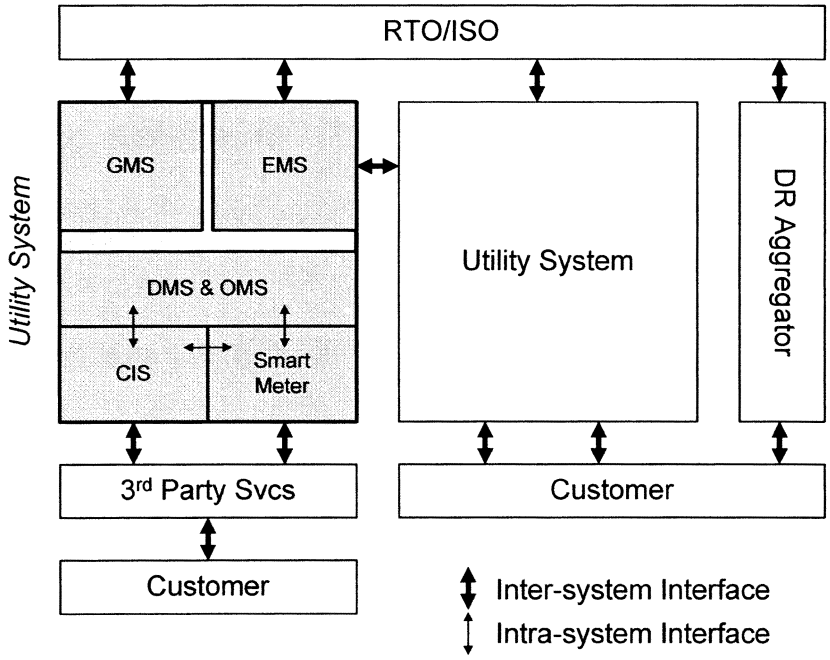
By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A

System of Systems



Adapted from: *Smart Grid Standards Adoption: Utility Industry Perspective*, OpenSG Subcommittee of the Utility Communication Architecture International User Group, and Smart Grid Executive Working Group.

[FR Doc. E9–6471 Filed 3–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–1158]

RIN 1625–AA09

Drawbridge Operation Regulation; Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of the SR 23 bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana. Due to high vehicular traffic during the afternoon, Plaquemines Parish has requested a change to the operation schedule to allow the bridge to remain closed-to-navigation for an additional 90 minutes during weekday afternoons to facilitate the movement of vehicular traffic.

DATES: Comments and related material must reach the Coast Guard on or before May 26, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–1158 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *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.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call David Frank, Bridge Administration Branch at 504–671–2128. 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. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1158), indicate the specific section of this document to which each comment applies, and give the reason for each comment. 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. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material 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. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

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* at any time. Enter the docket number for this rulemaking (USCG–2008–1158) in the Search box, and click ''Go>>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT 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 Bridge Administration Office in Room 1313 of the Hale Boggs Federal Building, 500 Poydras Street, New Orleans, LA 70130 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

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

Plaquemines Parish has requested that a regulation regarding the operation of the SR 23 bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana to allow for the bridge to remain in the closed-to-navigation for an additional 90 minutes in the afternoon to facilitate the movement of vehicular traffic. Presently, the draw need not open for the passage of vessels in the afternoon from 3:30 p.m. until 5:30 p.m. The request from Plaquemines Parish is to add an additional 90 minutes to the closure in the afternoon so that the draw need not open for the passage of vessels from 3:30 p.m. until 7 p.m. The Louisiana Department of Transportation and Development, the owner of the bridge, has reviewed their bridge tender logs and have estimated that the schedule change would affect an average of two vessels. It should be noted that the vertical clearance of the bridge in the closed-to-navigation position is 40 feet above mean high water in the closed-to-navigation position so only vessels with vertical clearance requirements of more than 40 feet will be affected by the proposed change.

This bridge currently opens on signal, except from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, excluding Federal holidays, during which time the draw need not be opened for the passage of vessels. Plaquemines Parish has requested that the bridge remain closed an additional 90 minutes in the afternoon, until 7 p.m. in the evening to minimize the delays to traffic caused by the opening of the bridge. A recent traffic study indicates that between 1500 and 2000 vehicles per hour cross the bridge during weekday afternoons. When the bridge opens for the passage of a vessel at 5:30 p.m., traffic may back up for more than two miles. As SR 23 is the main highway into and out of Plaquemines Parish, the traffic backup severely hampers the ability of emergency responders to transit in the area. Plaquemines Parish Office of Emergency Management has indicated that the increase in times in the afternoon will allow for most of the traffic to clear out of the area. They believe that the request will only cause a minor increase in delays for vessels wishing to use the area. An alternate route via the Harvey Canal is available for vessels with vertical clearances of greater than 40 feet if they do not wish to be delayed.

A Test Deviation, USCG–2008–0069, is being issued in conjunction with this Notice of Proposed Rulemaking to test the proposed schedule and to obtain data and public comments. The test period will be in effect from April 10, 2009 until May 11, 2009. The Coast Guard will review the logs of the drawbridge and evaluate public comments from this Notice of Proposed Rulemaking and the above referenced Temporary Deviation to determine if a permanent change to the special drawbridge operating regulation is warranted.

The Test Deviation shall allow the draw to open on signal, except that the draw need not be opened for the passage of vessels from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 7 p.m. Monday through Friday, excluding Federal holidays.

Discussion of Proposed Rule

Plaquemines Parish has requested a change in the operating regulation which would allow the draw of the bridge to remain in the closed-to-navigation position for an additional 90 minutes in the afternoon to facilitate the movement of vehicular traffic in the area. Presently, the bridge opens on signal, except from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, excluding Federal holidays, the draw need not be opened for the passage of vessels.

Plaquemines Parish has requested that an additional 90 minutes be added on to the afternoon closure to allow the bridge to remain in the closed-to-navigation position from 3:30 p.m. to 7 p.m., Monday through Friday, except Federal holidays. The additional time would facilitate the movement of vehicular traffic through Belle Chasse.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The public would need to notify the bridge owner of a required opening 14 days in advance rather than 24 hours in advance.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels with vertical clearances of greater that 40 feet needing to transit the bridge between the hours of 3:30 p.m. and 5:30 p.m., Monday through Friday, except Federal holidays, would be delayed an additional 90 minutes until 7 p.m. Vessels that can safely transit under the bridge may do so at any time. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact David Frank, Bridge Administration Branch, at 504–671–2128. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not affect 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 Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117 Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

§ 117.451(b) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(b) The draw of the SR 23 bridge, Algiers Alternate Route, mile 3.8 at Belle Chasse, shall open on signal;

except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 7 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels.

* * * * *

Dated: March 9, 2009.

J.R. Whitehead,

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

[FR Doc. E9–6668 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0101]

RIN 1625–AA09

Drawbridge Operation Regulation; Sabine River, Echo, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Sabine River, mile 19.3, at Echo, Orange County, TX. The bridge presently opens on 24-hour notice but because of the limited number of requests for openings, the bridge owner would like to increase the length of notification time required to open the bridge.

DATES: Comments and related material must reach the Coast Guard on or before May 26, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2009–0101 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov*.

(2) 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.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Kay Wade, Bridge Administration Branch at 504–671–2128. 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. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0101), indicate the specific section of this document to which each comment applies, and give the reason for each comment. 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. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material 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. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

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Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

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

Due to a lack of required openings requested by mariners, the bridge owner requested a modification to the Union Pacific railroad swing span bridge across the Sabine River, mile 19.3 at Echo, Texas to convert the existing bridge to a fixed span bridge. Previously, the Coast Guard issued a Public Notice for a bridge permit amendment to modify the swing bridge and make it a fixed bridge. Numerous comments were received regarding the proposed modification, indicating that this change would have a negative impact on the residents and facilities in the area above the bridge. As a result, the bridge owner withdrew his request for the bridge permit amendment to convert the swing span bridge to a fixed span bridge and has requested a 14-day advance notice to open the bridge. This change would allow for the bridge owner to open the bridge for the passage of vessels while minimizing his requirements to staff and maintain the bridge. The bridge has a vertical clearance of 7.9 feet above Mean High Water (MHW), elevation 2.18 feet NGVD in the closed-to-navigation position and unlimited in the open-to-navigation position. In accordance with 33 CFR 117.493(a), the bridge is required to open on signal for the passage of marine vessels if at least 24 hours of advanced notice is given.

Discussion of Proposed Rule

The bridge owner has requested a change in the operating regulation which would allow the draw of the bridge to open on signal if at least 14 days advance notice is given. Presently, the bridge opens on signal if at least 24 hours advanced notification is given. However, there have been no requests for bridge openings for more than fifteen years. The change to the regulation would allow the bridge owner to modify his equipment on the bridge to improve its operation for train traffic while allowing for the opening of the bridge for the passage of vessels. The increased notification time would allow the bridge owner to have the necessary personnel and equipment available to operate the bridge. The proposed rule change to 33 CFR 117.493(a) would reduce the burden on the bridge owner while maintaining the ability to operate the bridge.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The public would need to notify the bridge owner of a required opening 14 days in advance rather than 24 hours in advance.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge with less than 14 days advance notice. There have been no requests for bridge openings in several years so this proposed rule would not affect a substantial number of small entities. Vessels that can safely transit under the bridge may do so at any time. Before the effective period, we will issue maritime advisories widely available to users of the river.

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 Kay Wade, Bridge Administration Branch, at 504–671–2128. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this is one of a category of actions which, individually or cumulatively, is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.493, paragraph (a) is revised to read as follows:

§ 117.493 Sabine River.

(a) The draw of the Union Pacific railroad bridge, mile 19.3 near Echo shall open on signal if at least 14 days notice is given.

* * * * *

Dated: March 9, 2009.

J.R. Whitehead,

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

[FR Doc. E9–6679 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0014; FRL–8783–1]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Baton Rouge 1-Hour Ozone Nonattainment Area; Determination of Attainment of the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Baton Rouge (BR) 1-hour ozone nonattainment area is currently attaining the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. If this proposed determination is made final, the requirements for this area to submit a severe attainment demonstration, a severe reasonable further progress plan, applicable contingency measures plans, and other planning State Implementation Plan (SIP) requirements related to attainment of the 1-hour ozone NAAQS, shall be suspended for so long as the area continues to attain the 1-hour ozone NAAQS. EPA is proposing this action in accordance with section 110 and part D of the Federal Clean Air Act (the Act or CAA) and EPA's regulations and consistent with EPA's guidance.

DATES: Comments must be received on or before April 27, 2009.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2009–0014, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2009–0014. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367, fax (214) 665–7263, e-mail address *rennie.Sandra@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA. This supplementary information section is arranged as follows:

I. What Is the Background for This Action?

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm in any given day. Only the highest 1-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days at the monitor. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at the same monitor. For more information please see ''National 1-hour primary and secondary ambient air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, Appendix H).

The fourth-highest daily ozone concentration over the 3-year period is called the design value (DV). The DV indicates the severity of the ozone problem in an area; it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor's DV is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's DV is the highest of the design values from the area's monitors.

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on their ozone DVs, as marginal, moderate, serious, severe, or extreme.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while severe and extreme areas are subject to more stringent planning requirements and are provided more time to attain the standard.

Baton Rouge's History

EPA first designated the Baton Rouge area as an ozone nonattainment area in 1978. 43 FR 8964, 8998 (March 3, 1978). The BR 1-hour ozone nonattainment area contains five parishes: East Baton Rouge; West Baton Rouge; Ascension; Iberville; and Livingston Parishes (40 CFR 81.319). In 1991, the BR area was designated nonattainment by operation of law and EPA classified the BR area as a ''serious'' ozone nonattainment area with a statutory deadline of November 15, 1999. 56 FR 56694 (November 6, 1991). EPA approved the serious attainment demonstration SIP and its associated elements, *e.g.*, attainment Motor Vehicle Emissions Budgets (MVEB), the Reasonably Available Control Measures (RACM) demonstration, on July 2, 1999. 64 FR 35930. The BR area, however, did not attain by the serious area statutory deadline of November 15, 1999. Before this deadline however, EPA had issued a guidance memorandum that allowed an area to retain its existing classification and receive a later attainment deadline if the EPA found that area met all of its existing classification requirements, approved a demonstration that the area would attain but for the transport from another area, and approved the attainment demonstration SIP with its associated elements. See EPA's ''Guidance on Extension of Attainment Dates for Downwind Transport Areas'' (the Extension Policy) (Richard D. Wilson, Acting Assistant Administrator for Air and Radiation) July 16, 1998. On October 2, 2002, EPA approved the revised attainment demonstration SIP and its associated elements, found the area met all of the serious area requirements, found there was transport from Texas affecting the BR area reaching attainment, and extended the attainment date for the BR area to November 15, 2005, without reclassifying the area from serious to severe, consistent with the policy. 67 FR 61786 (October 2, 2002).

On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit vacated EPA's Extension Policy used to extend the 1-hour ozone attainment deadline for the Beaumont-Port Arthur, Texas, area without reclassifying the area. *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002). Thereupon, EPA on April 24, 2003, withdrew its approval of the BR area's revised attainment demonstration and the granting of an extended attainment deadline, finalized its finding of the area failing to attain the standard by the serious area deadline and reclassified the BR area by operation of law, to severe nonattainment. See 68 FR 20077 (April 24, 2003).[1] Once reclassified to severe,

[1] Petitions for review of the October 2, 2002, rulemaking were filed in the U.S. Court of Appeals for the Fifth Circuit (*Louisiana Environmental Action Network (LEAN)* v. *EPA,* No. 02–60991). The issues raised concerned EPA's decision to approve Louisiana's substitute contingency measures plan, the revised attainment demonstration SIP with a later attainment deadline without reclassifying the area to severe, and the associated precursor trading provision of the NSR rules. On February 25, 2003, the court granted EPA's partial voluntary remand to allow EPA the time to meet the December 2002 court decision by withdrawing its approval of the revised attainment demonstration SIP that extended the attainment deadline without reclassifying the area and the associated NSR precursor trading provision. The court also addressed the substitute contingency measures claim, and vacated and

Continued

the statutory attainment date for BR was November 15, 2005. As a result of the reclassification to severe, the State was required to submit an attainment demonstration SIP with an attainment date of November 15, 2005. The April 24, 2003, action also set the dates by which Louisiana was to submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas and to attain the 1-hour NAAQS for ozone.

Under section 182(d) and section (i) of the Act, serious ozone nonattainment areas reclassified to severe are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans and all the requirements for severe area plans.

In 1997, EPA promulgated a new, more protective standard for ozone based on an 8-hour average concentration (the 1997 8-hour ozone standard). In 2004, EPA published the 1997 8-hour ozone designations and classifications and a rule governing certain facets of implementation of the 8-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004). The BR area was designated as nonattainment for the 1997 8-hour ozone standard. The 8-hour nonattainment area is composed of the same five parishes as the 1-hour ozone nonattainment area. The area was classified as marginal under the 1997 8-hour ozone standard. At the time of designation, the five parishes remained in nonattainment for the 1-hour standard.

The Phase 1 Rule revoked the 1-hour ozone standard. See 69 FR 23951. The Phase 1 Rule also provided that 1-hour ozone nonattainment areas are required to adopt and implement ''applicable requirements'' according to the area's classification under the 1-hour ozone standard for anti-backsliding purposes. See 40 CFR 51.905(a)(i). On May 26, 2005, we determined that an area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain as ''applicable requirements'' under the Phase 1 Rule. 40 CFR 51.900(f). (70 FR 30592).[2]

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Phase 1 Rule. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA,* Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. With respect to the challenges to the anti-backsliding provisions of the rule, the court vacated three provisions that would have allowed States to remove from the SIP or not to adopt three 1-hour obligations once the 1-hour standard was revoked to transition to the implementation of the 8-hour ozone standard: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour standard by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

The provisions in 40 CFR 51.905(a)–(c) concerning anti-backsliding remain in effect and areas must continue to meet those requirements. However, the court decision vacated the portions of § 51.905(e) that removed the obligations to meet the three provisions noted above. As a result, states must continue to meet the obligations for 1-hour NSR; 1-hour contingency measures; and, for severe and extreme areas, the obligations related to a section 185 fee program. Currently, EPA has proposed one rule and is developing other actions to address the court's vacatur and remand with respect to these three requirements. We address below how the 1-hour obligations that currently continue to apply under EPA's anti-backsliding rule (as interpreted and directed by the court) apply where EPA has made a determination that the area is currently attaining the 1-hour NAAQS.

The Baton Rouge 1-hour nonattainment area was still classified as severe on June 15, 2004, so the 1-hour ozone standard requirements applicable to the five-parish area are those that apply to nonattainment areas classified as severe. This includes meeting the serious area requirements. Louisiana submitted and EPA approved all the requirements for a 1-hour ozone area classified as serious. EPA's approval of the serious area Contingency Measures was challenged in the U.S. Court of Appeals for the Fifth Circuit (See footnote 1). The Court vacated the serious area contingency measure and remanded it to EPA.

The severe area requirements include Reasonably Available Control Technology (RACT) for both VOC and NO_X, NSR Emissions Offset Requirement, Vehicle Miles Traveled (VMT) Analysis, Post-1999 Rate of Progress Plan, Contingency Measures, and an Attainment Demonstration. The State has submitted many required severe area plan requirements, including the severe area ROP Plan, but has not submitted others, including the attainment demonstration and the contingency measures. The VMT Analysis was approved November 21, 2006 (71 FR 67308).

Under the Phase 1 rule and as a result of the *South Coast* decision, the requirement to provide a severe attainment demonstration SIP and the serious and severe RFP/failure-to-attain contingency measures remain in place. However, as discussed below, these requirements would be suspended based on a finding of attainment of the 1-hour ozone standard, and for so long as the area remains in attainment of the standard in the future.

II. Proposed Determination of Attainment

EPA is proposing to determine that the Baton Rouge 1-hour ozone nonattainment area is currently in attainment of the 1-hour standard based on the most recent 3 years of quality-assured air quality data. Certified ambient air monitoring data show that the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. Consistent with 40 CFR part 50, Appendix H, Table 1 contains the 1-hour ozone data for the BR 1-hour ozone nonattainment area monitors that show that the area is currently attaining the 1-hour ozone NAAQS.

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remanded EPA's approval of the contingency measures.

[2] As detailed in Section II below, various parties challenged the Phase 1 rule. In particular, the Chamber of Baton Rouge challenged EPA's authority to continue to enforce the 1-hour area requirements.

TABLE 1—1-HOUR OZONE DATA FOR THE BATON ROUGE 1-HOUR OZONE NONATTAINMENT AREA

Site	Design value (ppb)	Actual and expected number of exceedances [a]			3-year exceedance average
	2006–2008	2006	2007	2008	2006–2008
Plaquemine (22–047–0009)	114	0	0	0	0
Carville (22–047–0012)	113	0	0	0	0
Dutchtown (22–005–0004)	112	0	1	0	0.33
Baker (22–033–1001)	111	1	0	0	0.33
LSU (22–033–0003)	110	0	2	0	0.67
Grosse Tete (22–047–0007)	110	1	1	0	0.67
Port Allen (22–121–0001)	106	1	0	0	0.33
Pride (22–033–0013)	101	0	0	0	0
French Settlement (22–063–0002)	100	1	0	0	0.33
Capitol (22–033–0009)	97	0	0	0	0

[a] The actual and expected number of exceedances were equal in all cases.

Pursuant to the interpretation set forth in the May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard'' (Clean Data Policy), EPA is proposing to make a finding of attainment based on current air quality. Under this policy, if EPA determines through rulemaking that the Baton Rouge 1-hour ozone nonattainment area is meeting the 1-hour ozone standard, the requirements for the State to submit and have an approved attainment demonstration, and related components such as reasonably available control measures (RACM), a reasonable further progress (RFP) demonstration, contingency measures for failure to attain or make reasonable further progress are suspended as long as the area continues to attain the 1-hour ozone NAAQS. EPA intends to address the impact of a Clean Data determination on a CAA section 185 fees program separately based on the outcome of a rulemaking to address the *South Coast* decision with respect to this issue, discussed above. See 74 FR 2936, 2941 (January 16, 2009).

As stated above, the suspension of requirements continues for so long as the area remains in attainment. If the area subsequently violates the ozone NAAQS, EPA would initiate notice-and-comment rulemaking to withdraw the determination of attainment, which would result in reinstatement of the requirements for the State to submit such suspended plans.

The Tenth, Seventh and Ninth Circuits have upheld EPA rulemakings applying the Clean Data Policy. See *Sierra Club* v. *EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA*, No. 04–73032 (9th Cir. June 28, 2005) memorandum opinion.[3] See also the discussion and rulemakings cited in the Phase 2 Rule, 70 FR 71644–71646 (November 29, 2005).

IV. What Action Is EPA Taking?

EPA proposes to find that the BR 1-hour ozone nonattainment area has attained the 1-hour ozone standard; thus the requirements for submitting the severe attainment demonstration SIP with its RACM demonstration and other associated elements, the severe RFP requirements, and section 172(c)(9) and section 182(c)(9) serious and severe contingency measures are suspended for so long as the area is attaining the 1-hour ozone standard.

Thus, pursuant to our proposed determination of attainment and in accordance with our Clean Data Policy, the effect of the finding is that the following requirements to submit SIP measures under the 1-hour anti-backsliding provisions (40 CFR 51.905) are suspended for so long as the area continues to attain the 1-hour standard:

RFP reductions under sections 182(d) and 182(c)(2)(B) (for severe areas). Attainment demonstration under sections 182(d) and 182(c)(2) (for severe areas) and associated RACM demonstration.

Contingency measures for failure to meet RFP under section 172(c)(9) and section 182(c)(9) (for serious and severe areas) and contingency measures for failure to attain under sections 172(c)(9) and 182(c)(9) (for severe areas).

[3] The Clean Data Policy, as it is embodied in 40 CFR 51.918, is being challenged in the context of the 8-hour ozone standard in the Phase 2 Rule ozone litigation pending in the DC Circuit, *NRDC* v. *EPA*, No. 06–1045 (DC Cir.).

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 5, 2009.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–6598 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0359–200823(b); FRL–8781–6]

Approval and Promulgation of Implementation Plans; Revisions to the Alabama State Implementation Plan; Birmingham and Jackson Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Alabama State Implementation Plan (SIP) for two separate areas: Birmingham nonattainment area and Jackson County nonattainment area for both the 8-hour ozone and the $PM_{2.5}$ National Ambient Air Quality Standard. On March 7, 2007, and on January 8, 2009, revisions of the transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures were submitted to EPA for approval by the State of Alabama. The intended effect is to update the transportation conformity criteria and procedures in the Alabama SIP.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before April 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0359, by one of the following methods:

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

(b) *E-mail: wood.amanetta@epa.gov.*

(c) *Fax:* (404) 562–9019.

(d) *Mail:* ''EPA–R04–OAR–2007–0359,'' Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

(e) *Hand Delivery or Courier:* Amanetta Wood, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amanetta Wood of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Wood's telephone number is 404–562–9025. She can also be reached via electronic mail at *wood.amanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: February 25, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–6644 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2008–0942; FRL–8781–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Other Solid Waste Incinerator Units; Arizona; Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a negative declaration submitted by the

Pima County Department of Environmental Quality. The negative declaration certifies that other solid waste incinerator units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: Any comments on this proposal must arrive by April 27, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0942, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov*.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses a Clean Air Act section 111(d)/129 negative declaration submitted by the Pima County Department of Environmental Quality certifying that other solid waste incinerator units do not exist within its air pollution control jurisdiction. This negative declaration was submitted on April 14, 2008. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. If no adverse comments are received in response to this action, no further activity will be contemplated. If adverse comments are received, then EPA will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Dated: February 18, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–6626 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–606; MB Docket No. 09–34; RM–11522]

Television Broadcasting Services; Bryan, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Comcorp of Bryan License Corp. (''Comcorp''), the licensee of station KYLE–DT, post-transition DTV channel 29, Bryan, Texas. On June 20, 2008, Comcorp filed a petition for rulemaking in which it requested permission to substitute DTV channel 29 for its originally assigned DTV channel 28 at Bryan, as well to move its transmitter location and make associated technical changes. The staff granted the request on November 5, 2008.[1] By this petition, Comcorp seeks permission to return to its previously allotted DTV channel 28 at its original technical specifications.[2]

DATES: Comments must be filed on or before April 10, 2009, and reply comments on or before April 20, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: David J. Brown, *david.brown@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–34, adopted March 16, 2009, and released March 17, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

[1] *Bryan, Texas,* 23 FCC Rcd 16440 (Vid. Div. 2008).

[2] Comcorp is filing a new petition for rulemaking because the time period for filing a petition for reconsideration of the original amendment to the Post-Transition DTV Table of Allotments has expired.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding DTV channel 28 and removing DTV channel 29 at Bryan.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–6638 Filed 3–25–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 74, No. 57
Thursday, March 26, 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 23, 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.

Foreign Agricultural Service

Title: CCC's Export Credit Guarantee Program (GSM–102).

OMB Control Number: 0551–0004.

Summary of Collection: The Export Credit Guarantee Program (GSM–102) is administered by the Commodity Credit Corporation (CCC) of the U.S. Department of Agriculture. This program provides guarantees to exporters in order to maintain and increase overseas importers ability to purchase U.S. agricultural goods. The Export Credit Guarantee Program underwrites credit extended by U.S. private banks to approved foreign banks using dollar-denominated, irrevocable letters of credit. The Foreign Agricultural Service (FAS) will collect information from the guarantee application submitted by the participants in writing (via fax or e-mail) or mail.

Need and Use of the Information: FAS will collect information from participating U.S. exporters in order to determine the exporters eligibility for program benefits. The information is also used in fulfilling CCC obligation under the issued payment guarantee. If the information were not collected CCC would be unable to determine if export sales under the program would be eligible for coverage or, if coverage conformed to program requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 73.

Frequency of Responses: Record keeping.

Reporting: On occasion.

Total Burden Hours: 2,555.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–6759 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 23, 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.

Office of the Secretary, White House Liaison

Title: Advisory Committee and Research and Promotion Board Membership Background Information.

OMB Control Number: 0505–0001.

Summary of Collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, *et seq.*) requires the Department to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. Similar information will be required of research and promotion boards/committees in addition to the

supplemental commodity specific questions. The Secretary appoints board members under each program. Some of the information contained on form AD–755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. All committee members who are appointed by the Secretary require this clearance. The Office of the Secretary, White House Liaison will collect information using form AD–755, Advisory Committee and Research and Promotion Board Membership Background Information.

Need and Use of the Information: The Office of the Secretary, White House Liaison will collect information on the background of the nominees to make sure there are no delinquent loans to the United States Department of Agriculture, (USDA), as well as making sure they have no negative record that could be a negative reflection to USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent committee or board.

Description of Respondents: Individuals or households.

Number of Respondents: 1,740.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 870.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–6760 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Water Enhancement Program

AGENCY: Commodity Credit Corporation (CCC) and Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA).

ACTION: Notice of request for proposals; reopening of proposal submission period.

SUMMARY: The Commodity Credit Corporation (CCC) published in the **Federal Register** of January 14, 2009, a Notice of Request for Proposals to announce the availability of funds and to solicit proposals from potential partners who seek to enter into partnership agreements with the Chief, Natural Resources Conservation Service (NRCS). The deadline for submitting proposals was March 2, 2009. The purpose of this notice is to reopen the deadline for submitting proposals and to provide NRCS State Conservationists up to 2 weeks following the proposal submission deadline to submit their letter of review. The CCC is hereby reopening the deadline for submitting proposals until April 1, 2009.

DATES: The proposal submission deadline is reopened and extended to April 1, 2009. The deadline for NRCS State Conservationists to submit their letters of proposal review is extended to April 15, 2009

ADDRESSES: Proposals should be submitted to the Chief (Attn: Financial Assistance Programs Division), Natural Resources Conservation Service, USDA, AWEP Proposals, P.O. Box 2890, Washington, DC 20013 by April 1, 2009. Applicants also must send their proposal to the appropriate State Conservationist(s) postmarked, or dated if electronic, no later than April 1, 2009. To submit your application electronically, visit *http://www.grants.gov/apply* and follow the on-line instructions.

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, Room 5237, P.O. Box 2890, Washington, DC 20013–2890. Phone: (202) 720–1845. Fax: (202) 720–4265.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contract the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The CCC, published a Notice of Requests for Proposals in the **Federal Register** of January 14, 2009 (74 FR 2040), announcing funding availability and to potential partners, the opportunity to enter into Agricultural Water Enhancement Program (AWEP) partnership agreements with the Chief, NRCS, to promote the conservation of ground and surface water and the improvement of water quality. This notice announced a deadline of March 2, 2009, to submit proposals to enter into AWEP partnership agreements and required NRCS State Conservationists to submit letters of proposal review to the NRCS National Headquarters by March 2, 2009.

The CCC hereby amends the January 14 Notice of Requests for Proposals by:

1. Reopening and extending the proposal submission deadline to April 1, 2009; and

2. Extending the deadline for NRCS State Conservationists to submit their letters of proposal review to April 15, 2009.

Signed this 23rd day of March, 2009, in Washington, DC.

Dave White,

Acting Vice President, Commodity Credit Corporation and Acting Chief, Natural Resources Conservation Service.

[FR Doc. E9–6763 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on March 31, 2009 at the U.S. Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meetings will be held March 31, 2009, beginning at 9:30 a.m. and ending at 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Forest Service Office, 35 College Drive, South Lake Tahoe, CA 96150.

For Further Information or to Request an Accommodation (one week prior to meeting date) Contact: Aria Hams, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda: (1) Consensus on the Lake Tahoe Southern Nevada Public Land Management Act (SNPLMA) Round 10 preliminary recommendation for capital projects and science themes and (2) public hearing.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: March 20, 2009.

Terri Marceron,

Forest Supervisor.

[FR Doc. E9–6750 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Lassen County Resource Advisory Committee will meet April 9, 2009 and May 6 and 7, 2009 in Susanville, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on April 9, 2009, will begin at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. This meeting will be dedicated to reauthorization update, review the process for 2009 funding, discuss project review with monthly monitoring reports, summer field trips to projects, and overview of the Forest Health Program for the ''Secure Rural Schools and Self Determination Act of 2000,'' commonly known as Payments to States.

The business meetings on May 6 and 7, 2009, will begin at 8:30 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. These meetings will be dedicated to hearing presentations from project proponents on Tuesday and voting on Wednesday for funding through the ''Secure Rural Schools and Self Determination Act of 2000,'' commonly known as Payments to States.

FOR FURTHER INFORMATION CONTACT: Terri Frolli, Designated Federal Official, at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6604.

Kathleen S. Morse,

Forest Supervisor.

[FR Doc. E9–6564 Filed 3–25–09; 8:45 am]

BILLING CODE

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will host a workshop for the public in local communities to provide information and expertise to those who may want to submit project proposals to the RAC. Following the time allowed on the agenda for the workshop, the RAC will meet to conduct routine business consistent with the Secure Rural Schools and Community Self-Determination Act.

DATES: April 20, 2009.

ADDRESSES: The meeting will be held at the Holiday Inn Express Conference Center, 707 Montague Road, Yreka, CA 96097. All other Siskiyou County RAC meetings in calendar year 2009 will be held in accordance with **Federal Register** Vol. 74, No. 29, page 7215, dated February 13, 2009.

FOR FURTHER INFORMATION CONTACT: Davida Carnahan, Forest RAC coordinator, Klamath National Forest, (530) 841–4485 or electronically at *dcarnahan@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 18, 2009.

Patrica A. Grantham,

Designated Federal Official.

[FR Doc. E9–6751 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Rocky Mountain Region, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Colorado Recreation Resource Advisory Committee will tentatively meet in Denver, CO. The purpose of the meeting is to continue to provide the new committee members with the information they need to be effective committee members and review several fee proposals. These fee proposals will tentatively include fee increases for Christmas Tree cutting permits for the Grand Mesa/Uncompahgre/Gunnison National Forests and the Mud Springs Campground located in the Grand Junction Field Office Area of the BLM. A new fee for the North Fruita Desert Campground also located in the Grand Junction Field Office Area of the BLM will also be reviewed.

DATES: The meeting will be held April 21 from 9 a.m.–4:30 p.m. This meeting will only be held if a quorum is present.

ADDRESSES: The meeting will be at the REI Denver Flagship Store at 1416 Platte Street in Denver in their small conference room on the 3rd floor. Access prior to store opening is through Starbucks. Send written comments to Steve Sherwood, Designated Federal Official, 740 Simms Street, Golden, CO 80401 or *ssherwood@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Pam DeVore, Colorado Recreation Resource Advisory Committee Coordinator, at 303–275–5043 or *pdevore@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service, Bureau of Land Management staff and Committee members. Persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff. Written comments received at least a week before the meeting will be available for committee review. Written comments received less than a week before the meeting may not be available for committee referral. There will be time on the agenda for verbal comments and the Chairperson may ask for comments from the public at any time during the meeting. All persons wishing to address the committee must sign in at the door.

Check for the status of the meeting, the final agenda and a final list of the fee proposals to be reviewed at: *http://www.fs.fed.us/r2/recreation.*

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: March 4, 2009.

Maribeth Gustafson,

Deputy Regional Forester, Operations, Rocky Mountain Region.

[FR Doc. E9–6578 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–11–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 (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 List Sampling Frame Surveys. 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 June 1, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0140, 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: List Sampling Frame Surveys.

OMB Control Number: 0535–0140.

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 is to prepare and issue State and national estimates of crop and livestock production, economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture. The List Sampling Frame Surveys are used to develop and maintain as complete a list as possible of farm operations. The goal is to produce for each State a relatively complete, current, and unduplicated list of names for statistical sampling for agricultural operation surveys and the Census of Agriculture. Data from these agricultural surveys are used by government agencies and educational institutions in planning, farm policy analysis, and program administration.

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 15 minutes per respondent.

Respondents: Farms.

Estimated Number of Respondents: 500,000.

Estimated Total Annual Burden on Respondents: 103,000 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 methods.

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, March 9, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–6725 Filed 3–25–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency National Oceanic and Atmospheric Administration (NOAA).

Title: Vessel Monitoring System for Atlantic Highly Migratory Species.

OMB Control Number: 0648–0372.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 584.

Number of Respondents: 292.

Average Hours per Response: Annual maintenance and repair, 2 hours.

Needs and Uses: The purpose of this collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (ATCA; 16 U.S.C. 971) and the Secretary of Commerce's obligations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Vessels fishing for Atlantic tuna and swordfish that use pelagic longline gear and vessels fishing for sharks with bottom longline or gillnet gear are required to install and operate vessel monitoring systems (VMS). The automatic position reports are submitted on an hourly basis whenever the vessel is at sea. Vessel operators must submit an installation checklist to National Marine Fisheries Service (NMFS), which provides information on the hardware and communications service selected by each vessel, when the VMS unit is initially installed. NMFS will use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems (all vessel operators have installed their units, so this requirement is not counted in the burden hours above).

Affected Public: Business or other for-profit organizations.

Frequency: Daily, annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 19, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–6483 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Trade Adjustment Assistance for Firms.

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Request: Regular submission.

Number of Respondents: 173.

Average Hours per Response: 8.

Burden Hours: 1,384.

Needs and Uses: The Economic Development Administration (EDA) administers the Trade Adjustment Assistance for Firms Program, which is authorized by chapters 3 and 5 of title II of the Trade Act of 1974. EDA certifies firms as eligible to apply for Trade Adjustment Assistance (TAA), provides technical adjustment assistance to firms and other recipients, and provides assistance to organizations representing trade injured industries. The collected information EDA must verify: (1) A significant reduction in the number or proportion of the workers in the firm, a reduction in the workers' wage or work hours, or an imminent threat of such reductions; (2) sales or production of the firm have decreased absolutely, as defined in EDA's regulations, or sales or production, or both, of any article accounting for at least twenty-five (25) percent of the firm's sales or production have decreased absolutely; and (3) an increase in imports of articles like or directly competitive with those produced by the petitioning firm, which has contributed importantly to the decline in employment and sales or production of that firm.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: March 19, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–6489 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey (CPS) School Enrollment Supplement

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before May 26, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, U.S. Census Bureau, DSD/CPS HQ–7H110F, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 2009 CPS. Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information. The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for 50 years.

This survey provides information on public/private elementary school, secondary school, and college enrollment, and on characteristics of private school students and their families, which is used for tracking historical trends, policy planning, and support.

This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the Federal government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

II. Method of Collection

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0464.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Households.

Estimated Number of Respondents: 59,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 2,950.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182, and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–6490 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802, A–570–893]

Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') and the People's Republic of China (''PRC''). The Department also received a timely request to revoke, in part, the antidumping duty order on shrimp from the PRC for one producer/exporter.[1] In addition, we received timely requests to revoke, in part, the antidumping duty order on shrimp from Vietnam for multiple producer/exporters.[2] Subsequently, several Vietnamese producers/exporters withdrew their request for revocation of the antidumping duty order.[3] The anniversary month of these orders is February. In accordance with the Department's regulations, we are initiating these administrative reviews.

DATES: *Effective Date:* March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand (Vietnam) or Scot Fullerton (PRC), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3207 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on shrimp from Vietnam and the PRC covering multiple entities. On March 13, 2009, one of the domestic interested parties provided a clarification that its request for review covered Hilltop International, the successor-in-interest to Yelin Enterprise Co., Ltd. The Department is now initiating these administrative reviews of the orders covering those entities.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review (''POR'') listed below. If a producer or exporter named in this notice of initiation had no exports, sales or entries during the POR, it must notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the ''Act''). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of this initiation notice, and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate

[1] Zhanjiang Regal Integrated Marine Resources Co., Ltd.

[2] These companies are: Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai''), Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish-One Co., Ltd., Sao Ta Foods Joint Stock Company (FIMEX VN), Grobest & I-Mei Industrial (Vietnam) Co., Ltd., Ca Mau Seafood Joint Stock Company (''Seaprimexco''), Cadovimex Seafood Import-Export and Processing Joint-Stock Company (''CADOVIMEX''), Cafatex Fishery Joint Stock Corporation (''Cafatex Corp''), Camau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (''CAMIMEX'') and/or Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX''), Can Tho Agricultural and Animal Products Import Export Company (''Cataco''), Coastal Fisheries Development Corporation (''COFIDEC''), Investment Commerce Fisheries Corporation (''Incomfish''), Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Minh Hai Jostoco''), Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., and Minh Phat Seafood Co., Ltd.), Ngoc Sinh Private Enterprise (''Ngoc Sinh Seafoods''), Nha Trang Seaproduct Company (''Nha Trang Seafoods''), Soc Trang Seafood Joint Stock Company (''STAPIMEX''), UTXI Aquatic Products Processing Corporation (''UTXICO'') and Vinh Loi Import Export Company (''VIMEX'').

[3] These companies are: Cafatex Corp., Seaprimexco, Cataco, COFIDEC, Incomfish, Minh Hai Jostoco, Ngoc Sinh Seafoods, STAPIMEX, Sao Ta Foods Joint Stock Company (FIMEX VN), UTXICO and VIMEX. Therefore, with the exception of these 11 companies, the remaining requests for revocation of the antidumping duty order are still active.

rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[5] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme.nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Initiation of Review

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the antidumping duty orders on shrimp from Vietnam and the PRC. We intend to issue the final results of these reviews on the companies listed below no later than March 9, 2010.

	Period to be reviewed
Antidumping Duty Proceeding	
Socialist Republic of Vietnam [6]	02/01/2008–01/31/2009
Frozen Warmwater Shrimp A–552–802	
• AAAS Logistics	
• Agrimex	
• Amanda Foods (Vietnam) Limited	
• Amerasian Shipping Logistics Corp.	
• American Container Line	
• An Giang Fisheries Import and Export Joint Stock Company (Agifish)	
• An Xuyen	
• Angiang Agricultural Technology Service	
• Aquatic Products Trading Company	
• Bac Lieu Company Limited	
• Bac Lieu Fisheries Company Limited	
• Bac Lieu Fisheries Company Limited and/or Bac Lieu Fisheries Company Limited (''Bac Lieu'')	
• Bac Lieu Fisheries Joint Stock Company (''Bac Lieu'') aka Bac Lieu Company Limited	
• Bentre Aquaproduct Imports & Exports	
• Bentre Forestry and Aquaproduct Import-Export Company (''FAQUIMEX'')	
• Bentre Frozen Aquaproduct Exports	
• Bentre Seafood Joint Stock and/or Beseaco	
• Beseaco	
• Binh An Seafood	
• Binh Dinh Fishery Joint Stock	
• C.P. Vietnam Livestock Co., Ltd.	
• C.P. Vietnam Livestock Co., Ltd.	
• Ca Mau Seafood Joint Stock Company (''SEAPRIMEXCO'')	
• Ca Mau Seaproducts Exploitation and Service Corporation (''SES'')	
• Cadovimex Seafood Import-Export and Processing Joint-Stock Company (''CADOVIMEX'')	
• Cadovimex Seafood Import-Export and Processing Joint-Stock Company (''CADOVIMEX'') aka Cai Doi Vam Seafood Import-Export Company (''Cadovimex'')	
• Cadovimex Seafood Import-Export and Processing Joint-Stock Company (''CADOVIMEX'') and/or Cadovimex Seafood Import-Export and Processing Joint-Stock Company (''Cadovimex-Vietnam'')	

[4] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[5] Only changes to the official company name, rather than trade names, need to be addressed *via* a Separate Rate Application. Information regarding new trade names may be submitted *via* a Separate Rate Certification.

	Period to be reviewed
• Cafatex Fishery Joint Stock Corporation (''Cafatex Corp.'') • Cafatex Fishery Joint Stock Corporation (''Cafatex Corp'') and/or Cafatex Fishery Joint Stock Corporation (''CAFATEX CORP.'') • Cai Doi Vam Seafood Import-Export Company (Cadovimex) • Cam Ranh Seafoods Processing Enterprise Company (''Camranh Seafoods'') • Cam Ranh Seafoods Processing Enterprise Company (''Camranh Seafoods'') and/or Cam Ranh Seafoods Processing Enterprise PTE and/or Camramh Seafoods • Camau Frozen Seafood Processing Import Export Corporation (''Camimex'') • Camau Frozen Seafood Processing Import Export Corporation or Camau Seafood Factory No. 4 (''CAMIMEX'') and/or Camau Frozen Seafood Processing Import Export Corporation (''CAMIMEX''), • Camau Seafood Fty • Can Tho Agricultural and Animal Products Import Export Company (''CATACO'') • Can Tho Agricultural and Animal Products Import Export Company (''CATACO'') and/or Can Tho Agricultural and Animal Products Import Export Company (''CATACO'') • Can Tho Agricultural Products • Can Tho Import Export Fishery Limited Company (''CAFISH'') • Can Tho Seafood Exports • Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex) • Cantho Imp & Exp Seafood Join, a.k.a. Caseamex • Cautre Enterprises • Cautre Export Goods Processing Joint Stock Company • Chun Cheng Da Nang Co., Ltd. • Co Hieu • Coastal Fisheries Development Corporation (''COFIDEC'') • Coastal Fisheries Development Corporation (Cofidec) • Coastal Fisheries Development Corporation (Cofidec) • Coastal Fisheries Development Corporation (Cofidec) and/or Coastal Fisheries Development Corporation (''COFIDEC'') • Coastal Fishery Development • Cong Ty Do Hop Viet Cuong • CP Livestock • Cuu Long Seaproducts Limited (Cuu Long Seapro) • Cuulong Seaproducts Company (''Cuulong Seapro'') • Cuulong Seaproducts Company (''Cuu Long Seapro'') • Cuulong Seaproducts Company (''Cuu Long Seapro'') and/or Cuulong Seaproducts Limited (''Cuulong Seapro'') • D & N Foods Processing Danang • Danang Seaproducts Import Export Corporation (''Seaprodex Danang'') • Danang Seaproducts Import Export Corporation (and its affiliate, Tho Quang Seafood Processing and Export Company) (collectively ''Seaprodex Danang'') • Danang Seaproducts Import Export Corporation (''Seaprodex Danang'') and/or Danang Seaproducts Import Export Corporation (and its affiliates) (''Seaprodex Danang'') • Dao Van Manh • Dong Phuc Huynh • Dragon Waves Frozen Food Fty. • Duyen Hai Bac Lieu Company (''T.K. Co.'') • Duyen Hai Foodstuffs Processing Factory (''COSEAFEX'') • Four Season Food • Frozen Fty • Frozen Seafoods Factory No. 32 • Frozen Seafoods Factory No. 32 and/or Frozen Seafoods FTy • Frozen Seafoods Fty • Gallant Ocean Vietnam • Gallant Ocean (Vietnam) Co., Ltd. • General Imports & Exports • Grobest & I-Mei Industrial (Vietnam) Co., Ltd. • Grobest & I-Mei Industrial Vietnam • Hacota • Hai Ha Private Enterprise • Hai Thuan Export Seaproduct Processing Co., Ltd. • Hai Viet • Hai Viet Corporation (''HAVICO'') • Hanoi Seaproducts Import Export Corporation (''Seaprodex Hanoi'') • Hatrang Frozen Seaproduct Fty • Hoa Nam Marine Agricultural • Hoan An Fishery • Hoan Vu Marine Product Co., Ltd. • Hua Heong Food Ind Vietnam • Investment Commerce Fisheries Corporation (''Incomfish'') • Investment Commerce Fisheries Corporation (''INCOMFISH'') • Investment Commerce Fisheries Corporation (''Incomfish'') and/or Investment Commerce Fisheries Corporation (''INCOMFISH'') • Khanh Loi Trading • Kien Gang Sea Products Import-Export Company (Kisimex)	

	Period to be reviewed
• Kien Gang Seaproduct Import and Export Company (“KISIMEX”) • Kien Long Seafoods • Kim Anh Co., Ltd. • Konoike Vinatrans Logistics • Lamson Import-Export Foodstuffs Corporation • Long An Food Processing Export Joint Stock Company (“LAFOOCO”) • Lucky Shing • Minh Hai Export Frozen Seafood Processing Joint Stock Company • Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Josoco”) • Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”) and/or Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostosco”) • Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jotosco”) • Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) • Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) and/or Minh Hai Join-Stock Seafoods Processing Company (“Sea Minh Hai”) • Minh Hai Sea Products Import Export Company (Seaprimex Co) • Minh Phat Seafood • Minh Phat Seafood and/or Minh Phat Seafood Co., Ltd. • Minh Phat Seafood Co., Ltd. • Minh Phu Seafood Corp. • Minh Phu Seafood Corporation • Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively ‘‘Minh Phu Group’’) • Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) • Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) and/or Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively ‘‘Minh Phu Group’’) • Minh Qui Seafood • Minh Qui Seafood Co., Ltd. • Nam Hai • Ngoc Sinh Private Enterprise • Ngoc Sinh Private Enterprise (‘‘Ngoc Sinh Seafoods’’) • Ngoc Sinh Seafoods • Nha Trang Company Limited • Nha Trang Fisheries Co., Ltd. • Nha Trang Fisheries Joint Stock Company (‘‘Nha Trang Fisco’’) • Nha Trang Fisheries Joint Stock Company (‘‘Nha Trang FISCO’’) • Nha Trang Fisheries Joint Stock Company (‘‘Nha Trang Fisco’’) and/or Nha Trang Fisheries Joint Stock Company (‘‘Nha Trang FISCO’’) • Nha Trang Seaproduct Company (‘‘Nha Trang Seafoods’’) • Nha Trang Seaproduct Company (‘‘Nha Trang Seafoods’’) and/or Nha Trang Seaproduct Company (‘‘NHA TRANG SEAFOODS’’) • Pataya Food Industry (Vietnam) Ltd. • Phat Loc Seafood • Phu Cuong Seafood Processing and Import-Export Co., Ltd. • Phu Cuong Seafood Processing & Import-Export Co., Ltd. • Phu Cuong Seafood Processing and Import-Export Co., Ltd. and/or Phu Cuong Seafood Processing & Import-Export Co., Ltd. • Phung Hung Private Business • Phuong Nam Co., Ltd. • Phuong Nam Seafood Co., Ltd. • Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd. • Saigon Orchide • Sao Ta Foods Joint Stock Company (‘‘Fimex VN’’) • Sao Ta Foods Joint Stock Company (‘‘FIMEX VN’’) • Sao Ta Foods Joint Stock Company (‘‘Fimex VN’’) and/or Sao Ta Foods Joint Stock Company (‘‘FIMEX’’) • Sao Ta Foods Joint Stock Company (Fimex VN) aka Sao Ta Seafood Factory • Sao Ta Seafood Factory • Sea Product • Sea Products Imports & Exports • Seafood Company Zone II (‘‘Thusaco2’’) • Seafood Processing Joint Stock Company No. 9 (previously Seafood Processing Imports Exports) • Seafoods and Foodstuff Factory • Seaprimexco Vietnam • Seaprodex and/or Seaprodex Hanoi • Seaprodex Min Hai • Seaprodex Quang Tri • Soc Trang Aquatic Products and General Import Export Company (‘‘Stapimex’’) • Soc Trang Aquatic Products and General Import Export Company (‘‘Stapimex’’) and/or Soc Trang Aquatic Products and General Import-Export Company (‘‘STAPIMEX’’) • Soc Trang Seafood Joint Stock Company (‘‘STAPIMEX’’) aka Soc Trang Aquatic Products and General Import Export Company (‘‘Stapimex’’) • Sonacos	

	Period to be reviewed
• Song Huong ASC Import-Export Company Ltd. • Song Huong ASC Import-Export Company Ltd. and/or Song Huong ASC Joint Stock Company Song Huong ASC Joint Stock Company • Special Aquatic Products Joint Stock Company (''Seaspimex'') • SSC • T & T Co., Ltd. • Tacvan Frozen Seafoods Processing Export • Taydo Seafood Enterprises • Thami Shipping & Airfreight • Thang Long • Thanh Doan Seaproducts Import • Thanh Long • Thien Ma Seafood • Tho Quang Seafood Processing & Export Company Da Nang Fisheries Service Industrial • Thuan Phuoc Seafoods and Trading Corporation • Thuan Phuoc Seafoods and Trading Corporation and its separate factories Frozen Seafoods Factory No. 32 and Seafoods and Foodstuff Factory (collectively ''Thuan Phuoc'') • Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation (and its affiliates) • Tourism Material and Equipment Company (Matourimex Hochiminh City Branch) • Truc An Company • Trung Duc Fisheries Private Enterprise • UTXI Aquatic Products Processing Company • UTXI Aquatic Products Processing Corporation (''UTXICO'') • UTXI Aquatic Products Processing Corporation (''UTXICO'') aka UTXI Aquatic Products Processing Company • V N Seafoods • Vien Thang Private Enterprise • Viet Foods Co., Ltd. • Viet Foods Co., Ltd. (''Viet Foods'') • Viet Foods Co., Ltd. (''Viet Foods'') and/or Viet Foods Co., Ltd. • Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd.'') and/or Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish One Co., Ltd. (Fish One) • Viet Hai Seafoods Company Ltd. (Vietnam Fish One) • Viet Hai Seafoods Company Ltd. (''Vietnam Fish One Co. Ltd.'') • Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish-One Co., Ltd. (Fish One) • Viet Nhan Company • Vietfracht Can Tho • Vietnam Fish-One Co., Ltd. • Vietnam Northern Viking Technologie Co. • Vietnam Northern Viking Technology Co., Ltd. • Vietnam Tomec Co., Ltd. • Vilfood Co. • Vinh Hoan Co., Ltd. • Vinh Loi Import Export Company (''Vimexco'') • Vinh Loi Import Export Company (''VIMEX'') • Vinh Loi Import Export Company (''Vimexco'') and/or Vinh Loi Import Export Company (''VIMEX'') • Western Seafood Processing and Exporting Factory	
People's Republic of China[7]	02/01/2008—01/31/2009
Frozen Warmwater Shrimp A–570–893 • Allied Pacific (H.K.) Co. Ltd. • Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. • Allied Pacific Food (Dalian) Co., Ltd. • Ammon International • Anhui Fuhuang Chaohu Sanzhen C • Anhui Huaxiang Foodstuffs Co., Ltd. • Anqiu Jiayuan Foodstuffs Co., Ltd. • Aquafreezer Company • Aquatic Foodstuffs FTY • Aquatic Products Processing Factory of China National Zhoushan Marine Fisheries Company • Asian Seafood (Zhanjiang) Co., Ltd. • Asian Seafoods Cold Storage • Babcock & Wilcox • Bao Xian Company Ltd. • Baofa Aquatic Products Co., Ltd. • Beihai Hongen Aquatic Products Co., Ltd. • Beihai Qinguo Frozen Foods Co., Ltd. • Beihai Tashare Seafood Co., Ltd. • Beihai Wanjing Marin Products Co., Ltd. • Beihai Zhengwu Aquatic Products Co., Ltd. and/or Beihai Zhengwu Industry Co., Ltd. • Beilian Foods Industrial Co., Ltd. • Cangnan Fengrun Freezing Plant • Changle Jiacheng Food Co., Ltd.	

	Period to be reviewed
• Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/Chaoyang Qiaofeng). Co., Ltd. • Chaozhou Huahai Aquatic Products Co., Ltd. • Chaozhou Huahai Aquatic Products Co., Ltd. Fengxi Plant • Chenghai Nichi Lan Food Co., Ltd. • China National Fisheries Yantai Marine Fisheries Corp. Fishery Products Processing Factory • Chung Wan Enterprises • Chungshan Shinyo Marine Products Co., Ltd. • Citic Heavy Machinery • CNF Zhanjiang (Tonglian) Fisheries Co., Ltd. • Dafu Foods Industry • Dalian Evergreen • Dalian Ftz Sea-Rich International Trading Co., Ltd. • Dalian Juxin Aquatic Food Company, Ltd. • Dalian Ohbun Food Co., Ltd. • Dalian Shan Li Food • Dalian Shanhai Seafood • Dalian Tongyuan Foodstuffs Co., Ltd. • Dandong Taihua Foodstuffs Co., Ltd. • Danzhou Zhulian Freezing Co., Ltd. • Dhin Foong Trdg • Dong Guan Hai Huang Food Co., Ltd. • Donggang Hongfeng Foods Freeze • Donggang Sanlong Sea Produces Co., Ltd. • Dongri Aquatic Products Freezing Plants • Dongri Aquatic Products Freezing Plants Shengping • Dongshan Dongsheng Food Co., Ltd. • Dongshan Dongwang Aquatic Products Freezing Co., Ltd. • Dongshan Dongxiecheng Seafoods Co., Ltd. • Dongshan Dongxing Aquatic Processing Co., Ltd. • Dongshan Huachang Foodstuff Co., Ltd. • Dongshan Xinfu Aquatic Processing Co., Ltd. • Dongshan Xinhefa Co., Ltd. and/or Dongshan Xinhefa Food • E.S. Foods • East Spark Logistics • Fangchenggang City Fangcheng District Forestry Development Co., Ltd. • Fenghua Hailiqu Frozen Corporation • Foshan City Shunde District Yang Sei Seafoods Co., Ltd. (Seafood Workshop) • Foshan Seafood Imp and Exp Co., Ltd., Seariver Seafood Foodstuff Factory • Fuchang Aquatic Products • Fujian Chaohui Intl. • Fujian Meihua Aquatic Processing Factory • Fujian Mingwei • Fujian Provincial Meihua Aquat • Fujian Western Gulf Seafood Co., Ltd. • Fuqing Chaohui Aquatic Food Co., Ltd. • Fuqing Chaohui Aquatic Food Trdg • Fuqing City Huasheng Aquatic Food Co., Ltd. • Fuqing Dongwei Aquatic Products Industry Co., Ltd. • Fuqing Longwei Aquatic Foodstuff Co., Ltd. • Fuqing Maowang Seafood Developing Co., Ltd. • Fuqing Minhua Trade Co., Ltd. • Fuqing Xuhu Aquatic Food Trdg • Fuqing Yihua Aquatic Food Co., Ltd. and/or Fuqing Yihua Aquatic Products Co., Ltd. • Fuzhou Hongli Food Co., Ltd. • Fuzhou Mandy Foods Industries Co., Ltd. • Fuzhou Rixing Aquatic Food Co., Ltd. • Gallant Ocean (Nanhai), Ltd. • Gallant Ocean (Liangjiang) Co., Ltd. • General (Xiamen Tongan) Food Industry Co., Ltd. • Go Harvest Aquatic Products • Gold Star Fishery Zhoushan Co., Ltd. • Gourmet Food (Zhongshan) Co., Ltd. • Grand Harvest Seafoods (Zhanjiang) Co., Ltd. • Guangdong Foshan Aquatic Products • Guangxi Cereals Oils and Foodstuffs Imp./Exp. Beihai Aquatic Products Cold Processing Factory • Guangxi Zhengwu Marine Ind. • Guangzhou Lingshan Aquatic Products Co., Ltd. • Hai Li Aquatic Co., Ltd. Zhao An, Fujian • Hai Pa Wang (Shantou) Foods Co., Ltd. (Seafood Workshop) • Haikui Aquatic Products • Haili Aquatic Co., Ltd. Zhaoan Fujian • Hainan Brich Aquatic Products Co., Ltd. • Hainan Cereals Oils and Foodstuff Imp. & Exp. Co. Freezing Factory	

	Period to be reviewed
• Hainan Dazhong Ocean Industry Co., Ltd. • Hainan Dongfang Dongxin Aquatic Development Co., Ltd. • Hainan Evernew Foods Co., Ltd. • Hainan Fruit Vegetable Food Allocation Co., Ltd. • Hainan Gaoyuan Foods Co., Ltd. • Hainan Golden Spring Foods Co., Ltd. • Hainan Golden Spring Foods Co., Ltd./Hainan Brich Aquatic Products Co., Ltd. • Hainan Hailisheng Food Co., Ltd. • Hainan Hualu Food Freezing Co., Ltd. • Hainan Jiadexin Foodstuff Co., Ltd. and/or Hainan Jiadexin Foodstuff • Hainan North Aquatic Co., Ltd. • Hainan Quebec Ocean Fishing Co., Ltd. • Hainan Ruiying Food • Hainan Sanya Yuanheng Aquatic Food Co., Ltd. • Hainan Seaberry Seafoods • Hainan Sinalog Intl. Logistics • Hainan Sky-Blue Ocean Foods Co., Ltd. • Hainan Taisheng Fishery Co., Ltd. • Hainan Wenchang Yongli Fishery Trading Co., Ltd. • Hainan Xiangtai Fishery Co., Ltd. • Hainan Zhongyi Frozen Food Co., Ltd. • Haiyang Gold Sun Food Processing Co., Ltd. • Haizhou Aquatic • Hangzhou Tianhai Aquatic Food Co., Ltd. • Harvest Aquatic Products • Hefei Meiling Washing Machine • Hilltop International • Hogiya Seafoods • Homey Dongfang Aquatic Foods Co., Ltd. • Homon Ind Dalian • Hong Hu Dei Young Aquatic Products Co., Ltd. • Hongzhou Aquatic Products Industry Co., Ltd., Shantou • Huahai Frozen Food • Huangshi Lianhai Foodstuffs Gr • Hubei Sanwuchun Foodstuff Manufacturing Co., Ltd. • Hunan Best Foods • I T Logistics • Intl Economic Techical • Jiachang Aquatic Product Co., Ltd. Longhai Doumei • Jiangmen Kings Food Waihai Branch Ltd. • Jiangmen Yue Fung Marine Products Co., Ltd. • Jiangsu Holly • Jiangsu Jiushoutang Organisms-Manufacturers • Jiangsu Younger Foods • Jiangzhou Tianhe Fishery Products Co., Ltd. • Jiansheng Aquatic Product • Jiaonan City Aquatic Cold Storage Factory • Jinfu Trading Co., Ltd. • Jinhang Aquatic Industry • Jintown Enterprises • Kaifeng Ocean Sky Industry • Kaifeng Ocean Sky Industry Co., Ltd. • King Bay Seafood Co., Ltd. • King Royal Investments, Ltd. • Laiyang Hengrun Foodstuff • Laiyang Luhua Foodstuffs • Laizhou Xincheng Food Co., Ltd. • Lee Shing Food (Dongguan) Co., Ltd. • Leizhou Yuyuan Aquatic Products Co., Ltd. • Leizhou Zhulian Frozen Food Co., Ltd. • Liangcheng (Longhai) Freezing Co. Ltd. • Long Sheng Trend Wide (Yuhuan) Seafood Co., Ltd. • Longhai Gelin Seafoods Co., Ltd. • Longhai Jiarong Foods Co., Ltd. • Longhai Xinlianda Freezing Foods Co., Ltd. • Longkou Jiabao Aquatic Foodstuffs Co., Ltd. • Longsheng Aquatic Products • Luk Ka Paper Industry • Maoming Changxing Foods • Maoming Jiahui Foods Co., Ltd. • Marnex • Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. Shantou • Michael Lloyd Verm • Mingfeng	

	Period to be reviewed
• Minnan Aquatic Development Co., Ltd. Jinjiang City • Momoya Zhujiang Foods Industrial Co., Ltd. • Muping Weiye Foods Co., Ltd. • Nanhai Katolee Foods Co., Ltd. • Ningbo Arts & Crafts Import and Export • Ningbo Dayu Food Co., Ltd. • Ningbo Fat Chef Food Co., Ltd. • Ningbo Hengkang Food • Ningbo Jiuzhou Food Co., Ltd. • Ningbo Today Food Co., Ltd. • Ningbo Wuling Taihsin Foods • Ningbo Yuzhimei Seafoods Plant • North Supreme Seafood (ZheJiang) Co., Ltd. • North Supreme Seafood (Zhuhai) Co., Ltd. • Ocean (Tianjin) Corporation Ltd. • Ocean Freezing Industry & Trade General • Olanya • Penglai Huaguang Foodstuff Co., Ltd. • Penglai Jinglu Fishery Co., Ltd. • Penglai Jinglu Fishery Co., Ltd. Processing Factory • Penglai Jinming Aquatic Products Co., Ltd. • Penglai Meibo Foodstuffs Co., Ltd. • Perfection Logistics Service • PingYang Xinye Aquatic Products Co., Ltd. • Pingye Foreign Transportation • Power Dekor Group Co., Ltd. • Qianjiang Heyi Aquatic Products and Foodstuff Co., Ltd. • Qianjiang Laike Seafood Co., Ltd. • Qingdao A&K Foods Col., Ltd. • Qingdao Anke Industrial Co., Ltd. • Qingdao Biwan Foods Co., Ltd. • Qingdao Biwan Marine Products Co., Ltd. • Qingdao Canning & Foodstuffs • Qingdao Chaoyang Foods Col., Ltd. • Qingdao Dayang Jian Foodstuffs • Qingdao Dong Gang Foodstuffs Co., Ltd. • Qingdao Dongwon F & B Co., Ltd. • Qingdao Gabsan Trdg • Qingdao Kangda Foodstuffs Co., Ltd. No. 2 Refrigeration Factory • Qingdao Kangda Haiqing Foods Co. Ltd. • Qingdao Katokichi Foodstuff Co., Ltd. • Qingdao Rongli Aquatic Foods Co. Ltd. • Qingdao Sanyang Aquatic Products Co., Ltd. • Qingdao Sohshoku Refrigeration and Processing Co., Ltd. • Qingdao Superior Foods Co., Ltd. • Qingdao Tsukiji Suisan Co., Ltd. • Qingdao Twins Co., Ltd. • Qingdao Wanfang Foodstuff, Ltd. • Qingdao Xinhaifeng Foods Co., Ltd. • Qingdao Xuri Foodstuffs • Qingdao Yilufa Foodstuffs Co., Ltd. • Qingdao Yuanxing Foods Processing Plant • Qingdao Yudong Foodstuffs Co., Ltd. • Qingdao Zhengjin West Coast Aquatic Products Processing Plant • Qinhuangdao Jiangxin Aquatic Food • Quanzhou Yisheng Gifts • Qunfa Seafood • Raoping County Longfa Seafoods Co., Ltd. • Raoping Jialong Freeze Food Co., Ltd. • Raoping Jianli Foods Co., Ltd. • Raoping Yongliang Foodstuffs Factory Co., Ltd. (Seafood Workshop) • Raoping Yuanteng Frozen Food Co., Ltd. • Red Garden Food • Red Garden Foodstuff and/or Red Garden Food • Regal Integrated Marine Resour • Rich Shipping • Rixiang Ocean Foodstuff Co., Ltd. Shishi • Rizhao Changhua Aquatic Foodstuff • Rizhao Huayang Farming Aquatic Processing Co., Ltd. • Rizhao Rirong Aquatic Products and Foods Co., Ltd. • Rizhao Smart Foods • Rongcheng Lijiang Aquatic and Foodstuffs Co., Ltd. • Rongcheng Tongda Aquatic Food • Rongcheng Yinhai Aquatic	

	Period to be reviewed
• Round the World Logistics • Ruian Huasheng Aquatic Products • Rushan Huagreat Aquatic Products Co. Ltd. • Sahndong Huashijia Foods • San Francisco Bay Brand Far East • Sanya Branch of Zhanjiang Runhai Food Co., Ltd. • Sanya Dongji Aquatic Products Co., Ltd. • Sanya Dongji Aquatic Products Co., Ltd. • Sanya Shengda Seafood Co., Ltd. • Sanya Shengda Seafood Co., Ltd. • Sanya Yuantiao Aquatic Products Trading Co., Ltd. • Savvy Seafood Inc. • Science & Technology Development • Sea Mart • Sea to Sea Seafood • Second Aquatic Food • SH Linghai Fisheries Trdg • Shandong Chengshun Farm Produce Trd • Shandong Foodstuffs Imp and Exp Corp. Qingdao Refrigeration Plant • Shandong Huashijia Foods • Shandong Longkou Aquatic Product Comprehensive Corporation • Shandong Oriental Ocean Sci-Tech Co., Ltd. • Shandong Rizhao Sanfod Foodstuffs Co., Ltd. • Shandong Rushan Weimei Foodstuffs • Shandong Sanfod Nissui Co., Ltd. • Shandong Yongkang Food Co. Ltd. • Shanghai Haidell Foods Co., Ltd. • Shanghai Ho Ho Food Factory • Shanghai Linghai Fisheries Economic and Trading Co. • Shanghai Royal Dragon Seafoods • Shanghai Taoen International Trading Co., Ltd. • Shantou Chaoyang Zhansheng Freeze Factory • Shantou City Qiaofeng Group Co., Ltd. • Shantou Freezing Aquatic Product Food Stuffs Co. • Shantou Freezing Factory • Shantou Haimao Foodstuffs Factory Co., Ltd. • Shantou Haixiang Aquatic Products Co., Ltd. • Shantou Haiyou Aquatic Foodstuff Co., Ltd. • Shantou Jiazhou Foods Industry Co., Ltd. • Shantou Jinfa Seafood Co., Ltd. • Shantou Jinhang Aquatic Industry Co., Ltd. • Shantou Jinping District Mingfeng Quick-Frozen Factory • Shantou Jinyuan District Mingfeng Quick-Frozen Factory • Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.) • Shantou Longfeng Foodstuff Co., Ltd. • Shantou Longsheng Aquatic Product Foodstuff Co., Ltd. • Shantou Longsheng Aquatic Product • Shantou Nichi Len Foods Co., Ltd. • Shantou Ocean Freezing Industry and Trade General Corporation • Shantou Red Garden Foodstuff Co., Ltd. and/or Shantou Red Garden Food Processing Co., Ltd. • Shantou Red Garden Foodstuff. • Shantou Ruiyuan Industry Co., Ltd. • Shantou SEZ Dafeng Aquatic Product Enterprise Co., Ltd. • Shantou SEZ Xu Hao Fastness Freeze Aquatic Factory Co., Ltd. • Shantou Sez Xuhoa Fastness Freeze Aquatic Factory Co. • Shantou Shengping District Yongping • Shengnanhe Aquatic Products Process Factory • Shantou Shengping Jiacheng Aquatic Product Foodstuff Quick-Frozen Factory • Shantou Shengping Oceanstar Business Co., Ltd. • Shantou Wanya Food Factory Co., Ltd. • Shantou Wanya Foods Fty. Co., Ltd. (Branch Factory) • Shantou Yuexing Enterprise Company • Shanwei Cathay Food Industries Ltd. • Shanwei Good Harvest Aquatic Products Co., Ltd. • Shaotou Ocean Freezing Industry and Trade General Corporation • Sharewin Intl Cargo Agent • Shenzhen Allied Aquatic Products • Shishi Zhengyuan Aquatic Product Science & Technology Development Co., Ltd. • Silvertie Holding • Sinda Intl Trdg • Sino Champion • Sky Blue Ocean Foods • St. City Qiaofeng Group • ST Wanya Foods Fty	

	Period to be reviewed
• Suqian Foreign Trdg • T.H. • Taiwan Titan Enterprises • Taizhou Lingyang Aquatic Products Co., Ltd. • Taizhou Zhonghuan Industrial Co., Ltd. • Tangshan Dongguang Foods Co., Ltd. • Thai Royal Frozen Food Zhanjiang Co., Ltd. • The Aquaculture Processing Factory of Doumen Aquatic Products Import Co., Guangdong • The Freezing Plant of Guangdong Shantou Aquatic Product Imp. and Exp. Co. • The Second Aquatic Food • The Second Aquatic Foodstuffs Factory Shandong Hisea Group • Tianhe Hardware & Rigging • Tianjin Dongjiang Food • Tianjin Smart Gulf Foodstuffs Co., Ltd. • Tien Jiang Enterprises • TingFond Aquatic Food Development Co., Ltd. Guangzhou • Top One Intl. • Universal Freight Systems • Weifang Taihua Food • Weifang Yongqiang Food Ind. • Weihai Weidongri Comprehensive Food Co., Ltd. • Weishan Zhaozhong Lake Foodstuffs • Wenling Hotai Marine Processing Corp. • Wenling Jiaoshan Fishing Harbour Freezing Plant • Wenling Shatou Seafood Cold Storage Plant • Wenling Xingdi Aquatic Products Co., Ltd. • Wenling Xingdi Aquatic Products • Xiamen Sungiven Imports & Exports • Xiangshan Haiyang Food Co., Ltd • Xiangshan Huayi Seafood Co., Ltd. • Xiangshan South Aquatic Food Co., Ltd. • Xiantao Mianyang Sanzheng Foods Co., Ltd. • Xiashan Cold Storage Plant of Zhanjiang Foodstuffs I/E Co. of Guangdong • Xinxing Aquatic Products Processing Factory • Xuwen Hailang Breeding Co., Ltd. • Yancheng Haiteng Aquatic Products & Foods Co., Ltd • Yancheng Sea & Garden Beauty Foods Co., Ltd. • Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd. • Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd. • Yangjiang Jiangcheng Huanghai Marine Food Enterprises Co., Ltd. • Yangjiang Jiangcheng Huanghai Marine Food Enterprises Co., Ltd. • Yangxi Add Host Aquatic Product Processing Factory • Yangxi Add Host Aquatic Product Processing Factory • Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Fazhan Branch • Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Haifa Food Branch • Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Fazhan Branch • Yantai Aquatic Products Supplying and Marketing Co., Aquatic Products Haifa Food Branch • Yantai Dachen Food Products Co., Ltd. • Yantai Defeng Aquatic Product Co., Ltd. • Yantai Development Area Yulong Foods Co. Ltd. • Yantai Foreign Trade No. 2 Refrigerator Factory • Yantai Fuba Foodstuffs Co., Ltd. • Yantai Guangyuan Foods Co. • Yantai Haide Aquatic Products Co., Ltd. • Yantai Haihe Foodstuffs Co., Ltd. • Yantai Haixing Fishery Products Co., Ltd. • Yantai Huake Foodstuffs Co. Ltd. • Yantai Jinpeng Foodstuffs Co., Ltd. • Yantai Lianfa Aquatic Products Co., Ltd. • Yantai Liming Aquatic Products Co., Ltd. • Yantai Longda Foodstuffs Co., Ltd. • Yantai Longxiang Foodstuffs Co., Ltd. • Yantai Luxing Foodstuffs Co., Ltd. • Yantai M and K Foods Col., Ltd. • Yantai Pengfu Fishery Products Co., Ltd. • Yantai Sealucky Foodstuffs Co., Ltd. • Yantai Tangmu Seafood Products Co., Ltd. • Yantai Wei-Cheng Food Co., Ltd. • Yantai Xingyang Aquatic & Foods Co., Ltd. • Yantai Xinlai Trade • Yantai Xinxing Foodstuffs Co., Ltd. • Yantai Xuehai Foodstuffs • Yantai Xuehai Foodstuffs Co., Ltd. • Yantai Yuyuan Aquatic Products Co., Ltd.	

	Period to be reviewed
• Yantai Zhaoyang Aquatic Products Co., Ltd. • Yantai Zhengwang Seafood Co., Ltd. • Yantai Zhicheng Aquatic Product Co., Ltd. • Yelin Enterprise Co., Ltd. Hong Kong • Yelin Frozen Seafood Co. 21 • Yuhuan Minzhu Freezing Plant • Zhan Jiang Green Environmental Protection Aquatic Foods Co., Ltd. • Zhangjiang Bobogo Ocean Co., Ltd. • Zhangjiang Bo Bo Go Ocean Co., Ltd. • Zhangjiang Jinguo Seafood Co., Ltd. • Zhangzhou Changshan Haizhiwei Frozen Food Co. • Zhangzhou Hsien-pin Frozen Foods Co., Ltd. • Zhangzhou Oceanrich Foodstuffs Co., Ltd. • Zhangzhou Quanfeng Foods Development Co., Ltd. • Zhangzhou Yuanxin Foodstuff Co. Ltd. • Zhanjiang Allied Pacific Aquaculture Co., Ltd. • Zhanjiang Baohui Sea Products PTE Co., Ltd. • Zhanjiang Baoli Aquatic Products Co., Ltd. • Zhanjiang Bo Bo Go Ocean Co., Ltd. • Zhanjiang Dongyang Aquatic Products Co., Ltd. • Zhanjiang East Sea Kelon Aquatic Products Co., Ltd. • Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd. • Zhanjiang Fuchang Aquatic Product Freezing Plant • Zhanjiang Fuchang Aquatic Products • Zhanjiang Go-harvest Aquatic Products Co., Ltd. • Zhanjiang Guotong Aquatic Products Co., Ltd. • Zhanjiang Haizhou Aquatic Product • Zhanjiang Hi Press Machine Eqp • Zhanjiang Longwei Aquatic • Zhanjiang Newpro Foods Co., Ltd. • Zhanjiang Puxin Aquatic Products Co., Ltd. • Zhanjiang Regal Integrated Marine Resources Co., Ltd. • Zhanjiang Runhai Foods Co., Ltd. • Zhanjiang Siyu Aquatic Products Co., Ltd. • Zhanjiang Universal Seafood Corp. • Zhanjiang Yueshui Fishery Co., Ltd. • Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd. and/or Zhejiang Cereals Oils & Foodstuffs Import & Export Corp. Yueqing Cooperative Cold Storage Plant • Zhejiang Daishan Baofa Aquatic Products Co., Ltd. • Zhejiang Dayang Aquatic Products Co., Ltd. • Zhejiang Evergreen Aquatic • Zhejiang Evergreen Aquatic Pro • Zhejiang Evernew Seafood Co., Ltd. Cold Storage Plant • Zhejiang Evernew Seafood Co., Ltd. • Zhejiang Haizhiwei Aquatic Products Co., Ltd. • Zhejiang Iceman Foods • Zhejiang New Century Aquatic Food Co., Ltd. • Zhejiang New Century Imp. & Exp. Group Co. Ltd. Seafood Factory • Zhejiang Ocean Fisheries Group Ningbo Seafood Processing Co., Ltd. Corp. Food Plant • Zhejiang Taizhou Haierbao Aquatic Products Co., Ltd. • Zhejiang Tongxinrong Seafood Co., Ltd. • Zhejiang Xingyang Import & Exports • Zhejiang Xintianjiu Sea Products Co., Ltd. • Zhejiang Zhenglong Foodstuffs Co., Ltd. • Zhejiang Zhongdao • Zhejiang Zhoufu Food Co., Ltd. • Zhejiang Zhoushan Haisilk Aquatic Products Co., Ltd. • Zhenjiang Evergreen Aquatic Products Science & Technology Co., Ltd. • Zhenye Aquatic & Cool Storage • Zhongshan Daisheng Frozen Food Company Ltd. • Zhongshan Fishery and Agricultural Products Freezing Factory Co., Ltd. • Zhongshan Metro Frozen Food Co., Ltd. • Zhoushan • Zhoushan Cereals, Oils and Foodstuffs Import and Export Co., Ltd. • Zhoushan Changguo Foods Co., Ltd • Zhoushan City Shengtai Aquatic Co., Ltd. • Zhoushan Diciyuan Aquatic Products Co., Ltd. • Zhoushan Diciyuan Aquatic Products • Zhoushan Dinghai Hongxin Aquatic Products Coldstorage Plant • Zhoushan Gangming Foods Co., Ltd. • Zhoushan Guotai Aquatic Products Co., Ltd. • Zhoushan Guotai Fisheries Co., Ltd. • Zhoushan Haichang Food Co., Ltd. • Zhoushan Haizhou Aquatic Products Co., Ltd. Foods Processing Factory	

	Period to be reviewed
• Zhoushan Huading Seafood Co., Ltd • Zhoushan Industrial Co., Ltd. • Zhoushan Industrial Co., Ltd. Cold Storage Factory • Zhoushan Jingzhou Aquatic Foods Co., Ltd. • Zhoushan Jinyuan Aquatic Foods Co., Ltd. • Zhoushan Lizhou Fishery Co., Ltd. • Zhoushan Penglai Aquatic Co., Ltd. • Zhoushan Putuo Dongyu Frozen Aquatic Products Co., Ltd • Zhoushan Putuo Huafa Sea Products Co., Ltd. • Zhoushan Putuo Zhuohai Marine Products Co., Ltd. • Zhoushan Qiangren Imp & Exp • Zhoushan Thousand-Islands Aquatic Products Co., Ltd. • Zhoushan Toka Foods Co., Ltd. • Zhoushan Xifeng Aquatic Co., Ltd. • Zhoushan Yueyang Food Co., Ltd. • Zhoushan Zaohai Aquatic Products Co., Ltd. • Zhoushan Zhenyang Developing Co., Ltd. • ZJ CNF Sea Products Engineering Ltd. Viet Nhan	

Notification

This notice constitutes public notification to all firms requested for review and seeking separate-rate status in the administrative reviews of the antidumping duty orders on shrimp from Vietnam and the PRC that they must submit a separate rate status application or certification, as appropriate, within the time limits established in this notice of initiation of administrative reviews in order to receive consideration for separate-rate status. The Department will not give consideration to any Separate Rate Certification or Separate Rate Status Application made by parties who fail to timely submit the requisite Separate Rate Certification or Application. All information submitted by respondents in these administrative reviews is subject to verification. To complete these segments within the statutory time frame, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the Separate Rate Certification and the Separate Rate Status Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://www.trade.gov/ia*.

This initiation and notice are in accordance with section 751(a) of the Act, and 19 CFR 351.221(c)(1)(i).

Dated: March 18, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6634 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–DS–P

[6] If one of the below named companies does not qualify for a separate rate, all other exporters of shrimp from Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam-wide entity of which the named exporters are a part.

[7] If one of the listed companies does not qualify for a separate rate, all other exporters of shrimp from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC-wide entity of which the named exporter is a part.

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–837, A–533–828, A–588–068, A–580–852, A–201–831, A–549–820

Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, the Republic of Korea, Mexico, and Thailand: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Finding/Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2008, the Department of Commerce initiated sunset reviews of the antidumping duty finding/orders on prestressed concrete steel wire strand from Brazil, India, Japan, the Republic of Korea, Mexico, and Thailand pursuant to section 751(c) of the Tariff Act of 1930, as amended. The Department has conducted expedited (120–day) sunset reviews for these finding/orders in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty finding/orders would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: March 26, 2009.

FOR FURTHER INFORMATION: Yang Jin Chun or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2008, the Department of Commerce (the Department) published the notice of initiation of the sunset reviews of the antidumping duty finding[1]/orders on prestressed concrete steel wire strand (PC strand) from Brazil, India, Japan, the Republic of Korea (Korea), Mexico, and Thailand pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five–year (''Sunset'') Reviews*, 73 FR 72770 (December 1, 2008) (*Notice of Initiation*).

The Department received notices of intent to participate in these sunset reviews from American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the domestic interested parties) within the 15–day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested

[1] On December 8, 1978, the Department of the Treasury published the antidumping duty finding, which is equivalent to an antidumping duty order published after 1980, on PC strand from Japan. See *Steel Wire Strand for Prestressed Concrete from Japan: Finding of Dumping*, 43 FR 57599 (December 8, 1978).

parties within the 30–day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from any respondent interested parties. As a result, in accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120–day) sunset reviews of the antidumping duty finding/orders on PC strand from Brazil, India, Japan, Korea, Mexico, and Thailand.

Scope of the Finding/Orders

The product covered in the sunset reviews of the antidumping duty orders on PC strand from Brazil, India, Korea, Mexico, and Thailand is steel strand produced from wire of non–stainless, non–galvanized steel, which is suitable for use in prestressed concrete (both pre–tensioned and post–tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The product covered in the sunset review of the antidumping duty finding on PC strand from Japan is steel wire strand, other than alloy steel, not galvanized, which is stress–relieved and suitable for use in prestressed concrete.

The merchandise subject to the finding/orders is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the finding/orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Finding/Orders on Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, the Republic of Korea, Mexico, and Thailand'' from Acting Deputy Assistant Secretary John M. Andersen to Acting Assistant Secretary Ronald K. Lorentzen dated March 19, 2009 (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the finding/orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty finding/orders on PC strand from Brazil, India, Japan, Mexico, Korea, and Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Country	Company	Weighted–Average Margin (Percent)
Brazil	Belgo Bekaert Arames S.A.	118.75
	All Others	118.75
India	Tata Iron and Steel Co., Ltd.	102.07
	All Others	83.65
Japan	Shinko Wire Co., Ltd.	13.30
	Suzuki Metal Industry Co., Ltd.	6.90
	Tokyo Rope Manufacturing Co., Ltd.	4.50
	All Others	9.76
Korea	Dong–Il Steel Manufacturing Co., Ltd.	54.19
	Kiswire Ltd.	54.19
	All Others	35.64
Mexico	Aceros Camesa S.A. de C.V.	62.78
	Cablesa S.A. de C.V.	77.20
	All Others	62.78
Thailand	Siam Industrial Wire Co., Ltd.	12.91
	All Others	12.91

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6797 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–801, A–428–801, A–475–801, A–588–804, A–412–801

Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Partial Rescission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2008, in response to requests from interested parties, the Department of Commerce published a notice of initiation of the administrative reviews of the antidumping duty orders

on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The period of review is May 1, 2007, through April 30, 2008. The Department of Commerce is rescinding these reviews in part.

EFFECTIVE DATE: March 26, 2009.

FOR FURTHER INFORMATION: Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2008, in response to requests from interested parties, the Department of Commerce (the Department) published a notice of initiation of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 37409 (July 1, 2008).

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review in part ''if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.'' In accordance with 19 CFR 351.213(d)(1), the Department may extend the 90–day time limit if the Department ''decides that it is reasonable to do so.'' On October 3, 2008, for all interested parties which requested the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom, we extended the due date for withdrawing the requests for reviews to October 10, 2008, because all respondents that we selected for individual examination in these two reviews had withdrawn their requests for reviews in a timely manner and because we had to identify additional respondents for individual examination. On October 14, 2008, for Canon, Inc., we extended the due date for withdrawing the request for review to October 15, 2008, based on the circumstances stated in Canon, Inc.'s October 14, 2008, letter requesting an extension of the due date.

Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for the reviews as follows:

Country	Company
France	ADR S.A.[1]
Germany	Dolmar GmbH[1]
	SNR Walzlager GmbH[1]
Italy	Edwards, Ltd., and Edwards High Vacuum Int'l Ltd.[1]
Japan	Aisin Seiki Company Ltd.[1]
	Asahi Seiko Co., Ltd.[1]
	Canon, Inc.[2]
	JTEKT Corporation[1]
	Keihin Corporation[3]
	Makino Milling Machine Company Ltd.[3]
	Makita Corporation[3]
	Mazda Motor Corporation[3]
	Mitsubishi Heavy Industries, Ltd.[1]
	Nachi–Fujikoshi Corporation[1]
	Nippon Pillow Block Company Limited[1]
	Nissan Motor Company, Ltd.[3]
	NSK, Ltd.[1]
	NTN Corporation[1]
	Univance Inc.[3]
	Yamazaki Mazak Trading Corporation[1]
United Kingdom	Edwards, Ltd., and Edwards High Vacuum Int'l Ltd.[1]
	NSK Bearings Europe Ltd.[1]
	Rolls–Royce PLC[1]

[1] We received timely withdrawals of the requests for reviews of these companies on or before September 29, 2008, which was the last day of the regulatory 90-day period in which interested parties could withdraw a request for review.
[2] We received a timely withdrawal of the request for review of Canon, Inc., on October 15, 2008.
[3] We received timely withdrawals of the requests for reviews of these companies between October 8, 2008, and October 10, 2008.

Because there are no other requests for review of the above–named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d). We also received a timely withdrawal of the request we received for Sapporo Precision, Inc. (Sapporo), with respect to the administrative review of the antidumping duty order on ball bearings and parts thereof from Japan. A review of Sapporo was also requested by another interested party which has not withdrawn its request. Consequently, we continue to conduct the administrative review of Sapporo.

Rescission of Reviews

The Department received the timely submitted letters withdrawing the requests for the reviews of the companies listed above within the 90–day period or within the specific extended due dates. The Department received no other requests for the reviews of these companies. Pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the reviews in part with respect to ball bearings and parts thereof produced and/or exported by the companies as stated above. The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these rescissions in part in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 19, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6800 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado, et al.; Notice of Consolidated Decision on Applications for Duty–Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 08–041. Applicant: University of Colorado, Denver, CO 80217. Instrument: Vitrification Robot. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 74 FR 7394, February 17, 2009.

Docket Number: 08–052. Applicant: University of Washington, Seattle, WA 98105–6698. Instrument: CTD Chain III. Manufacturer: ADM Electronik, Germany. Intended Use: See notice at 74 FR 7395, February 17, 2009.

Docket Number: 08–056. Applicant: Argonne National Laboratory, Lemont, IL 60439. Instrument: Isobar Separator System. Manufacturer: Bruker Biospin S.A., France. Intended Use: See notice at 74 FR 7395, February 17, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: March 19, 2009.

Chris Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–6799 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 08–050. *Applicant:* University of Colorado, Boulder, CO 80309–0427. *Instrument:* Dual Beam FIB Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use: See* notice at 74 FR 7588, February 18, 2009.

Docket Number: 08–051. *Applicant:* Lawrence Berkeley National Laboratory. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 74 FR 7588, February 18, 2009.

Docket Number: 08–062. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Scanning Electron Microscope. *Manufacturer:* FEI Company, The Netherlands. *Intended Use: See* notice at 74 FR 7588, February 18, 2009.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: March 19, 2009.

Chris Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–6798 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO24

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt of a permit application; request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit (permit 14579) to conduct steelhead rescue activities for population enhancement purposes from the Protected Resource Division of NMFS office in Long Beach (PRDLB), California. The requested permit would affect the Southern California Coast Distinct Population Segment of endangered steelhead trout (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NMFS either approves or disapproves the application.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) on or before April 27, 2009.

ADDRESSES: Written comments on the permit application should be sent to Matt McGoogan, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Comments may also be sent using email (*FRNpermits.lb@noaa.gov*) or fax (562) 980–4027. The permit application is available for review, by appointment, at the foregoing address and is also available for review online at the Authorizations and Permits for

Protected Species website at *https://apps.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at phone number (562) 980–4026 or e-mail: *matthew.mcgoogan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see ADDRESSES). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Permit Application Received

PRDLB has applied for a permit to conduct steelhead rescue activities for the Southern California Coast (SCC) Distinct Population Segment (DPS) of endangered steelhead (Oncorhynchus mykiss) which includes coastal streams from the Santa Maria River south to the Mexican border. The purpose of this permit is for the enhancement of survival of endangered steelhead in the SCC DPS. During the dry season and prolonged periods of below normal rainfall the instream areas harboring endangered steelhead can experience dewatering and desiccation. Because steelhead within drying sections of streams can perish, possessing the legal authority to capture and then relocate at-risk individuals would be valuable should biotic and abiotic factors suggest rescue of steelhead is warranted.

Criteria have been defined in the application to provide an objective biological basis for determining whether a steelhead rescue is reasonable and necessary to enhance the population. These criteria include instream characteristics and conditions within the affected area, the cause for any observed or projected streamflow decreases or dewatering, the availability of suitable instream areas to safely harbor the rescued steelhead (i.e., relocation areas), and the abundance of steelhead within the affected area. The application specifies that the permit would be applicable only in the following situations: when a rapid response is crucial to steelhead survival, and when mortality of steelhead, if not rescued and relocated, is reasonably certain; and, when take authorization has not been granted, or is not expected or warranted, under Section 7 or Section 10 of the ESA. The application defines criteria to increase the likelihood that the permit would not be misused.

NMFS-specific responsibilities under the rescue and relocation activities involve: (1) serving as the permit holder, principal investigator, and the primary contact, (2) designating and collaborating with the California Department of Fish and Game (CDFG) as a co-investigator, (3) determining the need for a steelhead rescue and relocation, and (4) providing written authorization for undertaking steelhead rescue and relocation. NMFS would retain discretion as principal investigator under the permit for determining, either individually or in collaboration with CDFG, whether a steelhead rescue and relocation are warranted using the established rescue criteria.

With regard to authorizing steelhead rescue and relocation, the permit would grant NMFS the authority to legally allow its own qualified biologists or those of the CDFG to conduct and oversee operations to capture and relocate steelhead when an imminent threat to the survival of individuals exists and when the rescue criteria are met. Once the determination has been made that a steelhead rescue is needed, NMFS will coordinate the rescue and relocation operation with its own biologists and (or) those of the CDFG.

The application identifies specific responsibilities for CDFG related to the rescue and relocation activities. CDFG will notify the designated NMFS point of contact of the need to rescue and relocate steelhead prior to implementing any rescue and relocation operation. The notification will involve a letter that provides the following information: A description of the need to rescue steelhead, including an assessment of the applicability of the rescue criteria; the name of the waterway where the subject rescue and relocation would occur; a brief description of the specific conditions believed to be prompting the rescue (e.g., naturally dry conditions, or anthropogenic activity causing the reduction in flow); an estimate of the number of steelhead that are expected to be rescued; the name of the waterway and location (GPS coordinates) where the collected steelhead would be relocated; and, a description of the plan that will be implemented to monitor the status of the relocated individuals over time.

A permit duration of 10 years is requested to cover the described activities from 6/1/2009 to 12/31/2019. For this 10 year program, PRDLB has requested an annual non-lethal take of up to 2000 juvenile steelhead and 100 adult steelhead. An annual collection and possession of up to 100 steelhead tissue samples is being requested as well as permission to recover up to 20 carcasses per year (if found). All samples and carcasses would be sent to NMFS science center for genetic research and processing. No intentional lethal take is being proposed for this permit. The unintentional lethal take (mortalities) that may occur during rescue activities is up to100 juvenile steelhead per year or no more than 5 percent of the total captured. See the attached documents in the methods section of the permit for a complete project description including tables and figures.

Dated: March 20, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–6779 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Damage Assessment and Restoration Plan and Environmental Assessment for Natural Resource Injuries and Service Losses Associated With Hazardous Substance Releases Into Bayou Verdine and the Calcasieu River, in Calcasieu Parish, LA (''Bayou Verdine Site'')

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

ACTION: Notice of Availability of a Draft Damage Assessment and Restoration Plan and Environmental Assessment for natural resource injuries and service losses associated with hazardous substance releases into Bayou Verdine and the Calcasieu River, in Calcasieu Parish, Louisiana (''Bayou Verdine Site''); 60-day period for public

comment on this plan begins March 27, 2009.

SUMMARY: Pursuant to 43 CFR 11.32 and 11.81–.82, notice is hereby given that a document entitled, ''A Draft Damage Assessment and Restoration Plan and Environmental Assessment for the Bayou Verdine Site, Calcasieu Parish, Louisiana'' (Draft DARP/EA) is available for public review and comment. This document has been prepared by the state and federal natural resource trustee agencies (the ''Trustees'') to address natural resource injuries and resource services losses attributable to past releases of hazardous substances from two facilities situated in the upper Calcasieu Estuary, in Calcasieu Parish, Louisiana that are presently owned and operated by ConocoPhillips Company and Sasol North America Inc (collectively, the ''potentially responsible parties'' or ''PRPs''). The Trustees include the National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish & Wildlife Service, acting on behalf of the U.S. Department of the Interior (USFWS/DOI); Louisiana Department of Environmental Quality (LDEQ) and Louisiana Department of Wildlife and Fisheries (LDWF).

This Draft DARP/EA presents the Trustees' proposed assessment of natural resource injuries and service losses in the upper Calcasieu Estuary due to hazardous substances released from these facilities, and presents the restoration plan that the Trustees are proposing for use to compensate for these losses. The Trustees will consider comments received during the public comment period before adopting the final DARP/EA.

Deadline for Comments: Comments on the Draft DARP/EA must be submitted in writing on or before May 26, 2009.

ADDRESSES: Requests for copies of the Draft DARP/EA should be sent to John Rapp of NOAA at 1315 East-West Highway, SSMC3, F/HC3, Silver Spring, MD 20910, e-mail: *Verdine.Comments@noaa.gov*. The Draft DARP/EA is also available for downloading at *http://www.darrp.noaa.gov* (by clicking on the document title in the Bayou Verdine announcement on that page).

Comments on this plan are to be sent in writing to John Rapp of NOAA for receipt on or before May 26, 2009. These written comments may be submitted either by mail at the address provided above; by fax to 301–713–0184, or by e-mail to *Verdine.Comments@noaa.gov*.

SUPPLEMENTARY INFORMATION: Bayou Verdine is a shallow, sinuous bayou in the upper Calcasieu Estuary, southwest of the City of Westlake and slightly northwest of the City of Lake Charles, in Calcasieu Parish, LA. It originates in an agricultural area immediately north and northwest of petroleum facilities owned and operated by ConocoPhillips Company and Sasol North America Inc., and flows in a south-southeast direction through this industrialized segment before entering the Calcasieu River at Coon Island Loop. Historical operations at these two facilities have resulted in releases of hazardous substances, such as polynuclear aromatic hydrocarbons (PAHs), heavy metals, and other hazardous compounds, into Bayou Verdine and Coon Island Loop, within the Estuary.

The upper Calcasieu Estuary has been the focus of a number of past investigations related to contaminant releases and is the subject of several on-going response or corrective action planning processes under the direction or oversight of the U.S. Environmental Protection Agency (USEPA) and/or LDEQ. The most extensive effort to identify the nature and extent of hazardous substances present in the Estuary to date is the federal-lead Remedial Investigation (RI) of contaminants in sediments, surface water, and biota in the Calcasieu Estuary undertaken by the USEPA in 1999. Results from this investigation, combined with other relevant data and information, prompted the Trustees to pursue a natural resource damage assessment (NRDA) to determine and quantify resource injuries and losses in the Estuary attributable to hazardous substances from the PRPs' facilities, and to develop a restoration plan that would be sufficient to compensate for those losses. The Trustees' decision to proceed with this NRDA was identified in a ''Notice Of Intent To Perform Damage Assessment & Develop Restoration Plan for Natural Resources Injured by Hazardous Substances in Bayou Verdine & Coon Island Loop in Calcasieu Parish, Louisiana'' published September 26, 2004, in the *American Press*, a newspaper of general circulation in Calcasieu Parish, LA. That notice also invited public input regarding potential restoration opportunities in the watershed that the Trustees could consider in developing an appropriate restoration plan. The PRPs were cooperatively involved in the NRDA process as well, consistent with 43 CFR 11.32.

The Draft DARP/EA released today identifies the Trustees' proposed assessment of natural resource injuries and losses due to past releases from these facilities and identifies the restoration action which is preferred for use to restore, replace or acquire resources or services equivalent to those lost.

In undertaking this NRDA and in releasing this Draft DARP/EA, the Trustees are acting in accordance with their designation and authorities under section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9607(f), section 311 of the Federal Water Pollution and Control Act (FWPCA), 33 U.S.C. section 1321, Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR sections 300.600–300.615, and regulations at 43 CFR part 11 that are applicable to natural resource damage assessments under CERCLA. The Trustees act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

FOR FURTHER INFORMATION CONTACT: John Rapp, at (301) 713–0174 x174, or e-mail: *Verdine.Comments@noaa.gov.*

Dated: March 9, 2009.

David G. Westerholm,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–6693 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting; The Advisory Committee on Commercial Remote Sensing (ACCRES)

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet April 7, 2009.

Date and Time: The meeting is scheduled as follows: April 7, 2009, 9 a.m.–3 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 1:30 p.m.

ADDRESSES: The meeting will be held in the Crowne Plaza Hotel located at 8777 Georgia Ave., Silver Spring, MD 20910. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5

U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with Section 552b(C)(1) of Title 5, United States Code. Accordingly, portions of this meeting which involve the ongoing review and implementation of the April 2003 U.S. Commercial Remote Sensing Space Policy and related national security and foreign policy considerations for NOAA's licensing decisions are closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will receive updates on NOAA's Commercial Remote Sensing Regulatory Affairs activities. The Committee will also be available to receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS Commercial Remote Sensing Regulatory Affairs Office, 1335 East-West Highway, Room 8260, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Jane D'Aguanno, Designated Federal Officer for ACCRES, NOAA/NESDIS Commercial Remote Sensing Regulatory Affairs Office, 1335 East-West Highway, Room 8260, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from David Hasenauer at (301) 713–1644, fax (301) 713–0204, or e-mail *David.Hasenauer@noaa.gov.*

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS Commercial Remote Sensing Regulatory Affairs Office on or before March 31, 2009, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Jane D'Aguanno, NOAA/NESDIS Commercial Remote Sensing Regulatory Affairs Office, 1335 East-West Highway, Room 8260, Silver Spring, Maryland 20910; telephone (301) 713–3385, fax (301) 713–0204, e-mail *Jane.Daguanno@noaa.gov,* David Hasenauer at (301) 713–1644, fax (301) 713–0204, or e-mail *David.Hasenauer@noaa.gov.*

Mary E. Kicza,

Assistant Administrator for Satellite and Information Service.

[FR Doc. E9–6756 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO38

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Dogfish Committee, its Bycatch / Limited Access Committee, its Ecosystems and Ocean Planning Committee, its Annual Catch Limits/ Accountability Measures (ACL/AM) Committee, its Squid, Mackerel, Butterfish Committee, and its Executive Committee will hold public meetings.

DATES: Tuesday, April 14, 2009 through Thursday, April 16, 2009.

ADDRESSES: The Sanderling Hotel, 1461 Duck Road, Duck, NC 27949; telephone: 252–261–4111.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New St., Room 2115, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331 ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, April 14 the Mid-Atlantic section of the Joint Dogfish Committee will meet from 10:00 a.m. until 12:00 p.m. The Bycatch /Limited Access Committee will meet from 1:00 p.m. until 2:30 p.m. The Ecosystems and Ocean Planning Committee will meet from 2:30 p.m. until 5:00 p.m. From 7:00 p.m. until 8:30 p.m. there will be a scoping session for the Omnibus Amendment regarding ACL/AM.

On Wednesday, April 15 the ACL / AM Committee will meet from 8:00 a.m. until 9:30 a.m. The Squid, Mackerel, and Butterfish Committee will meet from 9:30 a.m. until 12:00 p.m. The Council will convene at 1:00 p.m. until 5:00 p.m. to conduct its regular business session, receive organizational reports, liaison reports, Executive Director's report, the Status of the Fishery Management Plans (FMP) report, a report on risk considerations, and an update on Amendment 11 to the Squid, Mackerel, and Butterfish FMP.

On Thursday, April 16 the Executive Committee will meet from 8:00 a.m. until 9:00 a.m. The Council will convene at 9:00 a.m. until 1:00 p.m. to receive an update on the Marine Recreational Information Program (MRIP), receive an update on Amendments 17 and 18 to the South Atlantic Fishery Management Council's Snapper Grouper FMP, Committee Reports, and any continuing and/or new business.

Agenda items by day for the Council's Committees and the Council itself are: Tuesday, April 14—the Mid-Atlantic section of the Joint Spiny Dogfish Committee will receive a report on the March meeting of the Joint Dogfish Committee, review and discuss pre-scoping issues related to the development of Amendment 1 to the Dogfish FMP, and develop Committee recommendations for consideration and future action by the Joint Dogfish Committee. The Bycatch / Limited Access Committee will discuss possible modifications to black sea bass pots, and finalize text and lay-out of the bycatch reduction pamphlet. It will also develop a plan of action for distribution of the bycatch reduction pamphlet, and receive a presentation from Environmental Defense Fund

representatives regarding British Columbia's fishery management practices and bycatch reduction efforts. The Ecosystems and Ocean Planning Committee will review the DOC Inspector General's Report on NEFSC's use of best science for ecosystems, receive a report from Dr. Jason Link regarding NEFSC prey-predator relationship studies, and review the status of proposed LNG facilities in the Mid-Atlantic Council's jurisdiction off New Jersey. There will be an evening scoping session for the ACL/AM Omnibus Amendment. Wednesday, April 15—The ACL / AM Committee will review the status of action for the Omnibus Amendment, and discuss risk philosophies to be considered by the Council for the Omnibus Amendment.

The Squid, Mackerel, and Butterfish Committee will review the management alternatives addressed in Amendment 11, and review the recommendations of the Fishery Management Action Team (FMAT). The Council will convene for its regular business session to receive various reports including a report on risk considerations. The Council will also review alternatives associated with proposed management measures and if appropriate select preferred alternatives contained in Amendment 11 to the Squid, Mackerel, and Butterfish FMP, and review and adopt the Public Hearing Document (PHD) and associated draft Environmental Impact Statement (DEIS) for Amendment 11. Thursday, April 16 - The Executive Committee will review highlights of the Council Coordination Committee meeting and review discussions and outcomes from the Northeast Regional Coordinating Council (NRCC) meeting. The Council will convene to receive an update on the Marine Recreational Information Program (MRIP), receive an update on Amendments 17 and 18 to the South Atlantic Fishery Management Council's (SAFMC) Snapper Grouper FMP, develop a Council position and provide comments to the SAFMC on proposed actions contained in Amendments 17 and 18, receive Committee Reports and conduct any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan (302–674–2331 ext 18) at least five days prior to the meeting date.

Dated: March 23, 2009

Tracey L. Thompson,

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

[FR Doc. E9–6736 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO39

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene meetings of the Hawaii Archipelago Plan Team (PT), Advisory Panel (AP), and Regional Ecosystem Advisory Committee (REAC) in Honolulu, Hawaii.

DATES: The Hawaii Archipelago PT meeting will be held Tuesday-Wednesday, April 14–15, 2009, the Hawaii AP meeting will be held Thursday, April 16, 2009, and the Hawaii REAC meeting will be held Friday, April 17, 2009. For the specific dates, times, and agendas for the meetings see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings of the Hawaii Archipelago PT, AP and REAC will be held at the Council Office, 1164 Bishop St. Suite 1400, Honolulu, Hawaii 96814.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION:

Schedule and Agenda for Hawaii Archipelagic Plan Team Meeting

9:00 a.m. — 4:00 p.m. Tuesday, April 14, 2009

1. Welcome and Introduction of Members
2. Approval of Draft Agenda
3. Update on Federal Fisheries Management Actions
   a. Fishery Ecosystem Plan amendments on Annual Catch Limits (ACLs)/Allowable Catch Targets (ACTs)/ Accountability Measures
   b. Defining Small-scale traditional fishing
   c. Discussion and recommendations
4. Ecosystem and Habitat
   a. Habitat Assessment Improvement Plan
   b. Updating EFH/HAPC information
      i. FEP/FMP designations
      ii. Defining/improving EFH/HAPC definitions, boundaries and information
   c. Stimulus Funding for Habitat
5. Fishery Development
   a. Identify Marine, Education and Training Priorities
   b. Cooperative Research priorities
   c. Marine Conservation Plan
   d. Discussion and recommendations
6. Review of Annual Report Modules for Hawaii & Pacific Remote Island Areas
   a. Coral Reef Ecosystem
   b. Precious Coral
   c. Crustaceans
   d. Discussion and Recommendations

Hawaii Archipelagic Plan Team Meeting

9:00 a.m. — 4:00 p.m. Wednesday, April 15, 2009

   e. Bottomfish
      i. Main Hawaiian Island Module
      ii. Northwestern Hawaiian Island Module
      iii. Market/Economic Report
      iv. Administrative report
8. Precious Corals Issues
   a. State of Hawaii Black Coral Research
   b. National Marine Fisheries Service Pacific Island Fisheries Science Center Gold Coral Research
   c. Corallium (Pink Coral) Issues
   d. Review of Current and Proposed Management Measures
9. Other Business
10. Public Comments
11. Discussion and Recommendation

Schedule and Agenda for the Hawaii Archipelago Advisory Panel Meeting

9:00 a.m. — 4:00 p.m. Thursday, April 16, 2009

1. Welcome and Introduction of Members
2. Introduction to the Council and Magnuson Stevens Act
3. Status Report on 2008 Advisory Panel Recommendations
4. Emerging Fishery Issues
5. Community Marine Management
   a. Marine Education and Training Program
   b. Aha Moku Community Consultation Process

c. Recreational Fishing Data Collection Options
d. Status of State of Hawaii Fishing Regulations Review
e. Report on State of Hawaii Protected Species Activities
f. Allowing Commercial Harvest of Invasive Sardines/Herrings
g. Cooperative Research — Report on Bottomfish Tagging Project
6. Upcoming 145th Council Meeting Actions
a. Hawaii Offshore Handline Permits and Limited Entry
b. Main Hawaiian Islands Bottomfish Stock Assessment Review
c. Annual Catch Limits for Non-Pelagic Species
d. Small-scale Traditional Fisheries
7. Other Business
8. Public Comment
9. Discussion and Action

Schedule and Agenda for the Hawaii Archipelagic Regional Ecosystem Advisory Committee Meeting

9:00 a.m. — 4:00 p.m. Friday, April 17, 2009

1. Welcome and Introduction of Members
2. Approval of Draft Agenda
3. Update on Federal Fisheries Management Actions
a. Hawaii Offshore Handline Permits and Limited Entry
b. FEP amendments on ACLs/ACTs/AMs
c. Defining Small-scale traditional fishing
d. Discussion and Recommendation
4. Community Marine Management Forum
a. Hawaii's Living Seascape: A Strategy For A Prosperous Future
b. Report on Aha Kiole Final Report and Legislation
c. Invasive Species
i. Hawaii Invasive Species Council Strategy 2008–2013
ii. Allowing Commercial Harvest of Invasive Sardines/Herrings
d. Discussion and Recommendation
5. Coastal Ecosystems
a. Marine Education and Training Program Priorities
b. Coastal America Program and Projects
c. Report on the State's Recreational Renaissance Plan
d. Marine Recreational Information Program Initiatives
e. Habitat Initiatives
i. Habitat Assessment Improvement Plan
ii. Refining Essential Fish Habitat Designations in Hawaii
iii. Military Activities to Remove Mangroves
6. Public Comments
7. Discussion and Recommendations

The order in which agenda items are addressed may change. Public comment periods will be provided throughout each agenda. The PT, AP and REAC will meet as late as necessary to complete scheduled business.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–6737 Filed 3–25–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Defense Base Act Insurance Acquisition Strategy; Questions for Industry and Other Interested Parties

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for public input.

SUMMARY: DoD is soliciting information and feedback from defense contractors, insurance industry representatives, and others, on DoD's requirement to develop a comprehensive acquisition strategy for Defense Base Act insurance that will address provisions of Section 843 of the National Defense Authorization Act for Fiscal Year 2009. Responses must be limited to no more than 20 pages.

DATES: Submit written comments to the address shown below on or before April 3, 2009.

ADDRESSES: You may submit comments using any of the following methods. E-mail is the preferred method.

- *E-mail: Teresa.Lawson@osd.mil.*
- *Fax:* 703–602–7887.
- *Mail:* Deputy Director, Defense Procurement and Acquisition Policy (Cost, Price, and Finance), ATTN: Ms. Teresa Lawson, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Deputy Director, Defense Procurement and Acquisition Policy (Cost, Price, and Finance), ATTN: Ms. Teresa Lawson, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa A. Lawson, by telephone at 703–602–2402, or by e-mail at *Teresa.Lawson@osd.mil.*

SUPPLEMENTARY INFORMATION: DoD is soliciting information and feedback from defense contractors, insurance industry representatives, and others, on DoD's requirement to develop a comprehensive acquisition strategy for Defense Base Act insurance that will address the following provisions of Section 843 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417):

> The Secretary of Defense shall adopt an acquisition strategy for insurance required by the Defense Base Act (42 U.S.C. 1651 *et seq.*) which minimizes the cost of such insurance to the Department of Defense and to defense contractors subject to such Act * * * The Secretary shall ensure that the acquisition strategy adopted * * * addresses the following criteria: (1) Minimize overhead costs associated with obtaining such insurance, such as direct or indirect costs for contract management and contract administration. (2) Minimize costs for coverage of such insurance consistent with realistic assumptions regarding the likelihood of incurred claims by contractors of the Department. (3) Provide for a correlation of premiums paid in relation to claims incurred that is modeled on best practices in government and industry for similar kinds of insurance. (4) Provide for a low level of risk to the Department. (5) Provide for a competitive marketplace for insurance required by the Defense Base Act to the maximum extent practicable. * * * In adopting the acquisition strategy * * * the Secretary shall consider such options (including entering into a single Defense Base Act insurance contract) as the Secretary deems to best satisfy the (five aforementioned) criteria * * *

1. Policy Options

Under current law and DoD regulations, generally contractors performing work outside the United States are required to have Defense Base Act (DBA) insurance to provide workers' compensation benefits for employees, unless the requirement has been waived by the Department of Labor (DoL). To meet the requirement of Section 843 of the National Defense Authorization Act for Fiscal Year 2009, DoD is considering all options for its acquisition strategy and welcomes comments highlighting the advantages and disadvantages of any of a non-exclusive set of options, which includes but is not limited to: (1) A single-source contract awarded on a competitive basis issued and administered by DoD; (2) a multiple-award contract awarded on a competitive basis issued and administered by DoD; (3) no change (*i.e.*, contractors are required to obtain

appropriate DBA insurance on their own); (4) Government self-insuring for DBA losses while contracting to the private sector for program administrative and claims processing; (5) Government self-insuring with DoD and DoL employees performing all administrative and claims processing; (6) a GSA schedules-type set of maximum rates, which may include awards based on geographic location of the work to be performed and/or based on the nature of the work to be performed, with competition for each major contract (a vehicle structured similar to state-side workers compensation policies); (7) a pre-qualified list of DoD-approved DBA carriers and brokers/agents who meet a predetermined set of criteria/qualifications to provide DBA insurance from which contractors would be required to obtain appropriate DBA coverage; (8) contractors self-insuring either on an individual basis or by pooling of contractors, including information on how a panel/pool participant would avoid adverse selection; or (9) other alternative recommendations not listed above.

DoD would appreciate responses to the following questions pertinent to consideration of the various acquisition options:

a. *Cost Drivers.* What are the main cost drivers of DoD's DBA expense? How can those cost drivers be better controlled or mitigated?

b. *Main Stakeholders.* Identify the main stakeholders in DBA. How should DoD (and DoL or others if applicable) orchestrate communications and involvement to ensure all stakeholder interests are represented?

c. *Claims Management.* How critical are claims management practices to controlling ultimate DBA costs? Drawing on the best practices of claims management (whether currently applied to DBA claims or not), what should be required to address claims promptly, fairly, and efficiently to ensure good service and care and proper treatment for workers serving those who serve our country?

d. *Technical Exhibits.* What claims history or other information should DoD include in its technical exhibits to any solicitation to enhance competition?

2. Additional Questions Regarding Potential Policy Options

DoD would appreciate additional specific responses to the following questions citing pros and cons of the various alternatives:

a. *Single Source DBA Contract.* Regarding a potential single source contract (which would be awarded based on source selection procedures considering price, technical, management, and past performance criteria), would your insurance company be willing to bid on such a contract? Why or why not? For broker respondents, do you believe one or more insurance companies/brokers would be interested in bidding on a single source contract? Why or why not? Please provide insight into whether one provider could handle all claims associated with DoD's DBA insurance requirements for contractor performance overseas for U.S. citizens, foreign nationals, and third country nationals. Finally, please provide insight into the market implications of having only one source for DBA insurance for all of DoD.

b. *Multiple-Award DBA Contract.* Please provide your recommendations and rationale regarding the basis for dividing the multiple awards—by geographic location, by type of work performed (*e.g.*, basic logistics support, technical services, security, construction), by military department or defense agency, by war zone versus non-war-zone, by dollar value of payroll involved and/or dollar amount of contract, to ensure DoD meets the criteria outlined in the National Defense Authorization Act (minimizing direct and indirect overhead costs associated with administering the program, minimizing insurance costs, etc.). Please consider the implications of pooling of like risks (or unlike risks) to minimize insurance costs to DoD.

c. *Minimum Policy Amounts.* Please provide your recommendations and rationale considering the options regarding minimum policy amounts of a single provider or a multiple award contract. If a multiple award contract were divided in part based on dollar value of payrolls/dollar value of contracts, what is the maximum threshold you would recommend be used as the basis for not having a minimum policy amount? Should DoD avoid dividing any multiple award contract based on dollar value to minimize the need for minimum policy amounts? Please keep in mind that DoD aims to not discourage small businesses from performing overseas work for DoD and any minimum policy amounts might inhibit that competition.

d. *No Change (Contractors procure their own DBA coverage).* If the current approach is retained, how can it be modified to be responsive to the five criteria outlined in Section 843 of the National Defense Authorization Act for Fiscal Year 2009?

e. *Self-Insurance.* If DoD elected to directly self-insure contractor DBA losses, what would be the relative pros and cons of contracted administration vs. ''in-house'' Government administration? Please provide comments regarding the pros and cons of contractors self-insuring either on an individual basis or by pooling of contractors. Recognizing that there are many variations of self-insurance, which do you believe are relevant for DoD to consider and why?

3. Specific Questions for Brokers/Carriers

In addition to the questions above soliciting information from all interested parties, DoD would appreciate additional responses from interested brokers and carriers to the following questions:

a. *Experience.* What is your experience in handling DBA insurance? For example, how many clients, years, and geography of experience, payroll exposure, and premium volume managed?

b. *Competition.* How do you suggest that Government ensure the broadest industry participation in establishing a DBA insurance acquisition strategy given a limited pool of qualified carriers and broker/agents?

c. *Broker/Agent Role.* What is the role of the insurance broker/agent in the open-market DBA insurance procurement process?

d. *Rating Approach.* What is your rating approach in light of the underwriting and service complications of insuring this long-tail catastrophic liability? In the absence of adequate loss history data to rate DBA coverage, what is the rationale/rating methodology you apply? How do you measure a contractor's risk mitigation/loss reduction results to reward the best performing contractors and minimize costs to the Government?

e. *Data.* Are you willing and able to provide aggregate loss and development information to include medical expenses, lost wages, reserves, adequate medical care/evacuation/infrastructure expenses, administrative costs, and other appropriate support services? Are you willing to provide the rate of return and amounts made on invested insurance premiums?

f. *Retrospective Plans.* Regarding establishing a program with rates that change based on overall program loss experience, what is your experience in structuring loss-sensitive rated DBA programs? Please provide suggestions regarding the potential structures of such retrospective rating plans.

g. *Term Length.* Regarding the length of any contract term for any of the policy options being considered, what term length of a contract would be

reasonable (1, 3, or 5 years)? If more than a one-year term, could retrospective pricing be a reasonable approach based on the profit/loss ratio?

h. *Subcontractors.* Do you recommend that subcontractors obtain their own individual policies, or do you recommend that the prime contractor purchase the insurance for all its subcontractors (at all tiers)?

i. *DBA Data.* Please provide recommendations on how DoD can best collect, analyze, and act on relevant DBA data from various sources to optimize its understanding and tracking of DBA costs and trends and put DoD in the most favorable negotiating position.

j. *Medical Care.* Please provide data and analysis on the costs of finding sources of adequate medical care for countries where the standard of care is insufficient.

k. *Contracting Entity.* If DoD procures DBA coverage (vs. contractors procuring), should DoD be contracting with broker(s) or carrier(s) or some combination of the two?

l. *Discounts.* By including DBA insurance with other insurance coverage, what type of discount is typically obtained on DBA insurance?

m. *Impact of Safety Record.* How does a contractor's safety record affect insurance rates—does it have a significant impact? How much of a discount is normally offered for a good safety record?

n. *Maximum Mandated DBA Rates.* What is your position on DoD mandating maximum DBA rates based upon job description (classification), geography (*e.g.*, Iraq vs. Germany) and loss experience? What would be your response to having to file your proposed rates with DoD for approval each year, based upon your own individual loss experience and trending?

o. *WHA Claims.* Please provide the percent of DBA claims that are initially believed to be War Hazard Act (WHA) claims. Please provide the percent of initial WHA claims that are later determined by DoL not to be WHA claims. How long on average does it take DoL to settle and reimburse the insurance carrier for WHA claims? Typically, does DoL pay the entire WHA claim amount the carrier submits—if not, what is the average percent?

4. Specific Questions for DoD Contractors

In addition to the questions in 1 and 2 above soliciting information from all interested parties, DoD would appreciate additional responses from DoD contractors to the following questions:

a. *Current Practice.* How do you acquire your DBA coverage today? Do you purchase insurance or are you an approved self-insurer for this coverage?

b. *Purchased Insurance.* If you purchase your DBA insurance, is it: (a) Acquired through a stand-alone insurance policy; (b) acquired through a multi-line insurance program with DBA coverage separately priced; or (c) acquired through a multi-line insurance program with DBA coverage not separately priced?

c. *Supplemental Coverage.* Do you supplement the standard DBA coverage for employees with medical assistance or additional life or disability coverage? Do you do so: (a) For all DBA covered employees; or (b) only for specific categories of employees? Are the premiums for any such coverage: (a) Paid for in full by the company; (b) paid for in part by the company and in part by the employee; or (c) paid in full by the employee?

d. *Subcontractors.* Do you recommend that subcontractors obtain their own individual policies, or do you recommend that the prime contractor purchase the insurance for all its subcontractors (at all tiers)?

e. *Discounts.* By including DBA insurance with other insurance coverage, what type of discount is typically obtained on DBA insurance?

f. *Impact of Safety Record.* How does a contractor's safety record affect insurance rates—does it have a significant impact? How much of a discount is normally offered for a good safety record?

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9–6808 Filed 3–25–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 26, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 20, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: IEPS Fulbright-Hays Group Projects Abroad Customer Surveys.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,629.
Burden Hours: 723.

Abstract: The purpose of this evaluation is to assess the impact of the Group Projects Abroad (GPA) program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: A survey of the GPA Project Directors; a survey of

2002–2007 GPA alumni; and a survey of 2008 alumni. Results from the three surveys will inform the writing of a final report determining the impact of the GPA program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3993. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6625 Filed 3–25–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On March 20, 2009 the U.S. Department of Education published a comment period notice in the **Federal Register** (Page 11291, Column 3) for the information collection, '' Feasibility and Conduct of an Impact Evaluation of Title I Supplemental Education Services''. This notice amends the responses to 22,260 and the burden hours to 2,139. The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: March 23, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E9–6790 Filed 3–25–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2611–068]

Madison Paper Industries; Hydro Kennebec Limited Partnership; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

March 19, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2611–068.

c. *Date Filed:* February 26, 2009.

d. *Applicants:* Madison Paper Industries and Hydro Kennebec Limited Partnership (transferors), and Madison Paper Industries (transferee).

e. *Name and Location of Project:* The Hydro Kennebec Project is located in Kennebec and Somerset Counties, Maine, on the Kennebec River, a navigable waterway of the United States.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant Contacts:* For the transferor and transferee: Madison Paper Industries—Ms. Sarah A. Verville, Pierce Atwood LLP, One Monument Square, Portland, ME 04101, (207) 791–1100.

For the transferor: Hydro-Kennebec Limited Partnership—Mr. Mel Jiganti, Esq., Hydro-Kennebec Limited Partnership, c/o Brookfield Renewable Power, 290 Donald Lynch Boulevard, Marlborough, MA 01752, (508) 251–7705.

h. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

i. *Deadline for Filing Comments, Protests, and Motions to Intervene:* April 20, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the Project Number (P–2611–068) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Applicants seek Commission approval to transfer the license for the Hydro Kennebec Project from Madison Paper Industries and Hydro Kennebec Limited Partnership to Madison Paper Industries only.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2611) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicants specified in the particular application.

o. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6696 Filed 3–25–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–60–001]

Dominion Cove Point LNG, LP; Notice of Amendment To Application

March 19, 2009.

Take notice that on March 5, 2009, Dominion Cove Point LNG, LP (Cove Point) with a principal place of business at 120 Tredegar Street, Richmond, VA, filed with the Federal Energy Regulatory Commission an amendment to its February 4, 2009 application under section 3 of the Natural Gas Act. In this application, Cove Point is seeking authorization to upgrade, modify, and expand the existing offshore pier at Cove Point's LNG Terminal located in Calvert County, Maryland. Cove Point says that these proposed facilities will enable the safe docking, discharge and departure from the pier of next-generation LNG vessels that are now coming into service worldwide.

Cove Point's amendment to its application is more fully set forth in the March 5, 2009, filing which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document, but include 001 in the sub docket list. For assistance, contact FERC at FERCOnline *Support@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this Application should be directed to Amanda K. Prestage, Regulatory and Certificates Analyst II, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone: (804) 771–4416, fax: (804) 771–4804.

In Exhibit Z3 of Cove Point's February 4, 2009, application it included certain applicable proposed revisions to its tariff. By this amendment, Cove Point has further revised certain proposed tariff sheets and proposed further revisions to its tariff. Specifically, Cove Point has revised proposed tariff sheet Nos. 23A, 51, and 287; and added to its application proposed revisions to tariff sheet Nos. 27 and 31. All other aspects of Cove Point's proposal remain the same as filed on February 4, 2009.

There are two ways to become involved in the Commission's review of this project.[1] First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: April 3, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6695 Filed 3–25–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Persons who have already filed motions to intervene or commented on this application need not file anything again unless they seek to comment on the specific revisions to the application proposed in this amendment.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 19, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–1137–002.

Applicants: Lockhart Power Company.

Description: Supplement to Updated Market Power Analysis for Market-Based Authority of Lockhart Power Company.

Filed Date: 03/18/2009.

Accession Number: 20090318–5073.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Docket Numbers: ER08–844–002.

Applicants: Entergy Services, Inc.

Description: Entergy Mississippi, Inc. Submits an Amended Interconnection and Operating Agreement with TPS McAdams, LLC.

Filed Date: 03/17/2009.

Accession Number: 20090318–0139.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2009.

Docket Numbers: ER08–1332–000; ER06–169–000; ER08–1330–000; ER98–3774–000.

Applicants: Choctaw Gas Generation, LLC; SUEZ Energy Marketing NA, Inc.; Hot Spring Power Company, LLC; Choctaw Generation LP.

Description: Amendment to Updated Market Power Analysis of Choctaw Gas Generation, LLC.

Filed Date: 03/18/2009.

Accession Number: 20090318–5117.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Docket Numbers: ER09–552–002.

Applicants: Goldfinch Capital Management, LP.

Description: Goldfinch Capital Management, LP Submits Petition for Acceptance of Initial Tariff and Waivers and Request Acceptance of FERC Electric Tariff, Original Volume 1 etc.

Filed Date: 03/17/2009.

Accession Number: 20090318–0140.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2009.

Docket Numbers: ER09–582–001.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp. on behalf of AEP Operating Companies Submits an Amendment to the Eleventh Revised Repair and Maintenance Agreement under ER09–582.

Filed Date: 03/18/2009.

Accession Number: 20090319–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Docket Numbers: ER09–683–001.

Applicants: Alex Energy, LLC.

Description: Alex Energy, LLC Submits its Application for a Finding of Category 1 Seller States with Respect to the Southeast Region Filed on 2/11/09 and Submits a Revised Market-Based Rate Tariff.

Filed Date: 03/17/2009.

Accession Number: 20090318–0141.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2009.

Docket Numbers: ER09–836–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. Submits Sixth Revised Sheet 486 which Superseding Fifth Revised Sheet 486 to FERC Electric Tariff, Original Volume 2 Attachment J under ER09–836.

Filed Date: 03/18/2009.

Accession Number: 20090319–0203.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Docket Numbers: ER09–857–000.

Applicants: Nevada Power Company.

Description: NV Energy, Inc. Submits Notice of Cancellation of Nevada Power Company Electric Rate Schedule No 24.

Filed Date: 03/17/2009.

Accession Number: 20090318–0135.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2009.

Docket Numbers: ER09–858–000.

Applicants: Cheyenne Light Fuel & Power Company.

Description: Cheyenne Light, Fuel and Power Company submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1, Open Access Transmission Tariff, Effective 3/18/09.

Filed Date: 03/17/2009.

Accession Number: 20090318–0144.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2009.

Docket Numbers: ER09–860–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company Submits a Letter Agreement with City of Victorville.

Filed Date: 03/18/2009.

Accession Number: 20090319–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Docket Numbers: ER09–861–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. Submits First Revised Sheet 3706, Supersedes Original Sheet 3706 to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 03/18/2009.

Accession Number: 20090319–0206.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Docket Numbers: ER09–862–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. Submits First Revised Sheet 3730, Supersedes Original Sheet 3730 to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 03/18/2009.

Accession Number: 20090319–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 8, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6707 Filed 3–25–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 19, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–320–102.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits negotiated rate letter agreement executed by Gulf South and City of Vicksburg.

Filed Date: 03/12/2009.

Accession Number: 20090313–0134.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 24, 2009.

Docket Numbers: RP09–340–002.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits First Revised Sheet 3 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 4/13/09.

Filed Date: 03/13/2009.

Accession Number: 20090316–0226.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: RP09–373–001.

Applicants: Freebird Gas Storage, LLC.

Description: Freebird Gas Storage, LLC submits Substitute First Revised Sheet 119 *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 3/20/09.

Filed Date: 03/10/2009.
Accession Number: 20090311–0054.
Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–373–002.
Applicants: Freebird Gas Storage, LLC.
Description: Freebird Gas Storage, LLC submits its FERC Gas Tariff, First Revised Volume 1 an Original Sheet 120A, to be effective 3/20/09.
Filed Date: 03/13/2009.
Accession Number: 20090316–0225.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 25, 2009.

Docket Numbers: RP09–452–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits a Petition of NFGSC for Waiver of Tariff Provision and Request for Shortened Notice Period.
Filed Date: 03/16/2009.
Accession Number: 20090316–0235.
Comment Date: 5 p.m. Eastern Time on Monday, March 23, 2009.

Docket Numbers: RP09–453–000.
Applicants: Columbia Gas Transmission Corporation.
Description: Columbia Gas Transmission, LLC submits Second Revised Sheet 1587 *et al.* to its FERC Gas Tariff, Original Volume No 2.
Filed Date: 03/16/2009.
Accession Number: 20090317–0257.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–454–000.
Applicants: KO Transmission Company.
Description: KO Transmission Company submits updated Second Revised Sheet 32 *et al.* to FERC Gas Tariff, Original Volume 1.
Filed Date: 03/16/2009.
Accession Number: 20090317–0258.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–455–000.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Sixth Revised Sheet No 257 *et al.* to FERC Gas Tariff, Fifth Revised Volume No 1.
Filed Date: 03/17/2009.
Accession Number: 20090318–0137.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–456–000.
Applicants: Steckman Ridge, LP.
Description: Steckman Ridge, LP submits executed service agreement containing deviations from the form of service agreement under Rate Schedule FSS.
Filed Date: 03/17/2009.
Accession Number: 20090318–0138.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–457–000.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits Contract 1617 a Rate Schedule KRF–1 transportation service agreement for backhaul service with Nevada Power Company, to be effective 6/1/09.
Filed Date: 03/17/2009.
Accession Number: 20090318–0147.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Docket Numbers: RP09–458–000.
Applicants: El Paso Natural Gas Company.
Description: Request for Waiver of El Paso Natural Gas Company.
Filed Date: 03/17/2009.
Accession Number: 20090317–5116.
Comment Date: 5 p.m. Eastern Time on Monday, March 30, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–6708 Filed 3–25–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–768–000]

Saranac Power Partners, LP; Notice of Filing

March 19, 2009.

Take notice that, on March 16, 2009, Saranac Power Partners, LP filed to amend, its filing in the above-captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6697 Filed 3–25–09; 8:45 am]

BILLING CODE

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2008–0825, FRL–8786–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Monthly Project Reports (Renewal), EPA ICR Number 1039.12, OMB Control Number 2030–0005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before April 27, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OARM–2008–0825, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donna Blanding, Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 564–1130; fax number: (202) 565–2475; e-mail address: *blanding.donna@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to procedures prescribed in 5 CFR 1320.12. On November 13, 2008 (73 *FR* 67152), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OARM–2008–0825, which is available for public viewing at *http://www.regulations.gov*, or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Titles: Monthly Progress Reports (Renewal).

ICR numbers: EPA ICR No. 1039.12, OMB Control No. 2030–0005.

ICR Status: This ICR is scheduled to expire on April 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractors' progress under the contract. Responses to the information collection are mandatory for contractors, and are required for the contractors to receive monthly payments. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201 *et seq.*

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 27 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The majority of respondents fall into one of the following NAICS codes: 511210 for prepackaged computer software, 541511 for computer processing services, 54170 for computer-related services, and 541620 for environmental consulting services.

Estimated Number of Respondents: 203.

Frequency of Response: Monthly.

Estimated Total Annual Hour Burden: 65,772.

Estimated Total Annual Cost: $4,953,362.40, which includes $0 annual capital/startup costs, $29,232 annual O&M costs, and $4,924,130.40 annual labor costs.

Changes in the Estimates: There is a decrease of 56,196 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Collection activity hours have decreased since the last clearance due mainly to improved tracking software and increasing familiarity with EPA reporting requirements.

Dated: March 18, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–6670 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0096; FRL–8406–1]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on April 14–16, 2009, in Alexandria, VA. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acrylonitrile, aldicarb, arsenic pentoxide, arsenic trichloride, calcium cyanide, carbofuran, diacetylmorphine, fluoroacetate salts, methomyl, methyl fluoroacetate, methyl iodide, methoxyethylmercuric acetate, monofluoroacetic acid, oxamyl, paraquat, perchloryl fluoride, perfluoroisobutylene, phencyclidine, phosgene, phosgene oxime, potassium cyanide, sodium cyanide, sodium fluoroacetate, tellurium hexafluoride, tetraethylpyrophosphate, tetramethylenedisulfotetramine, 1,1,1-trichloroethylene, and tungsten hexafluoride.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on April 14, 2009; from 8:30 a.m. to 5:30 p.m. on April 15, 2009; and from 8 a.m. to 12:30 p.m. on April 16, 2009.

ADDRESSES: The meeting will be held at the Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address:*tobin.paul@epa.gov*.

To request accommodation of a disability, please contact the DFO preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0096. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr*.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled forSeptember 9–11, 2009. Chemicals currently being considered for AEGL development at this meeting include the following: Cadmium, dichlorvos, dicrotophos, dimethyl phosphite, fenamiphos, lead, methamidophos, mevinphos, monocrotophos, phosphamidon, red phosphorus, and trimethylphosphite.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: March 20, 2009.

Barbara Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E9–6761 Filed 3–25–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8786–9]

Science Advisory Board Staff Office, Notification of an Upcoming Meeting of the Science Advisory Board Homeland Security Advisory Committee (HSAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Homeland Security Advisory Committee (HSAC). HSAC has been augmented with additional members to provide consultative comment on a draft *Environmental Response Technical Assistance Document for Bacillus anthracis Intentional Releases* (BA–TAD).

DATES: The meeting will be held on April 21, 2009 from 8:30 a.m. to 5 p.m. (Eastern Daylight Time) and April 22, 2009 from 8:30 a.m. to 12 p.m. (Eastern Daylight Time).

ADDRESSES: The Committee meeting will be held at the SAB Conference Center, located at 1025 F Street, NW., Room 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain additional information regarding this meeting may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW.,Washington, DC 20460; telephone/voice mail: (202) 343–9946; fax (202) 233–0643; or via e-mail at *hanlon.edward@epa.gov.* General information about the EPA SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at *http://www.epa.gov/sab.* Any inquiry regarding EPA's BA–TAD should be directed to Captain Colleen Petullo, U.S. Public Health Service, on detail to EPA's Office of Solid Waste and Emergency Response (OSWER), at *petullo.colleen@epa.gov* or (702) 784–8004.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Augmented SAB HSAC will hold a public face-to-face meeting to discuss their comments on the draft BA–TAD. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the 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. The SAB HSAC provides scientific and technical advice to the EPA Administrator through the chartered SAB on scientific matters pertaining to EPA's mission in protecting against the environmental and health consequences of terrorism.

Background: In response to the 2001 *Bacillus anthracis* incidents in Washington, the Weapons of Mass Destruction (WMD) Subcommittee of the Science and Technology (S&T) Committee of the EPA-chaired National Response Team (NRT) developed an interim-final draft Technical Assistance Document (TAD) in 2003 for responses to an actual or suspected terrorist release of *Bacillus anthracis.* In July 2005, the NRT slightly revised the interim-final draft TAD. EPA, as chair, works closely with seventeen other Federal agencies on the NRT. The NRT is developing the BA–TAD by revising and updating the 2005 interim-final draft TAD, and requested that OSWER seek consultative advice from the SAB HSAC on their development of the BA–TAD. The Augmented HSAC will conduct the consultation. The primary purpose of this upcoming meeting is for the Augmented HSAC to provide advice on whether the technical plans to prepare the BA–TAD are properly directed, and if there are any items, issues or practical applications that have not been considered that ought to be included.

The SAB HSAC held a teleconference on October 15, 2008 and was briefed by the EPA and its partners on its progress in developing the draft BA–TAD. A **Federal Register** Notice dated September 29, 2008 (73 FR 56578–56579) announced this teleconference and provided background information on this advisory activity. Information on the process of augmenting the expertise on the SAB HSAC was provided in a **Federal Register** Notice dated March 28, 2008 (73 FR 16679–16680). Additional information about this consultative activity including a meeting agenda will be posted on the SAB Web site prior to the meeting at *http://www.epa.gov/sab.*

Availability of Meeting Materials: The agenda and other meeting materials will be available on the SAB Web site at *http://www.epa.gov/sab* in advance of the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB HSAC to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public face-to-face meeting will be limited to three minutes per speaker, with no more than a total of one hour for all speakers. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should contact Edward Hanlon, DFO, in writing (preferably via e-mail) at the contact information noted above, by April 7, 2009 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by April 7, 2009 so that the information may be made available to the Committee members for their consideration. 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, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are requested to provide 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 Edward Hanlon at the phone number or e-mail address noted above, preferably at least ten days prior to the public face-to-face meeting to give EPA as much time as possible to process your request.

Dated: March 18, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–6762 Filed 3–25–09; 8:45 am]

BILLING CODE

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 20, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). 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. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 26, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0213.

Title: Section 73.3525, Agreements for Removing Application Conflicts.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents/Response: 38 respondents; 40 responses.

Estimated Time per Response: 15 minutes to 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in sections 154(i) and 311 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Total Annual Burden: 39 hours.

Total Annual Cost: $61,453.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.3525 states (a) except as provided in 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; Provided that this provision shall not apply to bona fide merger agreements;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to 73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio service among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

(ii) If no weekly newspaper of general circulation is published in the community in which the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

(5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6640 Filed 3–25–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to reestablish.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to announce that a Federal Advisory Committee, known as the ''Technological Advisory Council'' (hereinafter the ''TAC'') is being reestablished.

ADDRESSES: Federal Communications Commission, Attn: Jon M. Peha, Chief Technologist, 445 12th Street, SW., Room 7–C324, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jon M. Peha, Chief Technologist, Federal Communications Commission, 445 12th Street, SW., Room 7–C324, Washington, DC 20554. Telephone: (202) 418–2406, e-mail: *jon.peha@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Chairman of the Federal Communications Commission has determined that the reestablishment of the Council is necessary and in the public interest in connection with the performance of duties imposed on the Federal Communications Commission (FCC) by law. The Committee Management Secretariat, General Services Administration concurs with the reestablishment of the Council. The purpose of the TAC is to provide technical advice to the Federal Communications Commission and to make recommendations on the issues and questions presented to it by the FCC. The TAC will address questions referred to it by the FCC Chairman, the FCC Chief Technologist, the Chief of the FCC Office of Engineering and Technology, or the TAC Designated Federal Officer. The questions referred to the TAC will be directed to technological and technical issues in the field of communications. The duties of the TAC will be to gather data and information, perform analyses, and prepare reports and presentations to respond to the questions referred to it.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9–6463 Filed 3–25–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2009–08]

Filing Dates for the California Special Election in the 32nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special general election on May 19, 2009, to fill the U.S. House of Representatives seat in the Thirty-Second Congressional District vacated by Representative Hilda Solis. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a special runoff election will be held on July 14, 2009, among the top vote-getters of each qualified political party, including qualified independent candidates.

Political committees participating in the California special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections shall file a 12-day Pre-General Report on May 7, 2009; a Pre-Runoff Report on July 2, 2009; and a Post-Runoff Report on August 13, 2009. (See chart below for the closing date for each report).

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on May 7, 2009; and a Post-General Report on June 18, 2009. (See chart below for the closing date for each report).

Note that these reports are in addition to the campaign committee's quarterly filings in July and October.

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2009 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the California Special General Election and/or Special Runoff Election by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Political committees filing monthly that support candidates in the California Special General or Special Runoff Election should continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the California Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml.*

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
If Only the Special General is Held (05/19/09), Quarterly Filing Political Committees Involved Must File:			

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Pre-General	04/29/09	05/04/09	05/07/09
Post-General	06/08/09	06/18/09	06/18/09
July Quarterly	06/30/09	07/15/09	07/15/09
If Only the Special General is Held (05/19/09), Semi-Annual Filing Political Committees Involved Must File:			
Pre-General	04/29/09	05/04/09	05/07/09
Post-General	06/08/09	06/18/09	06/18/09
Mid-Year	06/30/09	07/31/09	07/31/09
If Two Elections are Held, Quarterly Filing Political Committees Involved Only in the Special General (05/19/09) Must File:			
Pre-General	04/29/09	05/04/09	05/07/09
July Quarterly	06/30/09	07/15/09	07/15/09
If Two Elections are Held, Semi-Annual Filing Political Committees Involved Only in the Special General (05/19/09) Must File:			
Pre-General	04/29/09	05/04/09	05/07/09
Mid-Year	06/30/09	07/31/09	07/31/09
Quarterly Filing Political Committees Involved in the Special General (05/19/09) and Special Runoff (07/14/09) Must File:			
Pre-General	04/29/09	05/04/09	05/07/09
Pre-Runoff	06/24/09	06/29/09	07/02/09
July Quarterly	06/30/09	07/15/09	07/15/09
Post-Runoff	08/03/09	08/13/09	08/13/09
October Quarterly	09/30/09	10/15/09	10/15/09
Semi-Annual Filing Political Committees Involved in the Special General (05/19/09) and Special Runoff (07/14/09) Must File:			
Pre-General	04/29/09	05/04/09	05/07/09
Pre-Runoff	06/24/09	06/29/09	07/02/09
Mid-Year	06/30/09	07/31/09	07/31/09
Post-Runoff	08/03/09	08/13/09	08/13/09
Year-End	12/31/09	01/31/10	01/31/10
Quarterly Filing Political Committees Involved Only in the Special Runoff (07/14/09) Must File:			
Pre-Runoff	06/24/09	06/29/09	07/02/09
July Quarterly	06/30/09	07/15/09	07/15/09
Post-Runoff	08/03/09	08/13/09	08/13/09
October Quarterly	09/30/09	10/15/09	10/15/09
Semi-Annual Filing Political Committees Involved Only in the Special Runoff (07/14/09) Must File:			
Pre-Runoff	06/24/09	06/29/09	07/02/09
Mid-Year	06/30/09	07/31/09	07/31/09
Post-Runoff	08/03/09	08/13/09	08/13/09
Year-End	12/31/09	01/31/10	01/31/10

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

Dated: March 20, 2009.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–6699 Filed 3–25–09; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs

Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Jerry W. Fuller, individually and acting in concert with Terry R. Fuller and Mary S. Fuller, all as co–executors of the estate of Ray C. Fuller; all of Poplar Grove, Arkansas, to acquire control of Helena Bancshares, Inc., and thereby indirectly acquire control of Helena National Bank, both of Helena, Arkansas.

Board of Governors of the Federal Reserve System, March 23, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–6765 Filed 3–25–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-09–08AX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Sexually Transmitted Disease (STD) Morbidity Surveillance—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is responsible for the reporting and dissemination of nationally notifiable STD morbidity information for prevention and control purposes in collaboration with state and local health departments. Recent changes in sexually transmitted disease (STD) epidemiology in the United States indicate that the existing passive surveillance for STD does not include all the elements needed in order to control and prevent STDs in the U.S. Towards that end, CDC is proposing a new electronic information collection called STD Morbidity Surveillance that will include information on laboratory confirmation of syphilis infection and risk behaviors of persons infected with syphilis and other STDs. Physicians and other providers collect demographic, risk, and clinical (including laboratory) information from persons diagnosed with notifiable STDs during a clinical encounter or counseling session. The respondents will submit the information electronically, to the state and local public health departments. Clinical specimens obtained from case-patients are submitted to private or public diagnostic laboratories with laboratory requisition forms which includes information on the provider and case-patient. A subset of the information reported to state health departments from health care providers or laboratories is reported electronically as a case report e-record to CDC's Nationally Notifiable Disease Surveillance System on a weekly basis. CDC estimates that 57 respondents spend 20 minutes each week extracting notifiable STD surveillance information from their electronic information system. CDC staff review STD morbidity data at varying frequencies to identify population subgroups at increased risk for STDs. The target evidence-based intervention strategies, evaluate the impact of ongoing control efforts, thus enhancing our understanding of STD transmission. There is no cost to respondents other than their time. The total estimated annual burden hours are 989.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
State Health Departments	Electronic STD Case report	50	52	20/60
Territorial Health Agencies	Electronic STD Case report	5	2	20/60
City and county health departments	Electronic STD Case report	2	52	20/60

Dated: March 19, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–6631 Filed 3–25–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0134]

Center for Biologics Evaluation and Research eSubmitter Pilot Evaluation Program for Source Plasma Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is announcing an invitation to participate in a pilot evaluation program for CBER's eSubmitter Program (eSubmitter). CBER's eSubmitter has been customized as an automated biologics license application (BLA) and BLA supplement (BLS) submission system for blood and blood components. Participation in the pilot program is open to blood establishments that collect Source Plasma. The pilot program is intended to provide industry and CBER regulatory review staff the opportunity to evaluate the eSubmitter system and determine if it facilitates the BLA/BLS submission process. The purpose of this notice is to invite blood establishments that collect Source Plasma to submit a request to CBER if they are interested in participating in this pilot program.

DATES: Submit a written or electronic request for participation in this program by April 27, 2009. You should include the following information in your request: contact name, contact phone number, e-mail address, name of the establishment, address, and license number (if applicable).

ADDRESSES: If you are interested in participating in this program, you should submit a request to participate in the program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Lore Fields, Center for Biologics Evaluation and Research (HFM–375), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6143, Fax: 301–827–3534, or e-mail: *lore.fields@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products, including blood and blood products, and is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness and timely delivery of these products to patients. Further, CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff and industry with improved processes. In support of this goal, CBER has participated in the FDA development of a computer-assisted automated BLA/BLS submission program called eSubmitter to improve the process for providing certain regulatory submissions to FDA. The eSubmitter will include programs to submit applications for licensure, supplements to an approved license, and amendments to pending applications or supplements.

II. The eSubmitter Pilot Evaluation Program Expectations

The eSubmitter pilot evaluation program is expected to last approximately 6 months. During this period of time, participants will complete BLA/BLS regulatory submissions using the eSubmitter template developed at CBER for use by Source Plasma establishments. The eSubmitter was developed using the same review criteria for applications for these products as currently used in the BLA/BLS review process at CBER. During the BLA/BLS submission process, the participants will enter the requested information into the eSubmitter tool and attach requested documents as an Adobe document (pdf format). This information will be saved onto a CD–ROM and mailed to CBER for review. Paper copies of submissions will not be required. CBER will review the information provided on the CD–ROM and the attachments according to current managed review procedures.

During the BLA/BLS submission process, CBER staff will be available to answer any questions or concerns that may arise. As each submission is completed, the users will be asked to comment on the eSubmitter program. These discussions will assist CBER in the final development and release of this electronic tool for use by industry.

III. Requests for Participation

Requests to participate in the eSubmitter pilot are to be identified with the docket number found in brackets in the heading of this document. Once requests for participation are received, FDA will contact interested establishments to discuss the pilot program.

Dated: March 20, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6687 Filed 3–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0137]

Draft Guidance for Industry: Use of Serological Tests to Reduce the Risk of Transmission of Trypanosoma cruzi Infection in Whole Blood and Blood Components for Transfusion and Human Cells, Tissues, and Cellular and Tissue-Based Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Use of Serological Tests to Reduce the Risk of Transmission of *Trypanosoma cruzi* Infection in Whole Blood and Blood Components for Transfusion and Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated March 2009. The draft guidance document notifies establishments that manufacture Whole Blood and blood components intended for use in transfusion, and establishments that make eligibility determinations for donors of HCT/Ps about FDA approval of a biologics license application for an enzyme-linked immunosorbent assay (ELISA) test system for the detection of antibodies to *Trypanosoma cruzi* (*T. cruzi*). The draft guidance also notifies establishments that make donor eligibility determinations for HCT/P donors that FDA has determined *T. cruzi* to be a relevant communicable disease under current regulations. In addition, the guidance provides recommendations for using a licensed test for antibodies to *T. cruzi* to test individual human donors, including donors of Whole Blood and blood components for transfusion and HCT/P donors (living and cadaveric (non-heart beating)), for antibodies to *T. cruzi* in plasma and serum samples. The guidance document does not apply to Source Plasma.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by June 24, 2009. Submit written comments on the information collection burden by May 26, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for

Industry: Use of Serological Tests to Reduce the Risk of Transmission of *Trypanosoma cruzi* Infection in Whole Blood and Blood Components for Transfusion and Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated March 2009. The draft guidance document notifies establishments that manufacture Whole Blood and blood components intended for use in transfusion, and establishments that make eligibility determinations for donors of HCT/Ps about FDA approval of a biologics license application for an ELISA test system for the detection of antibodies to *T. cruzi*. The test is intended for use as a donor screening test to reduce the risk of transmission of *T. cruzi* infection by detecting antibodies to *T. cruzi* in plasma and serum samples from individual human donors, including donors of Whole Blood and blood components intended for transfusion, and HCT/P donors.

In addition, FDA is providing establishments that manufacture Whole Blood and blood components intended for use in transfusion with recommendations for unit and donor management, labeling of Whole Blood and blood components, and procedures for reporting implementation of a licensed *T. cruzi* test at their facilities or contract testing laboratories, as required for blood establishments under title 21 of the Code of Federal Regulations (CFR) § 601.12 (21 CFR 601.12). FDA is notifying establishments that make donor eligibility determinations for HCT/P donors, that it has determined *T. cruzi* to be a relevant communicable disease under 21 CFR 1271.3(r)(2), and is providing them with recommendations for screening and antibody testing of HCT/P donors.

The guidance document applies to Whole Blood and blood components intended for transfusion and donors of HCT/Ps. The guidance document does not apply to Source Plasma. The recommendations made in the guidance with respect to HCT/Ps are in addition to recommendations made in the document entitled ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)'' dated August 2007.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The draft guidance document contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry: Use of Serological Tests to Reduce the Risk of Transmission of *Trypanosoma cruzi* Infection in Whole Blood and Blood Components for Transfusion and Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)

The draft guidance would implement the FDA approved donor screening ELISA test system for the detection of antibodies to *T. cruzi*. The use of the donor screening test is to reduce the risk of transmission of *T. cruzi* infection by detecting antibodies to *T. cruzi* in plasma and serum samples from individual human donors, including donors of Whole Blood and blood components intended for use in transfusion. The draft guidance recommends establishments that manufacture Whole Blood and blood components intended for use in transfusion to notify consignees of all previously collected in-date blood and blood components to quarantine and return the blood components to establishments or to destroy them within 3 calendar days after a donor tests repeatedly reactive by a licensed test for *T. cruzi* antibody. The draft guidance also recommends that when establishments identify a donor who is repeatedly reactive by a licensed test for *T. cruzi* antibodies and for whom there is additional information indicating risk of *T. cruzi* infection, such as geographical risk for exposure in an endemic area, or medical diagnostic testing of the donor, the establishment notify consignees of all previously distributed blood and blood components collected during the lookback period and, if blood or blood components were transfused, encourage consignees to notify the recipient's physician of record of a possible increased risk of *T. cruzi* infection.

Description of Respondents: The reporting recommendations described in the draft guidance affect establishments that manufacture Whole Blood and blood components intended for use in transfusion.

Burden Estimate: We believe that the information collection provisions for consignee notification and consignees to notify the recipient's physician in the draft guidance do not create a new burden for respondents and are part of usual and customary business practice. Since the end of January 2007, a number of blood centers representing a large proportion of U.S. blood collections have been testing donors using this licensed assay. We believe these establishments have already developed standard operating procedures for notifying consignees and the consignees to notify the recipient's physician.

The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in § 601.12 have been approved under OMB control no. 0910–0338; the collections of information in 21 CFR 606.100, 606.121, 606.122, 606.160(b)(ix), 606.170(b), and 630.6 have been approved under OMB control no. 0910–0116; the collections of information in 21 CFR 606.171 have been approved under OMB control no. 0910–0458.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. We recognize that recent

scientific information obtained from screening of donors may affect the recommendations for implementation in the guidance. In particular, we welcome comments on potential strategies for selective donor testing for *T. cruzi* infection. Also, we recognize that lookback studies conducted using the licensed ELISA test suggest that the risk of transmission of this agent by transfusion of a seropositive unit in the United States may be much lower than previously thought, and we welcome comments in that regard. Additionally, we encourage you to submit comments to the docket regarding the value of performing recipient notification on prior collections from a donor who is repeatedly reactive on a currently licensed *T. cruzi* antibody test, and a prior collection had a licensed test result with a signal to cutoff ratio greater than 0.75 (i.e., a grey zone result), but for whom there may not be additional information indicating risk of infection.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.regulations.gov*.

Dated: March 20, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6684 Filed 3–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0149]

Agency Emergency Processing Under Office of Management and Budget Review; Guidance for Industry: Animal Generic Drug User Fees and Fee Waivers and Reductions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns the burden hours required to implement the new statutory requirements for the user fees and fee waivers reductions provisions of the Animal Generic Drug User Fee Act of 2008 (AGDUFA) (Federal Food, Drug, and Cosmetic Act (the act)).

DATES: Fax written comments on the collection of information provisions by March 31, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Guidance for Industry: Animal Generic Drug Fees and Fee Waivers Reduction; Emergency Request.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710); Food and Drug Administration 5600 Fishers Lane Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: FDA is requesting emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). Section 741(d) of the act (21 U.S.C. 379k(d)), as amended by AGDUFA, authorizes FDA to collect user fees for certain: (1) Abbreviated applications for generic new animal drugs, (2) new animal drug products, and (3) sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions of new animal drugs. However, AGDUFA also provides FDA with the authorization to grant a waiver from or a reduction of those fees in certain circumstances. To provide guidance, FDA has developed the guidance entitled ''Animal Generic Drug User Fees and Fee Waivers and Reductions,'' which is crucial to firms understanding whether they might qualify for the waiver or reduction, and if so, how to apply for it.

With respect to the following collection of information FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Animal Generic Drug User Fees and Fee Waivers and Reductions (Section 741(d) of the Federal Food, Drug, and Cosmetic Act); Emergency Request

AGDUFA requires FDA to collect user fees for certain: (1) Abbreviated applications for a generic new animal drug, (2) generic new animal drug products, and (3) sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. AGDUFA also contains a specific provision under which a fee waiver or reduction may be requested for any or all of these fees. The type of fee waiver and reduction requests to be submitted is: Minor Use or Minor Species. FDA seeks OMB approval for this summary of information required for a fee waiver or reduction request.

Respondents to the proposed collection of information will likely be private industry. Requests for a waiver or reduction may be submitted by a person paying any of the generic new animal drug user fees assessed—application fees, product fees, or sponsor fees.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section 741(d) of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
741(d)—Minor Use or Minor Species Fee Waiver & Reduction Requests	9	1	9	2	18
Request for Reconsideration; CVM AGDUFA Waiver Officer[2]	1	1	1	1	1
Request for Review; CVM AGDUFA Appeals Officer	1	1	1	1	1
Request for Review; FDA User Fee Appeals Officer	1	1	1	1	1
Total					21

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] CVM means Center for Veterinary Medicine.

Appeals for reconsideration or review of AGDUFA user fee waiver decisions will be very rare. Waivers are granted only for user fees involving minor use or minor species as defined by the Minor Use and Minor Species Act of 2008 (MUMS). Decisions on waivers of user fees based on minor species do not allow for agency discretion as ''minor species'' is defined specifically in the MUMS statute. As to minor use in a major species, FDA, under MUMS, determines that a new animal drug is for minor use in a major species at the time that the pioneer new animal drug application is submitted. This determination carries over to the abbreviated (generic) new animal drug application. Therefore, we do not anticipate that there will be more than one request for review or reconsideration for either the ''minor use'' or ''minor species'' waivers or reductions under AGDUFA per year.

Fee Waiver or Reduction Requests: For those who, after reading the guidance, decide to apply for a waiver or reduction of one or more of the fees they were assessed, the time to complete the information required for their waiver application, based on the guidance provided, is estimated to be 2 hours or less.

Based on FDA's database system, there are an estimated 50 sponsors of products subject to AGDUFA. However, not all sponsors will have submissions in a given year. CVM estimates nine waiver requests that include minor use or minor species. The estimated hours per response are based on past FDA experience with the various waiver requests in CVM. The hours per response listed in table 1 of this document are based on the average of these estimates.

Dated: March 19, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6724 Filed 3–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Joint Meeting of the Pediatric Advisory Committee and the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee and Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Monday, April 27, 2009, from 8 a.m. to 6 p.m.

Addresses: Washington DC North/Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Carlos Peña, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, or by e-mail: *carlos.peña@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On Monday, April 27, 2009, the Pediatric Advisory Committee and the Oncologic Drugs Advisory Committee will meet to discuss the scientific and ethical issues involved in obtaining and using brain biopsy specimens to evaluate gene expression patterns in children with diffuse pontine gliomas.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 13, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief

statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 3, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 6, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Dr. Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 19, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–6796 Filed 3–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0145]

Developing a Consolidated Pediatric Rheumatology Observational Registry; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Developing a Consolidated Pediatric Rheumatology Observational Registry.'' This 2-day public workshop is intended to seek constructive input from key stakeholders in the pediatric rheumatology community, the pharmaceutical industry and the public to explore the value and feasibility of developing a consolidated pediatric rheumatology observational registry.

DATES: The public workshop will be held on May 12, 2009, from 8:30 a.m. to 5 p.m. and on May 13, 2009, from 8:30 a.m. to noon. Register by April 21, 2009, to make a presentation at the workshop. See section III of this document for information on how to attend or present at the workshop. We are opening a docket to receive your written or electronic comments. Written or electronic comments must be submitted to the docket by July 14, 2009.

ADDRESSES: The public workshop will be held at the Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910 (Metro: Silver Spring Station on the Red Line). Submit written or electronic requests to make a presentation to Diane Ehrlich (see **FOR FURTHER INFORMATION CONTACT**).

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061. Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document.

Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the workshop.

FOR FURTHER INFORMATION CONTACT: Diane Ehrlich, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6190, Silver Spring, MD 20993–0002, 301–796–3452, FAX: 301–847–8753, e-mail: *Diane.Ehrlich@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, approved drug and therapeutic biological products for patients with juvenile idiopathic arthritis (JIA) (or juvenile rheumatoid arthritis (JRA)) are monitored for long-term safety beyond the information available at the time of approval on a product-by-product basis using registries mandated by FDA's postmarketing requirements. FDA is addressing concerns raised by individuals in the pediatric rheumatology community about the current approach of using product-specific pediatric rheumatology observational safety registries. Some of the concerns expressed include the following:

1. It is difficult to capture important information from children and adolescents whose medication is switched over time because long-term data on these patients will not be available under the product specific registries. Patients on ''real-life'' combinations of medications and/or nonstandard doses are often not included in product-specific registries.

2. Current registries do not always provide an adequate control group to assess background rates of important adverse events.

3. The limited number of patients with JIA will make adequate enrollment in product-specific observational registries more difficult as the number of approved drug and biological products increases.

4. A nonproprietary registry rather than a proprietary registry would allow wider access to the safety data that is collected.

5. A consolidated pediatric rheumatology observational registry may allow more efficient identification of longer term safety issues in this population.

II. Scope of Public Workshop

At the public workshop, FDA will present its current thinking on the use of product-specific postmarketing registries to capture long-term safety data of drug and biological products administered to patients with JIA. Product-specific registries will be compared with a consolidated pediatric rheumatology observational registry that could meet the regulatory postmarketing requirements of FDA and also collect other safety information and support potential research initiatives.

A. Objectives of the Workshop

The workshop objectives are as follows:

1. Discuss potential registry models, taking into account existing registries for other diseases and in other countries.

2. Discuss the advantages and disadvantages of a common consolidated registry for JIA, taking into account:

- The pediatric rheumatology perspective.
- The pharmaceutical company perspective.

3. Discuss methods to capture information regarding safety signals in rare diseases.

4. Discuss the value of working through existing large pediatric

rheumatology collaborative networks, such as the Childhood Arthritis and Rheumatology Research Alliance or the Pediatric Rheumatology Collaborative Study Group.

5. Define, for phase 4 studies in JIA patients, the database standards and elements of data collection (e.g., data quality, monitoring) that are necessary and sufficient to meet FDA regulatory requirements.

6. Discuss how pertinent research initiatives can be accomplished in the framework of a consolidated JIA registry, including:

- Ethical considerations.
- Data sharing considerations.

7. Discuss the options for funding a consolidated JIA registry.

B. Issues for Comment

FDA is interested in obtaining public comment on the following issues relating to development of a consolidated pediatric rheumatology observational registry:

1. Should we transition from product-specific registries to a consolidated pediatric rheumatology observational registry?

2. Currently, the product-specific registries are conducted by the individual sponsors of the approved drugs and/or biological products with the safety data submitted to FDA.

- How should a consolidated pediatric rheumatology observational registry be structured to collect data and conduct analyses to meet the standards for postmarketing requirements set by FDA and provide information about long-term safety?
- What hurdles must be overcome to transition from product-specific registries to a consolidated pediatric rheumatology observational registry (e.g., industry concerns, pediatric rheumatology community concerns, proprietary issues of longer term data and informed consent, fulfilling FDA regulatory requirements, challenges of registry funding, management and ownership or sharing of data)?

3. What data should be collected in a consolidated pediatric rheumatology observational registry? Consider the following topics:

Database standards and terminology (e.g., compatibility with large databases).

Necessary and sufficient data elements (e.g., safety, effectiveness, growth and development, comorbidities, tracking medication switches over time, as well as concurrent medication).

Length of individual patients' participation and overall duration of the consolidated pediatric rheumatology observational registry (e.g., managing pediatric data through and beyond the age of consent).

4. What are the optimal methods to analyze data from a consolidated pediatric rheumatology observational registry to identify safety signals? For example, should the methods define risk windows for attribution to a drug or biological product; internal controls; and/or analyses of confounding by indication, switches in medication, and multiple concurrent medications?

5. What are the opportunities for research initiatives within a consolidated observational rheumatology registry?

III. Attendance and Registration to Speak

There is no fee to attend the workshop, and attendees who do not wish to make an oral presentation do not need to register. Seating will be on a first-come, first-served basis.

If you would like to make an oral presentation during the open public session on day one of the workshop, you must register and provide an abstract of your presentation by close of business on April 21, 2009. To speak, submit your name, title, business affiliation (if applicable), address, telephone and fax numbers, and e-mail address to Diane Ehrlich (see **FOR FURTHER INFORMATION CONTACT**). FDA has included questions for comment in section II of this document. You should also identify by number each question you wish to address in your presentation, and the approximate time requested for your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. Persons registered to make an oral presentation should check in before the workshop.

Ample time will be allowed during the scheduled agenda for attendees to ask questions of panelists. In addition, we strongly encourage written comments to the docket. Written or electronic comments will be accepted until July 14, 2009.

If you need special accommodations because of disability, please contact Diane Ehrlich (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the workshop.

IV. Comments

Regardless of attendance at the public workshop, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. To ensure consideration, submit comments by July 14, 2009 (see **DATES**). Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcript

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 19, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6709 Filed 3–25–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 the following meeting.

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: National Institute of Child Health and Human Development Special Emphasis Panel; Gestational Diabetes Life-Course Study.

Date: April 20, 2009.

Time: 2 p.m. to 3:30 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680. *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6786 Filed 3–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel. Mutiple System Atrophy.

Date: April 7, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Ernest W Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–4056. *lyonse@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. Stroke Trial.

Date: April 14, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division Of Extramural Research, NINDS/NIH/DHHS/ Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635. *rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6660 Filed 3–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of 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 National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering; NACBIB May 2009.

Date: May 15, 2009.

Time: 8:30 a.m. to 11:45 a.m.

Agenda: Report from the Institute Director, other Institute Staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Room 241, Bethesda, MD 20892.

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.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm*, where an agenda and any additional information for the meeting will be posted when available.

Dated: March 20, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6784 Filed 3–25–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 PubMed Central National Advisory Committee.

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: PubMed Central National Advisory Committee.

Date: June 15, 2009.

Time: 8:30 a.m. to 3 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD

20894, 301–435–5985, *dlipman@mail.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.pubmedcentral.nih.gov/about/nac.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6624 Filed 3–25–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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: Board of Regents of the National Library of Medicine. Subcommittee on Outreach and Public Information.

Date: May 5, 2009.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 5–6, 2009.

Open: May 5, 2009, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 5, 2009, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 6, 2009, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.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.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6648 Filed 3–25–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Library of Medicine Special Emphasis Panel, Scholarly Works/Publication Grants (G13) Review.

Date: July 9–10, 2009.

Time: July 9, 2009, 5:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Time: July 10, 2009, 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zoe E. Huang, MD, Scientific Review Officer, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, MSC 7968, Bethesda, MD 20892–7968. (301) 594–4937. *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6650 Filed 3–25–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–1183]

Accounting of Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: In 1999, the Transportation Equity Act for the 21st Century made $5 million available to the Secretary of Homeland Security for payment per year of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. In 2005, the law was amended and the amount was increased to $5.5 million. The Coast Guard is publishing this notice published to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice, we have specified the amount of monies the Coast Guard has committed, obligated, or expended during fiscal year 2008, as of September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, Regulations Development Manager, telephone 202–372–1062, fax 202–372–1932.

Background and Purpose: The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. On September 29, 2005, the Sportfishing and Recreational Boating Safety Amendments Act of 2005 was enacted (Pub. L. 109–74; 119 Stat. 2031). This Act increased the funds available to the national recreational boating safety program from $5 million to $5.5 million annually, and stated that ''not less than'' $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels.

The responsibility to administer these funds was delegated to the Commandant of the United States Coast Guard. Subsection (c) of section 7405 of the Act directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year from 1999 through 2008 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2008 for each activity is shown below.

Factory Visit Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit 2,000 recreational boat manufacturers each year to either inspect for compliance with Federal regulations, communicate with the manufacturers as to why they need to comply with Federal regulations, or educate them, as necessary, on how to comply with Federal regulations. ($2,306,062).

Radar Reflective Gelcoat Testing: Funding was provided to Carderock Naval Surface Warfare Center to test and evaluate a newly developed coating that, when properly applied to fiberglass, should greatly increase the radar reflectivity of the fiberglass. If the test results prove positive, applying the radar reflective coating to fiberglass recreational boats would greatly increase the ability to detect these vessels using radar which would improve boating safety, would improve the ability to find boats in distress, would improve navigability of multiuse waterways, and would improve the ability to maintain security zones. ($58,000).

New Recreational Boating Safety Associated Travel: Travel by employees of the Boating Safety Division was performed to carry out additional recreational boating safety actions and to gather background and planning information for new recreational boating safety initiatives. ($10,469).

Boating Accident News Clipping Service: Funding was provided to continue to gather daily news stories of recreational boating accidents nationally for more real time accident information and to identify accidents that may involve regulatory non-compliances or safety defects. ($34,100).

Accident Investigation Tiger Team: Funding was provided to continue to provide on-call expert accident investigative services for any boating accident that appeared to involve a regulatory non-compliance or safety defect. ($104,120).

Web-Based Document Management System: Funding was provided to continue to provide a Web-based document management system to better enable the handling of thousands of recreational boating recall case and campaign reports. ($54,078).

Recreational Boating Safety (RBS) Outreach Program: Funding was provided for this program which provides full marketing, media, public information, and program strategy support to the nation-wide RBS effort. The goal is to coordinate the RBS outreach initiatives and campaigns some of which include: National Boating Under the Influence Campaign (BUI), ''You're in Command. Boat Responsibly!'', PFD Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, Propeller Strike Avoidance, Carbon Monoxide Poisoning, and other recreational boating safety issues on an as needed basis. ($865,875).

Boating Accident Report Database (BARD) Web System: BARD Web System funding enables reporting authorities in the 50 States, five U.S. Territories, and the District of Columbia to manage their accident reports electronically over a secure Internet environment. The system also enables the user community to generate statistical reports that show the frequency, nature, and severity of boating accidents. FY 08 funds supported system maintenance, development, and technical (hotline) support. ($462,586).

Personnel Support: Funding was provided for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($689,521).

Reimbursable Salaries: Funding was provided to carry out the work as prescribed in 46 U.S.C. 13106(c) and as described herein. The first function was that of a professional mathematician/statistician to conduct necessary national surveys and studies as well as to serve as a liaison to other Federal agencies that are conducting boating surveys so that we can pool our resources and reduce costs. The second function was that of Outreach coordinator for special RBS campaigns with responsibility of overseeing and

managing all RBS related projects in support of 'surge campaigns' for such elements as: Carbon monoxide poisoning, boating under the influence of alcohol or drugs, operation BoatSmart, etc. ($274,696).

Of the $5.5 million made available to the Coast Guard in fiscal year 2008, $2,854,920 has been committed, obligated, or expended and an additional $2,004,587 of prior fiscal year funds have been committed, obligated or expended, as of September 30, 2008. Approximately $8.8 million has not been committed, obligated, or expended from previous years, and is being reserved for a multi-year national boating survey.

Publication of this notice in the **Federal Register** satisfies the requirements of 46 U.S.C. 13107(c)(4). The Coast Guard has also submitted a copy of this notice for publication on *http://www.Grants.gov.*

Dated: March 11, 2009.

J.A. Watson,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–6807 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2002–11602]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration, DHS.

ACTION: 60 day reinstatement notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0005. The ICR, which is abstracted below, will be submitted to OMB for reinstatement in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

DATES: Send your comments by May 26, 2009.

ADDRESSES: Comments may be mailed or delivered to Ginger LeMay, PRA Officer, Office of Information Technology, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, PRA Officer, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3616; e-mail: *ginger.lemay@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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 valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0005; Security Programs for Foreign Air Carriers, 49 CFR Part 1546. TSA uses the information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. Foreign air carriers must carry out security measures to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities. This information collection is mandatory for foreign air carriers and must be submitted prior to entry into the United States.

The information TSA collects includes identiftying information on foreign air carriers' flight crews and passengers. Specifically, TSA requires foreign air carriers to submit the following information: (1) A master crew list of all flight and cabin crew members flying to and from the United States; (2) the flight crew list on a flight-by-flight basis; (3) passenger information on a flight-by-flight basis; and (4) total amount of cargo screened, including cargo screened at 100 percent and cargo screened at 50 percent. Foreign air carriers are required to provide this information via electronic means. Foreign air carriers with limited electronic systems may need to modify their current systems or generate a new computer system in order to submit the requested information. Additionally, foreign air carriers must maintain these records as well as training records for crew members and individuals performing security-related functions, and make them available to TSA for inspection upon request.

Foreign air carriers must conduct a comparison of their passenger names against the TSA-issued watch lists and report passengers who have been confirmed as a match to the TSA watch lists. TSA will continue to collect information to determine foreign air carrier compliance with other requirements of 49 CFR part 1546.

TSA estimates that there will be approximately 252 respondents to the information collection, with an annual burden estimate of 747,462 hours.

Issued in Arlington, Virginia, on March 20, 2009.

Ginger LeMay,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. E9–6682 Filed 3–25–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–07]

Notice of Proposed Information Collection: Comment Request; Insurance Termination Request for Multifamily Mortgage

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 26, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Beverly Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–2598 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 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 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: Insurance Termination Request for Multifamily Mortgage.

OMB Control Number, if applicable: 2502–0416.

Description of the need for the information and proposed use: The information collection is used to notify HUD that the mortgagor and mortgagee mutually agree to terminate the HUD multifamily mortgage insurance.

Agency form numbers, if applicable: HUD–9807.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 315.75. The number of respondents is 600, the number of responses is 600, the frequency of response is on occasion, and the burden hour per response is 1.0.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 19, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–6700 Filed 3–25–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–08]

2502–0001 Personal Financial and Credit Statement

AGENCY: Office of the Assistant Secretary for 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 26, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202)402–8048.

FOR FURTHER INFORMATION CONTACT Joyce Allen, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 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 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: Personal Financial and Credit Statement.

OMB Control Number, if applicable: 2502–0001.

Description of the need for the information and proposed use: The information collection is legally required to collect information to evaluate the character, ability, and capital or the sponsor, mortgagor, and general contractor for mortgage insurance.

Agency form numbers, if applicable: HUD–9241.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 16,000. The number of respondents is 2,000. The estimated number of annual responses is 2,000. The frequency of each response is once for each application submitted for mortgage insurance.

Status of the proposed information collection: This is an existing collection in use without an OMB control number.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 19, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–6705 Filed 3–25–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N0064; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with

endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before April 27, 2009.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–207369

Applicant: U.S. Army Garrison, Environmental and Natural Resources Division, Fort Huachuca, Arizona.

Applicant requests a new permit for research and recovery purposes to propagate and transplant Huachuca water umbel (*Lilaeopsis schaffneriana* spp. *recurva*) within Arizona.

Permit TE–207863

Applicant: URS Corporation, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapillus*), and Houston toad (*Bufo houstonensis*) within Oklahoma and Texas.

Permit TE–207880

Applicant: Steven Taylor, Champaign, Illinois.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: Peck's Cave amphipod (*Stygobromus peckii*), Comal Spring dryopid beetle (*Stygoparnus comalensis*), Coffin Cave mold beetle (*Batrisodes texanus*), Helotes mold beetle (*Batrisodes venyivi*), Comal Springs riffle beetle (*Heterelmis comalensis*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Tooth Cave ground beetle (*Rhadine persephone*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Cicurina venii*), Braken Bat Cave mesheweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Neoleptoneta myopica*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Bee Creek harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), and Robber Baron Cave harvestman (*Texella cokendolpheri*) within Texas.

Permit TE–207893

Applicant: Robert Edwards, Edinburg, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: Rio Grande silvery minnow (*Hybognathus amarus*), Big bend gambusia (*Gambusia gaigei*), Clear Creek gambusia (*Gambusia heterochir*), Comanche Springs pupfish (*Cyprinodon elegans*), Pecos gambusia (*Gambusia nobilis*), Leon Springs pupfish (*Cyprinodon bovines*), San Marcos gambusia (*Gambusia georgei*), and fountain darter (*Etheostoma fonticola*) within Texas.

Permit TE–202343

Applicant: Daniel Ginter, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) and southwestern willow flycatcher (*Empidonax taillii extimus*) within Arizona and New Mexico.

Permit TE–208531

Applicant: Sarah Zappitello, Buda, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: Peck's Cave amphipod (*Stygobromus peckii*), Comal Spring dryopid beetle (*Stygoparnus comalensis*), Coffin Cave mold beetle (*Batrisodes texanus*), Helotes mold beetle (*Batrisodes venyivi*), Comal Springs riffle beetle (*Heterelmis comalensis*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Tooth Cave ground beetle (*Rhadine persephone*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Cicurina venii*), Braken Bat Cave meshweaver (*Cicurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Neoleptoneta myopica*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Bee Creek harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), Cokendolpher Cave harvestman (*Texella cokendolpheri*), San Marcos salamander (*Eurycea nana*), and Texas blind salamander (*Eurycea rathbuni*) within Texas.

Permit TE–819528

Applicant: New Mexico Natural Heritage Program, Albuquerque, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of northern aplomado falcon (*Falco femoralis septentrionalis*) within New Mexico.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 18, 2009.

Brian A. Millsap,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E9–6568 Filed 3–25–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKA01000. L16100000. DQ0000. LXSI086L0000]

Notice of Intent To Prepare Ring of Fire Resource Management Plan Amendment and Supplemental Environmental Impact Statement, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Anchorage Field Office, Anchorage, Alaska, intends to prepare a Resource Management Plan (RMP) Amendment with an associated Supplemental Environmental Impact Statement (EIS) for the Haines planning block of the Ring of Fire RMP and by this notice is announcing the beginning of the public scoping process.

DATES: The BLM will announce public scoping meetings in Anchorage, Haines, and Skagway, Alaska through local news media, newsletters, and the BLM Web site (*http://www.blm.gov/ak*) at least 15 days prior to each meeting. We will provide formal opportunities for public comment upon publication of the Draft RMP Amendment and Supplemental EIS, including a 90-day public comment period. Please submit your comments on or before June 24, 2009.

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

- *Web Site: http://www.blm.gov/ak.*
- *E-Mail: ak_rof_amend@blm.gov.*
- *Fax:* (907) 267–1267.
- *Mail:* BLM-Anchorage Field Office, Attention—Ring of Fire Amendment, 4700 BLM Road, Anchorage, AK 99507.

Documents pertinent to this proposal may be examined at the Anchorage Field Office, 4700 BLM Road, Anchorage, AK 99507.

FOR FURTHER INFORMATION CONTACT: For information and/or to have your name added to the mail list, contact Beth Maclean, Ring of Fire Amendment Team Leader, (*beth_maclean@blm.gov*) at (907) 267–1214.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Anchorage Field Office, Anchorage, Alaska, intends to prepare an RMP Amendment with an associated Supplemental EIS for the Haines planning block of the Ring of Fire RMP and announces the beginning of the public scoping process.

The planning area is located in southeast Alaska. Bound by the Canadian border to the north and east and the Haines Borough boundary to the south and west, the planning area encompasses the towns of Haines and Skagway. This planning activity encompasses approximately 320,000 acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The purpose of the public scoping process and public scoping meetings is to identify relevant issues that will influence the scope of the environmental analysis and Supplemental EIS alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Preliminary issues and management concerns identified by BLM personnel, other agencies, and individuals and user groups represent the BLM's knowledge to date regarding existing issues and concerns with current land management. The major issue that will be addressed in this planning effort relates to potential impacts on wildlife populations from recreation activities occurring on BLM-managed lands in the Haines Block.

The BLM will analyze the following decisions through the RMP Amendment and Supplemental EIS:

- Whether to designate any of the Haines Block lands as an Area of Critical Environmental Concern (ACEC),
- Whether to retain the Haines Block Special Recreation Management Area (SRMA) designation, and
- What terms and conditions for special recreation permits in the Haines Block lands should be developed.

If the Haines Block SRMA designation is retained, the BLM, through the RMP Amendment and Supplemental EIS, will:

- Decide whether to change the boundaries of the SRMA,
- Make SRMA decisions as outlined in the Appendix C of the H–1601–1 Land Use Planning Handbook, and
- Develop a Special Recreation Management Plan (SRMP) for the Haines Block SRMA.

The BLM will evaluate the identified issues to be addressed in the plan and will place them into one of three categories:

1. Issues to be resolved in the plan,
2. Issues to be resolved through policy or administrative action, or
3. Issues beyond the scope of this plan.

The BLM will explain in the plan why an issue was placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Preliminary planning criteria include the following:

1. Multiple use is the primary function of BLM-administered public lands.
2. Areas to be addressed are the surface acres administered by the BLM in the Haines planning block.
3. Decisions will be limited to those related to recreation, wildlife, travel management, an ACEC and an SRMA.
4. Valid existing rights will be protected throughout the planning area.
5. Plans and policies of adjacent land owners/managers will be considered.
6. The BLM will encourage and participate in collaborative planning.
7. Identification, designation, and protection of an SRMA and an ACEC will receive full consideration.
8. The BLM will comply with all relevant laws, statutes, regulations, manuals, and handbooks.
9. Subsistence uses will be considered and adverse impacts minimized in accordance with Section 810 of ANILCA.
10. This resource management plan amendment will conform to the Bureau's H–1601–1 Land Use Planning Handbook.
11. The plan will be consistent with the Alaska Land Health Standards.
12. Areas of proposed ACEC designation will meet the criteria found in 43 CFR 1610.7–2.

The BLM will use an interdisciplinary approach while developing the plan to ensure consideration of the variety of resource issues and concerns identified.

Thomas P. Lonnie,

State Director.

[FR Doc. E9–6792 Filed 3–25–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT920–09–L13200000–EL000, UTU–87061]

Notice of Invitation To Participate in Coal Exploration License, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation to Participate in Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR part 3410, all interested qualified parties, as provided in 43 CFR 3472.1, are hereby invited to participate with Ark Land Company on a pro rata cost sharing basis in its program for the exploration of coal deposits in certain Federal coal deposits owned by the United States of America in the following-described lands in Sevier County, Utah:

T. 20 S., R. 5 E., SLM, Utah,
Sec. 31, SE¼;
T. 21 S., R. 4 E., SLM, Utah,
Sec. 1, all;
T. 21 S., R. 5 E., SLM, Utah,
Sec. 6, all.
Containing 888.62 acres.

All of the coal in the above-described land consists of unleased Federal coal within the Uinta-Southwestern Utah Known Coal Region. This coal exploration license will be issued by the Bureau of Land Management. This exploration program will obtain coal data to supplement data from adjacent coal development. The exploration program is fully described and is being conducted pursuant to an exploration plan approved by the Bureau of Land Management (BLM). The plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate.

ADDRESSES: Copies of the exploration plan and license are available for review during normal business hours (serialized under the number of UTU 87061) in the public room of the BLM State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah. The written notice to participate in the exploration program should be sent to both the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, and to Mark Bunnell, Senior Geologist, Ark Land Company, c/o Canyon Fuel Co., LLC, Skyline Mines, HC35, Box 380, Helper, Utah 84526.

SUPPLEMENTARY INFORMATION: This notice of invitation to participate was published in The Richfield Reaper, once each week for two consecutive weeks beginning the second week of February, 2009 and in the **Federal Register**.

Any person seeking to participate in this exploration program must send written notice to both the BLM and Ark Land Company, as provided in the **ADDRESSES** section above, no later than thirty days after publication of this invitation in the **Federal Register**.

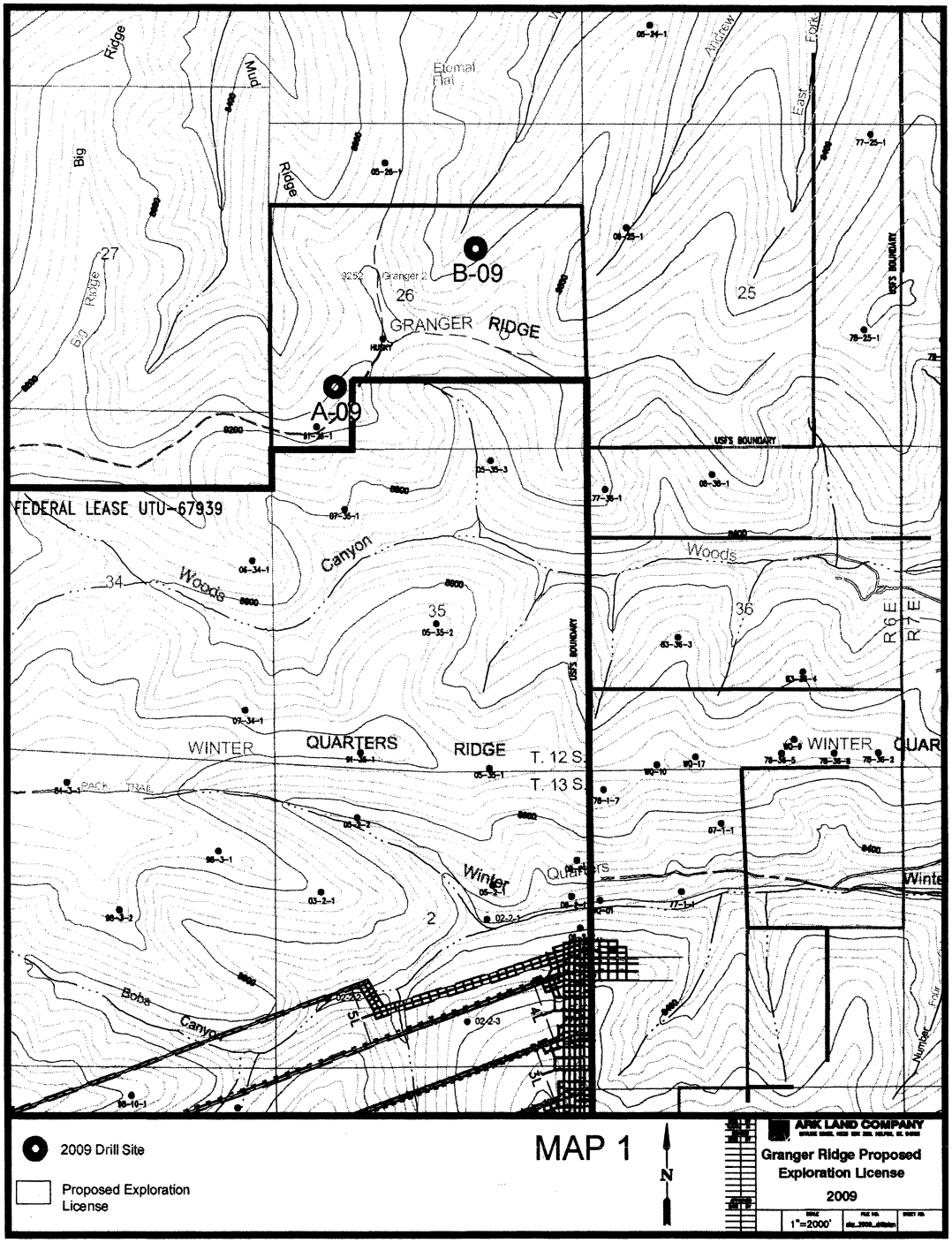
The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Jeff Rawson,

Assoc. State Director.

BILLING CODE 4310–DQ–P

MAP 1



[FR Doc. E9–6793 Filed 3–25–09; 8:45 am]

BILLING CODE 4310–DQ–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–AL; GP9–0123]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: Thursday, April 16, 2009, at the BLM Spokane District Office, 1103 N. Fancher Rd., Spokane Valley, WA 99212.

SUPPLEMENTARY INFORMATION: The meeting will start at 9 a.m. and end at 3:30 p.m. The meeting will be open to the public and there will be an opportunity for public comments at 2:30 p.m. Discussion will focus on the status of projects of interest and identification of topics for future meetings.

FOR FURTHER INFORMATION CONTACT: BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536–1200.

Dated: March 17, 2009.

Robert B. Towne,

District Manager.

[FR Doc. E9–6753 Filed 3–25–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORS00100 63500000 PH0000 LXSS030H0000; HAG 07–0158]

Salem District Resource Advisory Committee; Meeting

AGENCY: Bureau of Land Management .

ACTION: Pursuant to the Federal Advisory Committee Act, the Department of the Interior, Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Salem District Resource Advisory Committee.

Time and Date: 8:30 a.m.to 4 p.m. April 15 and 16, 2009 and April 22, and 23, 2009 if needed.

Place: Salem District Office, 1717 Fabry Road SE, Salem, OR 97306.

Status: Open to the public.

Matters To Be Considered: The Resource Advisory Committee will consider proposed projects for Title II funding under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 110–343) that focus on maintaining or restoring water quality, land health, forest ecosystems, and infrastructure.

For More Information Contact: Program information, meeting records, and a roster of committee members may be obtained from Randy Gould, Salem District Designated Official, 1717 Fabry Road, Salem, OR 97306. 503–375–5682. The meeting agenda will be posted at *http://www.blm.gov/or/districts/salem/rac* when available.

Should you require reasonable accommodation, please contact the BLM Salem District 503–375–5682 as soon as possible.

Dated: February 25, 2009.

Dan Hollenkamp,

Acting Field Manager.

[FR Doc. E9–6745 Filed 3–25–09; 8:45 am]

BILLING CODE

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO0000.L58530000.ES0000; N–78725; 9–08807; TAS: 14X5232]

Lease/Conveyance of Public Lands for a City Park in Las Vegas, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management has received a Recreation and Public Purposes (R&PP) Act request for lease and subsequent conveyance of approximately 10 acres of public land in Clark County for use as a public park. The parcel of land is located in the northwestern part of the Las Vegas Valley, northeast of the intersection of Alpine Ridge Way and Iron Mountain Road.

DATES: Interested parties may submit written comments regarding the proposed lease/ conveyance of the lands until May 11, 2009.

ADDRESSES: Mail written comments to the BLM Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Kimber Liebhauser (702) 515–5088.

SUPPLEMENTARY INFORMATION: The following described public land in Clark County, Nevada has been examined and found suitable for lease and subsequent conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*) and is legally described as:

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
Sec. 1, W½NE¼SW¼SE¼ and E½NW¼SW¼SE¼.

The area described contains 10 acres, more or less.

In accordance with the R&PP Act, the City of Las Vegas filed an R&PP application to develop the above described land as a public park. The City of Las Vegas is a political subdivision of the State of Nevada and is therefore a qualified applicant under the R&PP Act.

The proposed park and related facilities include basketball courts, tennis courts, a children's play area, a children's splash pad play area, group picnic armadas, an interpretive natural trail, a multi-purpose trail, and an open grass play area. Additional detailed information pertaining to this application, plan of development, and site plan is in case file N–78725 at the BLM Las Vegas Field Office.

Lease and/or patent of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulation, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.

The land is not needed for any Federal purpose. The lease/conveyance is consistent with the BLM Las Vegas Resource Management Plan, dated October 5, 1998, and would be in the public interest. The lease/conveyance of N–78725, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease/conveyance will be subject to:

1. Valid existing rights.

On publication of this notice in the **Federal Register**, the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use. Any adverse comments will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your

personal identifying information-may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. In the absence of any adverse comments, the decision will become effective on May 26, 2009. The lands will not be available for lease/conveyance until after the decision becomes effective.

Authority: 43 CFR 2741.5.

Dated: February 3, 2009.

Kimber Liebhauser,

Assistant Field Manager, Division of Lands, Las Vegas, Nevada.

[FR Doc. E9–6794 Filed 3–25–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on March 19, 2009, a proposed Consent Decree and Settlement Agreement regarding two sites in Texas was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC,* No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States (on behalf of the Environmental Protection Agency), the state of Texas, and Asarco LLC provides, *inter alia,* for the establishment of a custodial trust, the transfer of certain properties to that trust, and funding of the trust with allowed administrative expense claims for administrative and site cleanup costs. The proposed Agreement provides the custodial trust with an allowed administrative expense claim of $52 million to cover its administrative costs and fund cleanup work at certain properties owned by Asarco in Amarillo and El Paso Texas.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Asarco LLC,* DJ Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd., #500, Corpus Christi, TX 78476–2001, or at the Region 6 Office of the United States Environmental Protection Agency, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.25 (without attachments) or $23.50 (with attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–6782 Filed 3–25–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Under Tip Award No. 70NANB9H9007

Notice is hereby given that, on February 2, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Joint Venture under TIP Award No. 70NANB9H9007 (''70NANB9H9007'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Mistras Group Inc. DEA Physical Acoustics Corporation, Princeton Junction, NJ; University of Miami, Coral Gables, FL; University of South Carolina, Columbia, SC; and Virginia Polytechnic Institute and State University, Blacksburg, VA.

The general area of 70NANB9H9007's planned activity is to perform cooperative research for developing a self-powered wireless sensor network for structural bridge health prognosis.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–6378 Filed 3–25–09; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on February 4, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A&P Technology, Inc., Cincinnati, OH; Analex Corporation, Fairfax, VA; Assembly Guidance Systems, Inc., Chelmsford, MA; Automated Precision, Inc., Rockville, MD; Bayer MaterialScience LLC, Pittsburgh, PA; Clean Diesel Technologies, Inc., Stamford, CT; Henry Ford Health System, Detroit, MI; Intelli-Check—Mobilisa, Inc., Alexandria, VA; MDS–PRAD Technologies Corporation, Inc., Slemon Park, Prince Edward Island, CANADA; Steinbichler Optotechnik Gmbh, Neubeuern, GERMANY; and Raytheon Company, McKinney, TX have been added as parties to this venture. Also, Adam Aircraft Industries, Englewood, CO; Advanced Technology

Services, Inc., Peoria, IL; Bosch Rexroth Corporation, Hoffman Estates, IL; Chrysler Corporation, Auburn Hills, MI; Clockwork Solutions, Inc., Austin, TX; Decagon Devices, Inc., Pullman, WA; DEKA Research & Development Corporation, Manchester, NH; Dimensional Photonics International, Inc., Wilmington, MA; Ethereal Technologies, Inc., Ann Arbor, MI; ExOne Company, Irwin, PA; Extrude Hone Corporation, Irwin, PA; Freundenberg-NOK General Partnership, Plymouth, MI; General Motors Corporation, Warren, MI; Hardinge Inc., Elmira, NY; Millennium Cell Inc., Eatontown, NJ; Moore Tool Company, Bridgeport, CT; MTI Micro Fuel Cells Inc., Albany, NY; Proto Manufacturing Inc., Ypsilanti, MI; Protonex Technology Corporation, Southborough, MA; Pukoa Scientific, LLC, Oviedo, FL; Purdue University, West Lafayette, IN; SCRA, N. Charleston, SC; SFC Smart Fuel Cell AG, Brunnthal, GERMANY; Smiths Detection Danbury, Danbury, CT; STEP Tools, Inc., Troy, NY; Systems Documentation Inc., South Plainfield, NJ; TransCanada CNG Technologies Ltd., Calgary, Alberta, CANADA; VCD Technologies, LLC, San Dimas, CA; and Waterjet Tech Inc., St. Louis, MO have withdrawn as parties to this venture.

In addition, Radian Tool & Engineering has changed its name to Radian Precision, Troy, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on November 14, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 20, 2008 (73 FR 9357).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–6375 Filed 3–25–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Cooperative Research Group on the Development and Evaluation of a Gas Chromatograph Testing Protocol

Notice is hereby given that, on February 13, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Southwest Research Institute—Cooperative Research Group on Development and Evaluation of a Gas Chromatograph Testing Protocol (''GCTP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its nature and objective. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the period of performance has been extended to March 15, 2009.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GCTP intends to file additional written notifications disclosing all changes in membership.

On March 6, 2008, GCTP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 7, 2008 (73 FR 18813).

The last notification was filed with the Department on November 26, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 2008 (73 FR 80430).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–6376 Filed 3–25–09; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Development of Rapid, Reliable, and Economical Methods for Inspection and Monitoring of Highway Bridges

Notice is hereby given that, on February 24, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Development of Rapid, Reliable, and Economical Methods for Inspection and Monitoring of Highway Bridges has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: The University of Texas at Austin, Austin, TX; National Instruments Corporation, Austin, TX; and Wiss, Janey, Elstner Associates, Inc., Northbrook, IL. The general area of Development of Rapid, Reliable, and Economical Methods for Inspection and Monitoring of Highway Bridges' planned activity is to conduct certain specified research involving the development of innovative technologies for inspecting, monitoring, and evaluating critical components of the nation's roadways and bridges (including the development of efficient, accurate, low-cost and reliable wireless sensors and related technologies that can provide quantitative assessments of the structural integrity or degree of deterioration of bridges and roadways).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–6372 Filed 3–25–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on February 18, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

under specified circumstances. Specifically, Assistant Secretary of Defense for Networks & Information Integration and Department of Defense Chief Information Officer, Washington, DC; MIT Lincoln Laboratory, Lexington, MA; and Dataline, LLC, McLean, VA have been added as parties to this venture.

Also, Sikorsky Aircraft, Stratford, CT; Ericsson Federal Inc., Columbia, MD; Motorola, Inc., Schaumburg, IL; Institute for Defense Analyses, Alexandria, VA; Insta Group, Tampere, Finland; DataPath, Inc., Duluth, GA; Management and Engineering Technologies International, Inc., El Paso, TX; CAE, St-Laurent, Quebec City, CANADA; U.S. Department of Defense, Defense Information Systems Agency, Falls Church, VA; Meteksan Defence Industry Inc., Ankara, TURKEY; and Iridium Satellite LLC, Bethesda, MD have withdrawn as parties to this venture. In addition, ITT Industries changed its name to ITT Corporation, White Plains, NY. In the past ninety (90) days, the Joint Venture learned that MilSOFT Yazilirn Teknolojileri A.S., Ankara, Turkey did not change its name to MilSOFT ICT-Iletisim Teknolojileri A.S., as noted in the Joint Venture's notification filed under the Act on October 12, 2007. Rather, in October of 2007, MilSOFT Yazilim Teknolojileri A.S. transferred its membership in the Joint Venture to MilSOFT ICT-Iletisim Teknolojileri A.S., Ankara, Turkey, an affiliate and sister company of MilSOFT Yazilim Teknolojileri A.S.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on November 26, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 2008 (73 FR 80430).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–6374 Filed 3–25–09; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 16, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''the Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AASKI Technology, Inc., Ocean, NJ; ABIS & Associates Ltd, Chessington, Surrey, United Kingdom; AIST Limited, Stanmore, Middlesex, United Kingdom; Almira Labs, Tres Cantos, Madrid, Spain; Altran-Europe, Brussels, Belgium; Ariston Global, Pittsford, NY; Arizona State University, Tempe, AZ; ARRIS Group Inc., Suwanee, GA; ASPire Digital Technologies (Shenzhen) Co., Ltd., Shenzhen, Guangong, People's Republic of China; ATANOO Europe GmbH, Zug, Switzerland; Austen Consultancy Services, Ltd., Hemel Hempstead, Hertfordshire, United Kingdom; Biap Systems, Inc., Sterling, VA;

BlackArrow, Inc., San Mateo, CA; Boss Portal, Auckland, New Zealand; Brighthouse Networks, East Syracuse, NY; British Sky Broadcasting Group plc, Isleworth, United Kingdom; Call Genie, Inc., San Francisco, CA; Cloud Scope Technologies, Inc., Tokyo, Japan;

Computaris, Brentwood, Essex, United Kingdom; Cricket Communications, San Diego, CA; Cyan Optics, Petaluma, CA; Edge Technologies, Fairfax, VA; e-globe technologies AG, Bern, Switzerland; Elektro-Slovenija d.o.o., Ljubljana, Slovenia; Ethiopian Telecommunications Corporation, Addis Ababa, Ethiopia; Front Porch, Inc., Sonora, CA; HERMES SoftLab, Ljubljana, Slovenia; i2Cat, Barcelona, Spain; Icesolutions, Ljubljana, Slovenia; Information Works, Köln, Germany; Innovative Systems, Mitchell, SD; ITS Telco Services GmbH, Köln, Germany; IWF Consultoria e Terinamento, Campinas, São Paulo, Brazil; Kazakhtelecom JSC, Astana, Sary-Arka, Republic of Kazakhstan; King Mongkut's University of Technology Thonburi, Bangmod, Thung Karu District Bangkok, Thailand; KPMG Advisory Spolka z ograniczona odpowiedzialnoscia sp.k.ul., Warsaw, Poland; LGG Solutions, Colorado Springs, CO; Lightwolf Technologies LLC, Walpole, MA; Mantra Communication AB, Göteborg, Sweden; Metrotek, Moscow, Russia; mobily, Riyadh, Saudi Arabia; Mobitel, d.d., Ljubljana, Slovenia; MSTelcom, Luanda, Angola; MTN Zambia, Lusaka, Zambia; Nevogrid, Espoo, Finland; NetOne, Shinagawa-ku, Tokyo, Japan; Nipsoft Business System AB, Solleftea, Sweden; Noblis, Inc., Falls Church, VA; Ogilvy, London, United Kingdom; OpenVision Co., Ltd., Bangkok, Thailand; Picsel Technologies Ltd., Glasgow, United Kingdom; Piran Partners LLP, London, United Kingdom; Polystar OSIX, Farsta, Sweden; Process Management Consulting GmbH, Munich, Germany; Q/P Management Group of Canada, Nepean, Ontario, Canada; RAO Infosystems, Chamaraja Mohalla, Karnataka, India; Red Zinc, Dublin, Ireland; RightStar Systems, Vienna, VA; Savvion, Santa Clara, CA; ScoZA Uganda Limited, Kampala, Uganda; Serafina Consulting Oy, Jyvaskyla, Finland; ServicePilot Technologies, Pornichet, France; Sezmi Corporation, Belmont, CA;

Site of Knowledge Group AB, Lund, Sweden; SmartNet, São Paulo, Brazil; Solidi Pte Ltd, Singapore, Singapore; Superna Business Consulting Inc., Ottawa, Ontario, Canada; Sybase SA, Johannesburg, Rivonia, South Africa; Systems Research Private Limited, Islamabad, Pakistan; TailorMade, Sundbyberg, Sweden; Tata Communications Ltd., Mumbai, India; Telecom@Work, Bornem, Belgium; Telfort B.V., Amsterdam, The Netherlands; Texas Department of Information Resources, Austin, TX; Thales Communications SA, Cedex, France; The CNIA Group, Westfield, NJ; theNetStart Platform Ltd, Sheffield, United Kingdom; T-Home, Darmstadt, Germany; Trammell Craig & Associates, Dillon, CO; UK Cabinet Office, London, United Kingdom; University of Palermo, Palermo, Italy; uralsvyazinform JSC, Ekaterinburg, Russia; Vertek Corporation, Colchester, VT; VicTrack, Docklands, Victoria, Canada; Wataniya Telecom Maldives Private Limited, Hulhumalé, Malé, Republic of Maldives; and Zurich University of Applied Sciences, Winterthur, Zurich, Switzerland, have been added as parties to this venture.

Also, Aircom International Ltd, Leatherhead, Surrey, United Kingdom; ArcSight, mc, Cupertino, CA; Avistas, Irving, TX; Brix Networks, Chelmsford, MA; Cellex Network Systems (2007) Ltd., Bne Beraq, Israel; CIMI Corp.,

Voorhees, NJ; Comservice Networks Pty Ltd, Melbourne, Victoria, Australia; Conexion S.A., Asuncion, Paraguay; GuangZhou Sunrise Electronics Development Co., Ltd, Guangzhou, Guangong, People's Republic of China; Infogix, Inc., Naperville, IL; IONA Technologies, Waltham, MA; MaxProcess, Rio de Janeiro, Brazil; MOBIK d.o.o., Ljubljana, Slovenia; Netsure Telecom Ltd. Dublin 12, Leinster, Ireland; Reachview Technologies Inc., Atlanta, GA; Real Time Engineering Limited, Glasgow, Lanarkshire, United Kingdom; Servista Ltd. London, Greater London, United Kingdom; TechOne, Inc., Milpitas, CA; TideStone Software (Shanghai) Corp., Shanghai, People's Republic of China; Visionael Corporation, Mountain View, CA; VSNL International, Matawan, NJ; and Wisdom Networks Co., Ltd., Chiyoda-ku, Tokyo, Japan, have withdrawn as parties to this venture.

The following members have changed their names: DVA AG Optical Networking to ADVA Optical Networking Ltd; Alcatel-Lucent Polska Sp. z.o.o., to Alcatel-Lucent; Aricent Technologies (Holdings) Ltd, to Aricent; Arris uu to ARRIS Group Inc.; Bahrain Telecommunications Company (BSC) to Bahrain Telecommunications Company (Batelco); BlackArrow TV to BlackArrow Inc.; Brighthouse Networks, LLC to Brighthouse Networks; Sky to British Sky Broadcasting Group plc; CANTV.NET to CANTV; Comarch to Comarch S.A.; Cominfo Consulting to Cominfo Consulting Group Ltd; Fundacao CPqD to CPqD; Fundacao Centro de Pesquisa e Desenvolvimento em Telecom to CPqD; Dux Diligens to DUXDILIGENS, S.A. DE C.V.; Eles, d.o.o. to Elektro-Slovenija d.o.o.; Ernst & Young Global Telecom Center to Ernst & Young CIS B.V., Moscow Branch; KPMG CEE to KPMG Advisory Spolka z organiczona odpowiedzialnoscia sp.k; LGG Solutions, LLC to LGG Solutions; Nokia Siemens Networks GmbH & Co. KG to Nokia Siemens Networks; Gurulab.org to OOCorp; Openet Telecom to Openet; OSSEra, Inc.1 to OSSEra, Inc.; Picsel Technologies, Inc. to Picsel Technologies Ltd.; WeDo Technologies to Praesidium; Process Man GmbHagement Consulting to Process Management Consulting GmbH; Promon Tecnologia to PromonLogicalis Tecnologia SA; PT ExcelComindo Pratma to PT Excelcomindo Pratma Tbk; PURGE to ExcelComindo Pratma Tbk; PT Excelcomindo to PT Excelcomindo Pratma Tbk; ServicePilot to ServicePilot Technologies; Building-B to Sezmi Corporation; Sigma Systems Canada Inc to Sigma Systems; Superna Business Consulting to Superna Business Consulting mc; Tata Communication to Tata Communications Ltd.; Telekom Malaysia Berhad to Telekom Malaysia Berhad (TM); Telekom Serbia to Telekom Srbija; Thales Communications (France) to Thales Communications SA; Truebaseline Corporation to TrueClick Solutions LLC; Windward IT Solutions LLC to Windward IT Solutions.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 7, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2008 (73 FR 66673).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–6373 Filed 3–25–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review: Comment Request

March 20, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by April 6, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*. Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov*. Comments and questions about the ICR listed below should be received 5 days prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title of Collection: Planning Guidance for Indian and Native American Program (INAP) and Senior Community Service Employment Program (SCSEP) Recovery Act Grants.

OMB Control Number: Pending.

Frequency of Collection: One time collection.

Affected Public: INAP and SCSEP Grantees.

Estimated Time per Respondent: 16 hours.

Total Estimated Number of Respondents: 219.

Total Estimated Annual Burden Hours: 3,504.

Description: In February of 2009, ETA's Senior Community Service Employment Program (SCSEP) and the Indian and Native American Programs (INAP), received additional funds authorized by Title VIII of section A of the American Recovery and Reinvestment Act (ARRA). ETA is seeking emergency approval for Training and Employment Guidance Letters (TEGLs) issued by these programs in order to obligate Recovery

Act Funds, as directed by the Congress and the President.

Why are we requesting Emergency Processing? If DOL were to comply with standard PRA clearance procedures, it would not be able to comply with the ARRA-mandated payment schedule because procedures for these payments must be in place immediately. The statute provides that INAP and SCSEP grantees need the means to access the funds as soon as possible. Otherwise, harm to the nation's economic recovery could ensue. Finally, in preparing the guidelines, the Department has taken all necessary steps to consult with INAP and SCSEP grantees in order to minimize the burden of collecting the information while adhering to ARRA payment and monitoring provisions.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–6688 Filed 3–25–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2009–12; Exemption Application No. D–11341]

Grant of Individual Exemption To Replace Prohibited Transaction Exemption (PTE) 2000–45, Involving Citigroup Global Markets Inc. (CGMI), Formerly Salomon Smith Barney Inc. (Salomon Smith Barney), Located in New York, NY

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to replace PTE 2000–45.

This document contains a final exemption before the Department of Labor (the Department) that replaces PTE 2000–45 (65 FR 54315, September 7, 2000), an exemption granted to Salomon Smith Barney. On December 1, 2005, PTE 2000–45 became ineffective due to a material change in the exemption.

PTE 2000–45 related to the operation of the TRAK Personalized Investment Advisory Service (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust) as described in a notice of proposed exemption (65 FR 35138, June 1, 2000), which underlies PTE 2000–45.

The final exemption incorporates by reference many of the conditions contained in PTE 2000–45. The exemption also revises and updates certain facts and representations set forth in PTE 2000–45 to include a new fee offset procedure and the terms of a past merger (the Merger Transaction) between Citigroup Inc. (Citigroup) and Legg Mason, Inc. (Legg Mason). In this regard, the Applicants have requested that a limited and temporary exception to the definition of ''affiliate'' be incorporated in a new Section IV.

DATES: *Effective Date:* This exemption is effective (1) from December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions described in Sections I, II, and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

FOR FURTHER INFORMATION CONTACT: Mrs. Anna Vaughan or Ms. Jan D. Broady, Office of Exemptions Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8565 or (202) 693–8556. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On December 23, 2008, the Department published a notice of proposed exemption in the **Federal Register** at 73 FR 78846 from the prohibited transaction restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption has been requested in an application filed on behalf of CGMI pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before February 23, 2009.

During the comment period, the Department received 29 telephone calls from participants or beneficiaries in plans with investments in the TRAK Program. All of these comments concerned the commenters' inability to understand the notice of proposed exemption or the effect of the exemption on the commenters' benefits.

The Department also received one written comment with respect to the proposed exemption. The comment, which was submitted by Citigroup, is intended to clarify and update certain factual information discussed in the proposed exemption, as follows:

1. *TRAK Program Assets.* On page 78847 of the notice of proposed exemption, the first sentence of the first paragraph states that the TRAK Program held assets that were in excess of $9.4 billion. Citigroup states that the sentence should be revised to read as follows: ''As of July 29, 2008, the TRAK Program held assets of approximately $8.8 billion.''

Also, on page 78847 of the proposal, the first sentence in the last paragraph of the third column reads: ''The assets sold by Citigroup to Legg Mason included Smith Barney Mutual Funds Management Inc. (now Smith Barney Fund Management LLC) but excluded the Consulting Group and the TRAK Program.'' Citigroup explains that the first sentence should be revised to read: ''The assets sold by Citigroup to Legg Mason included Smith Barney Fund Management LLC, but excluded the Consulting Group and the TRAK Program.''

2. *Citigroup Loan to Legg Mason.* On page 78847 of the notice of proposed exemption, the last sentence in the last paragraph of the third column discusses a loan provided by Legg Mason to Citigroup. Citigroup explains that it provided the loan to Legg Mason. Therefore, this sentence should be revised to read as follows: ''Also, Citigroup Corporate and Investment Banking provided to Legg Mason approximately $550 million in the form of a five-year loan facility.''

3. *Merger Transaction.* On page 78848 of the notice of proposed exemption, Footnote 6 states that Citigroup Asset Management or ''CAM'' was sold to Legg Mason subsequent to the Merger Transaction. Citigroup explains that based on its knowledge, CAM was sold to Legg Mason as part of the Merger Transaction.

4. *General Conditions.* On pages 78850 and 78854 of the proposed exemption, Section II(j) makes reference to the ''Government Money Investments Portfolio'' and the ''GIC Fund Portfolio''. Citigroup wishes to clarify that these funds have been re-named the ''Money Market Investments Portfolio'' and the ''Stable Value Investments Portfolio,'' respectively.

Also, on pages 78850 and 78854 of the proposal, Section II(k)(1)(E) uses the term ''Financial Consultant.'' Citigroup explains that it now refers to these employees as ''Financial Advisors.''

In response to Citigroup's comment letter, the Department has made revisions to the operative language of the final exemption and, where applicable, has taken note of the foregoing clarifications and updates to the Summary of Facts and Representations of the proposed exemption.

For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11341) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption subject to the modifications described above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interest of the plan and of its participants and beneficiaries; and

(c) The exemption is protective of the rights of participants and beneficiaries of employee benefit plans participating in the TRAK Program.

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective December 1, 2005, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (an IRA), a retirement plan for self-employed individuals (a Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the section 403(b) Plan; collectively, the Plans) in the Trust for Consulting Group Capital Markets Funds (the Trust), established by Citigroup, Inc. (Citigroup), in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program).

B. The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective December 1, 2005, with respect to the provision, by Citigroup's Consulting Group (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

This exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Citigroup Global Markets Inc. (CGMI) and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates constitute not more than reasonable compensation.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary is implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that:

(1) If such Independent Plan Fiduciary elects in writing, on a form designated by CGMI from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account is automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election continues in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change is adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (*e.g.*, a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), CGMI sends out a written

notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation may be affected, describing the proposed reallocation and the date on which such allocation is to be instituted. If the Independent Plan Fiduciary notifies CGMI, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model remains at the current level, or at such other level as the Independent Plan Fiduciary then expressly designated, in writing. If the Independent Plan Fiduciary does not affirmatively opt out of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation is automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary receives a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.*, 401(k) Plan accounts), CGMI mails trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification depends upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group generally gives investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the section 404(c) Plan), the Consulting Group provides investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of CGMI and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by CGMI and/or its affiliates such as Citigroup common stock (the Citigroup Common Stock), the percentage of that Portfolio's net assets invested in such securities does not exceed one percent. However, this percentage limitation may be exceeded if:

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third-party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the Index is:

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of CGMI and its affiliates and is a generally-accepted standardized Index of securities which is not specifically tailored for use by CGMI and its affiliates.

(3) The acquisition or disposition of Citigroup Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit CGMI or any party in which CGMI may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds Citigroup Common Stock and the Sub-Adviser is responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Money Market Investments Portfolio and the Stable Value Investments Portfolio for which the Consulting Group and the Trust retains no investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan receives the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, CGMI and its subsidiaries and the compensation paid to such entities.*

(B) Upon written or oral request to CGMI, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan which relates to participation in the TRAK Program and describes the Automatic Reallocation Option.

(D) Upon written request of CGMI, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a CGMI Consultant to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the Proposed Exemption and the Final Exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (*i.e.*, the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary is required to represent in writing to CGMI that such fiduciary is (a) independent of CGMI and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and

* The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including the fees paid directly to CGMI or to other third parties.

represent to CGMI that such fiduciary is (a) independent of CGMI and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report including a financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to CGMI and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to CGMI and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than CGMI and its affiliates, both expressed as cents per share.

(m)(1) CGMI maintains or causes to be maintained for a period of (6) six years the records necessary to enable the persons described in paragraph (m)(2) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (2) of this section.

(2) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (1) of this section are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any fiduciary of a participating Plan or any duly authorized employee of such employer;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and;

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(3) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of CGMI, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than CGMI is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (2) of this section.

(4) None of the persons described in subparagraphs (ii)–(iv) of this section (m)(2) is authorized to examine the trade secrets of CGMI or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) The term ''*CGMI*'' means Citigroup Global Markets Inc. and any affiliate of Citigroup Global Markets Inc., as defined in paragraph (b) of this Section III.

(b) An ''*affiliate*'' of CGMI includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with CGMI. (For purposes of this subparagraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any individual who is an officer (as defined in Section III(d) hereof), director or partner in CGMI or a person described in subparagraph (b)(1);

(3) Any corporation or partnership of which CGMI, or an affiliate described in subparagraph (b)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of CGMI is a 10 percent or more partner or owner.

(c) An ''*Independent Plan Fiduciary*'' is a Plan fiduciary which is independent of CGMI and its affiliates and is either:

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct, the investment of assets of his or her account in such Plan.

(d) The term ''*officer*'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

Section IV. Limited Exception

(a) Notwithstanding the condition set forth in Section II(h) of the General Conditions or the definition of ''affiliate'' set forth in Section III(b) of the Definitions herein, during the period, December 1, 2005 until March 10, 2006, when Citigroup Inc. (Citigroup) held a 10 percent or greater economic ownership interest in Legg Mason, Inc. (Legg Mason) as a result of the merger transaction (Merger Transaction) consummated on December 1, 2005, between Citigroup and Legg Mason, Brandywine Asset Management LLC (Brandywine) and Western Asset Management Company (Western), both of which are wholly owned subsidiaries of Legg Mason, continued to be deemed ''independent'' of Citigroup Global Markets Inc. (CGMI) and its affiliates for purposes of Section II(h) of the General Conditions and

Section III(b) of the Definitions, as long as the following conditions were met:

(1) The Merger Transaction resulted in Citigroup receiving, among other things, approximately 4 percent of the Legg Mason voting common stock (Legg Mason Common Stock), and non-voting convertible preferred stock (Legg Mason Preferred Stock) which was convertible into approximately 10 percent of Legg Mason Common Stock (together, Legg Mason Stock).

(2) Following the Merger Transaction, Legg Mason Stock was being held by a subsidiary of Citigroup that is not in the vertical chain of ownership with CGMI, and CGMI was not controlling or controlled by the entity holding Legg Mason Stock.

(3) Legg Mason Preferred Stock was converted into Legg Mason Common Stock only after it was sold by Citigroup.

(4) Citigroup engaged in efforts to sell Legg Mason Preferred Stock within a reasonable amount of time pursuant to an underwritten broadly distributed public offering.

(5) Citigroup reduced its holdings in Legg Mason Stock below 10 percent within three months following the consummation of the Merger Transaction.

(6) Citigroup did not participate in any proxy contest or other activities concerning the management of Legg Mason.

(7) Citigroup did not acquire more than 5 percent of Legg Mason Common Stock at any time.

(8) Brandywine and Western operated as separate and autonomous business units within Legg Mason.

(9) The Consulting Group had no ability to exercise control or influence over the business of Brandywine or Western. Similarly, Brandywine and Western had no ability to exercise control or influence over the business of the Consulting Group.

(10) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, with respect to each Portfolio for which Brandywine or Western currently serves as a Sub-Adviser, the percentage of Portfolio assets allocated for management purposes to these entities by the Consulting Group was not increased.

(11) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, Brandywine and Western were not permitted to manage assets for any other Portfolio in the TRAK Program.

(12) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, the fee rates paid to Brandywine and Western were not increased.

(13) For so long as Citigroup's ownership interest in Legg Mason remained greater than 10 percent, no other affiliates of Legg Mason were retained to act as Sub-Advisers in the TRAK Program.

(14) The Board of Trustees of the Trust for the Consulting Group subjected Brandywine and Western to the same review process and fiduciary requirements as in effect for all other Sub-Advisers, and to the same performance standards.

Section V. Effective Dates

This exemption is effective: (1) December 1, 2005 until March 10, 2006 with respect to the limited exception described in Section IV; (2) as of December 1, 2005 with respect to the Covered Transactions, the General Conditions and the Definitions that are described in Sections I, II and III; and (3) as of January 1, 2008 with respect to the new fee offset procedure.

Signed at Washington, DC, this 20th day of March, 2009.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–6621 Filed 3–25–09; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2009–10, Camino Medical Group, Inc. Employee Retirement Plan (the Retirement Plan) D–11336; and 2009–11, JPMorgan Chase Bank, National Association, D–11471

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Camino Medical Group, Inc. Employee Retirement Plan
(the Retirement Plan)
Located in Sunnyvale, CA
[Prohibited Transaction Exemption 2009–10;
Exemption Application No. D–11336]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective July 1, 2003 until December 14, 2007, to (1) the leasing (the 2003 Leases) of a medical facility (the Urgent Care Facility) and a single family residence

[1] For purposes of this exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

converted to an office (the Residence) by the Retirement Plan to CMG, the sponsor of the Retirement Plan and a party in interest with respect to such plan; and (2) the exercise, by CMG, of options to renew the 2003 Lease with respect to the Residence for one year and the 2003 Lease with respect to the Urgent Care Facility for three years, provided that the following conditions were or will be met:

(a) The terms and conditions of each 2003 Lease were no less favorable to the Retirement Plan than those obtainable by the Retirement Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Retirement Plan was represented for all purposes under the 2003 Leases, and during each renewal term, by a qualified, independent fiduciary.

(c) The independent fiduciary negotiated, reviewed, and approved the terms and conditions of the 2003 Leases and the options to renew such leases on behalf of the Retirement Plan and determined that the transactions were appropriate investments for the Retirement Plan and were in the best interests of the Retirement Plan and its participants and beneficiaries.

(d) The rent paid to the Retirement Plan under each 2003 Lease, and during each renewal term, was no less than the fair market rental value of the Urgent Care Facility and the Residence, as established by a qualified, independent appraiser.

(e) The rent was subject to adjustment at the commencement of the second year of each 2003 Lease and each year thereafter by way of an independent appraisal. A qualified, independent appraiser was selected by the independent fiduciary to conduct the appraisal. If the appraised fair market rent of the Urgent Care Facility or the Residence was greater than that of the current base rent, then the base rent was revised to reflect the appraised increase in fair market rent. If the appraised fair market rent of the Urgent Care Facility or the Residence was less than or equal to the current base rent, then the base rent remained the same.

(f) Each 2003 Lease was triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by CMG, as lessee.

(g) The independent fiduciary—

(1) Monitored CMG's compliance with the terms of each 2003 Lease and the conditions of the exemption throughout the duration of such leases and the renewal terms, and was responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of CMG under the terms of such leases.

(2) Expressly approved the renewals of the 2003 Leases beyond their initial terms.

(3) Determined whether the rent had been paid on a monthly basis and in a timely manner based on documentation provided by CMG.

(4) Determined whether CMG owed the Camino Medical Group, Inc. Matching 401(k) Plan (the 401(k) Plan) or the Retirement Plan additional rent by reason of CMG's leasing of the Urgent Care Facility and/or the Residence from such plans prior to July 1, 2003 and ensured that CMG made such payments to the Plans, including reasonable interest.

(h) At all times throughout the duration of each 2003 Lease and each respective renewal term, the fair market value of the Urgent Care Facility and the Residence did not exceed 25 percent of the value of the total assets of the Retirement Plan.

(i) Within 90 days of the publication of the grant notice in the **Federal Register**, Palo Alto Medical Foundation, the successor in interest to CMG, (1) files a Form 5330 with the Internal Revenue Service and pays all applicable excise taxes that are due with respect to the leasing of the Urgent Care Facility and the Residence to CMG by the 401(k) Plan and/or the Retirement Plan prior to July 1, 2003; and (2) provides a copy of the cancelled check and other documentary evidence to the Department indicating that the taxes were correctly computed and paid within 45 days of such payment.

DATES: *Effective Date:* This exemption is effective from July 1, 2003 until December 14, 2007.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 24, 2008 at 73 FR 79168.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

JPMorgan Chase Bank, National Association, Located in Columbus, Ohio

[Prohibited Transaction Exemption 2009–11; Exemption Application No. D–11471]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities to affiliates of JPMorgan Chase & Co. Inc. (JPMCC), which are engaged in JPMCC's capital markets line of business (referred to herein as Global Capital Markets), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which JPMCC through its Financing & Market Products or any other similar division of JPMCB or a U.S. affiliate of JPMCC (collectively, FMP) acts as securities lending agent or sub-agent, and for which JPMCC, through its Investor Services line of Business, as operated through JPMCB and its affiliates (Investor Services), may also act as directed trustee or custodian, and (2) to the receipt of compensation by FMP in connection with the proposed transactions, provided the general conditions set forth below in Section II are met.

Section II. General Conditions

(a) This exemption applies to loans of securities to Global Capital Markets, as operated in the United States (J. P. Morgan Securities Inc., or the U.S. Affiliated Borrower) and in the following foreign countries: the United Kingdom (J. P. Morgan Securities Ltd.), Canada (J. P. Morgan Securities Canada Inc.), Australia (J. P. Morgan Securities Australia Limited), Japan (J. P. Morgan Securities Japan Co. Ltd) (collectively, the Foreign Affiliated Borrowers). Global Capital Markets will also include other companies or their successors which are affiliated with either JPMCB or JPMCC within these countries.[2]

(b) For each Client Plan, neither Investor Services, Global Capital Markets, FMP, nor any other division or affiliate of JPMCC has or exercises discretionary authority or control with respect to the investment of the assets of Client Plans involved in the transaction (other than with respect to the lending of securities designated by an independent fiduciary of a Client Plan as being available to lend and the investment of cash collateral after securities have been loaned and collateral received), or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, including decisions concerning a Client Plan's acquisition and disposition of securities available for loan.

(i) Notwithstanding the foregoing, for the period from March 16, 2008,

[2] Unless otherwise noted, Global Capital Markets will consist collectively of the above referenced entities.

through June 14, 2008, section II(b) shall not apply to the lending of securities by a Client Plan to Bear Stearns Affiliates, provided that (i) no division or affiliate of JPMCC that has discretionary authority or control with respect to the investment of the assets of the Client Plan involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, has access to information regarding whether the particular securities have been loaned to a Bear Stearns Affiliate, and (ii) an Independent Fiduciary (as defined in section IV(f)) conducts a Review (as defined in section IV(g)) of Client Plan securities loans to Bear Stearns Affiliates and within 180 days of the date of publication of this proposed amendment in the **Federal Register**, issues a written report presenting its specific findings.

(c) Before a Client Plan participates in a securities lending program and before any loan of securities to Global Capital Markets is effected, a Client Plan fiduciary which is independent of Global Capital Markets must have—

(1) Authorized and approved a securities lending authorization agreement with FMP, where FMP is acting as the securities lending agent;

(2) Authorized and approved the primary securities lending authorization agreement with the primary lending agent where FMP is lending securities under a sub-agency agreement with the primary lending agent; [3] and

(3) Approved the general terms of the securities loan agreement (the Loan Agreement) between such Client Plan and Global Capital Markets, the specific terms of which are negotiated and entered into by FMP.

Notwithstanding the foregoing, effective March 16, 2008, section II(c)(3) shall be deemed satisfied with respect to loans of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent, provided (i) FMP provided to such Client Plans no later than April 15, 2008, a description of the general terms of the securities loan agreements between such Client Plans and the Bear Stearns Affiliates and (ii) at the time of providing such information, FMP notified each Client Plan that it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates. If a written objection is received from a Client Plan within the 10-day period, FMP shall cease to make any new securities loans on behalf of that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

(d) Each loan of securities by a Client Plan to Global Capital Markets is at market rates and terms which are at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party.

(e) The Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice whereupon Global Capital Markets delivers securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within—

(1) The customary delivery period for such securities;

(2) Five business days; or

(3) The time negotiated for such delivery by the Client Plan and Global Capital Markets, whichever is less.

(f) The Client Plan receives from Global Capital Markets (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to Global Capital Markets, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a U.S. bank, which is a person other than Global Capital Markets or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time or, alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans), having, as of the close of business on the preceding business day, a market value (or, in the case of a letter of credit, a stated amount) initially equal to at least the percentage required in PTE 2006–16 (as amended from time to time) but in no case less than 102 percent of the market value of the loaned securities.

(g) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of business on that day, Global Capital Markets delivers additional collateral on the following day such that the market value of the collateral again equals 102 percent or the percentage otherwise required by 2006–16.

(h) The Loan Agreement gives the Client Plan a continuing security interest in, title to, or the rights of a secured creditor with respect to the collateral and a lien on the collateral and FMP monitors the level of the collateral daily.

(i) Before entering into a Loan Agreement, Global Capital Markets furnishes FMP the most recently available audited and unaudited statements of the financial condition of the applicable borrower within Global Capital Markets. Such statements are, in turn, provided by FMP to the Client Plan. At the time of the loan, Global Capital Markets gives prompt notice to the Client Plan fiduciary of any material adverse change in the borrower's financial condition since the date of the most recent financial statement furnished to the Client Plan. In the event of any such changes, FMP requests approval of the Client Plan to continue lending to Global Capital Markets before making any such additional loans. No new securities loans will be made until approval is received and each loan constitutes a representation by Global Capital Markets that there has been no such material adverse change.

Notwithstanding the foregoing, effective March 16, 2008, section II(i) shall be deemed satisfied with respect to loans of securities by Client Plans to Bear Stearns Affiliates by FMP as securities lending agent or sub-agent, provided (i) FMP provided to such Client Plans no later than April 15, 2008, the most recently available audited and unaudited consolidated statements of the financial condition of the parent company of the applicable Bear Stearns Affiliates and the parent company's subsidiaries, and notice of any material adverse change in financial condition since the date of the most recent financial statement being furnished to the Client Plans, and (ii) at the time of providing such information, FMP notified each Client Plan that it had 10 days to object in writing to the continued lending of securities to the Bear Stearns Affiliates. If a written objection is received from a Client Plan within the 10-day period, FMP shall cease to make any new securities loans on behalf of that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP

[3] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than FMP, beyond that provided pursuant to PTE 2006–16.

shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan. Loans of securities by such Client Plans to a Bear Stearns Affiliate entered into on or after April 15, 2008, under the same securities loan agreement terms disclosed in accordance with the second paragraph of section II(c)(3) above shall be deemed to satisfy this section II(i), absent a material adverse change in the financial condition of the particular Bear Stearns Affiliate since April 15, 2008 (in which event the provisions of the first paragraph of this section II(i) shall apply).

(j) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (In the case of cash collateral, the Client Plan may pay a loan rebate or similar fee to Global Capital Markets if such fee is not greater than the fee the Client Plan would pay an unrelated party in a comparable arm's length transaction.)

(k) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 2006–16 (as amended from time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans).

(l) If Global Capital Markets defaults on the securities loan or enters bankruptcy, the collateral will not be available to Global Capital Markets or its creditors, but will be used to make the Client Plan whole. In this regard,

(1) In the event a Foreign Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, JPMCB will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, FMP will pay the Client Plan cash equal to—

(i) The market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus

(ii) All the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus

(iii) Interest from such date to the date of payment.

The lending Client Plans will be indemnified in the United States for any loans to the Foreign Affiliated Borrowers.

(2) In the event the U.S. Affiliated Borrower defaults on a loan, JPMCB will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, either JPMCB or the U.S. Affiliated Borrower will indemnify the Client Plan for any shortfall in the collateral plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan for legal actions arising out of the default on the loans or failure to indemnify property under this provision).

(m) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including all interest, dividends and distributions on the loaned securities during the loan period.

(n) Prior to any Client Plan's approval of the lending of its securities to Global Capital Markets, copies of the notice of proposed exemption and the final exemption, and, effective November 7, 2008, the proposed amendment to the exemption and, upon publication in the **Federal Register**, the final amendment to the exemption, are provided to the Client Plan; provided, that for Client Plans of FMP as of the date of the proposed amendment or final amendment, as applicable, is published in the **Federal Register**, section II(n) shall be deemed satisfied if such notice is provided to the Client Plan within 15 days of publication in the **Federal Register**.

(o) Each Client Plan receives a monthly report with respect to its securities lending transactions, including but not limited to the information described in Representation 24 of the proposed exemption for PTE 99–34 (64 FR 34281, 6/25/99), so that an independent fiduciary of the Client Plan may monitor the securities lending transactions with Global Capital Markets.

(p) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Global Capital Markets; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (*i.e.*, the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with Global Capital Markets, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(In addition, none of the entities described above are formed for the sole purpose of making loans of securities.)

(q) With respect to each successive two week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, will be to unrelated borrowers.

(r) In addition to the above, all loans involving Foreign Affiliated Borrowers within Global Capital Markets have the following supplemental requirements:

(1) Such Foreign Affiliated Borrower is registered as a bank or broker-dealer with—

(i) The Financial Services Authority in the case of J. P. Morgan Securities Ltd.;

(ii) The Office of the Superintendent of Financial Institutions (OSFI), in the case of J.P. Morgan Securities Canada Inc.;

(iii) The Australian Securities & Investments Commission in the case of J.P. Morgan Securities Australia Ltd.; and

(iv) The Financial Services Agency in the case of J.P. Morgan Securities Japan Ltd.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (the 1934 Act) which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of credit of U.S. banks or any combination thereof, or other collateral permitted under PTE 2006–16 (as amended from time to time, or alternatively, any additional or superseding class exemption that may be issued to cover securities lending by employee benefit plans);

(4) All collateral is held in the United States;

(5) The situs of the Loan Agreement is maintained in the United States;

(6) The lending Client Plans are indemnified by JPMCB in the United States for any transactions covered by this exemption with the Foreign Affiliated Borrower so that the Client Plans do not have to litigate in a foreign jurisdiction nor sue the Foreign Affiliated Borrower to realize on the indemnification; and

(7) Prior to the transaction, each Foreign Affiliated Borrower enters into a written agreement with FMP on behalf of the Client Plan whereby the Foreign Affiliated Borrower consents to service of process in the United States and to the jurisdiction of the courts of the United States with respect to the transactions described herein.

(s) JPMCB or J.P. Morgan Securities Inc. (JPMSI) maintains, or causes to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (t)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of JPMCB or JPMSI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than JPMCB or JPMSI shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (t)(1).

(t)(1) Except as provided in subparagraph (t)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (s) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(t)(2) None of the persons described above in paragraphs (t)(1)(ii)–(t)(1)(iv) of this paragraph (t)(1) are authorized to examine the trade secrets of JPMCB, the U.S. Affiliated Borrowers, or the Foreign Affiliated Borrowers or commercial or financial information which is privileged or confidential.

Section III. Temporary Exemption for Investment in Bear Stearns Master Note

The restrictions of sections 406(a)(1)(A) through (D) and sections 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the investment of securities lending collateral by JPMCB, as the investment manager of such collateral on behalf of the Client Plan or Collective Fund that has lent the securities, in the Bear Stearns Master Note (as defined in paragraph (b) below), provided that the condition set forth below in paragraph (a) is met.

(a) Repayment of the Bear Stearns Master Note is unconditionally guaranteed by JPMCB.

(b) For purposes of this Section III, the term ''Bear Stearns Master Note'' means the $750 million Evergreen Advance dated October 23, 2007, under the Master Note Agreement dated February 9, 2007, by and between JPMCB as agent for a group of lending entities and certain subsidiaries of The Bear Stearns Companies Inc., which matured on June 13, 2008, and was paid in full.

Section IV. Definitions

For purposes of this exemption,

(a) The terms ''JPMCB'' and ''JPMCC'' as referred to herein in Sections I, II and III, refer to JPMorgan Chase Bank, National Association, and its parent, JPMorgan Chase & Co., Inc.

(b) The term ''affiliate'' means any entity now or in the future, directly or indirectly, controlling, controlled by, or under common control with JPMCC or its successors. (For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(c) The term ''U.S. Affiliated Borrower'' means an affiliate of JPMCC that is a bank supervised by the United States or a State, or a broker-dealer registered under the 1934 Act.

(d) The term ''Foreign Affiliated Borrower'' means an affiliate of JPMCC that is a bank or a broker-dealer which is supervised by—

(i) The Financial Services Authority in the United Kingdom;

(ii) OSFI in Canada;

(iii) The Australian Securities & Investments Commission in Australia; and

(iv) The Financial Services Agency in Japan.

(e) The term ''Bear Stearns Affiliate'' means The Bear Stearns Companies Inc. and its affiliates as constituted on March 15, 2008.

(f) The term ''Independent Fiduciary'' means a fiduciary who is independent of and unrelated to JPMCB and Bear Stearns Affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB and Bear Stearns Affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with JPMCB or a Bear Stearns Affiliate;

(ii) Such fiduciary, or any employee of the fiduciary who will be involved in the Review (as defined in section IV(g)), or any officer, director, partner, or highly compensated employee (as

defined in section 4975(e)(2)(H) of the Code) of the fiduciary, is an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate; or any member of the business segment performing the independent fiduciary services is a relative of an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate.

However, if an individual is a director of the fiduciary and an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate, and if he or she abstains from participation in the Review, then this section IV(f)(ii) shall not apply.

For purposes of this section IV(f)(ii), the term officer means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for the fiduciary, JPMCB, or a Bear Stearns Affiliate.

(iii) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption, except that the Independent Fiduciary may receive compensation from JPMCB for acting as Independent Fiduciary as contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decision; or

(iv) The annual gross revenue received by such fiduciary, during any year of its engagement, from JPMCB and Bear Stearns Affiliates exceeds five percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(g) The term ''Review'' means a test by an Independent Fiduciary of a representative sample of transactions falling under section II(b)(i) of this Exemption that is sufficient in size to afford the Independent Fiduciary a reasonable basis to make findings as to compliance with the following:

(i) Whether allocation of the opportunity to lend securities to the applicable client plan account was in accordance with JPMCB's internal securities loan allocation procedures;

(ii) Whether the loan of securities by the Client Plan to Bear Stearns Affiliates was at market rates and terms which were at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party (as required by section II(d) hereof);

(iii) Whether with respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans by FMP, in the aggregate, were to unrelated borrowers (as required by section II(q) of the exemption); and

(iv) Whether investment by the applicable Client Plan in the underlying securities that were loaned was consistent with the investment guidelines for the particular Client Plan account.

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99–34, refer to the proposed exemption (64 FR 34281, June 25, 1999), the grant notice (64 FR 46419, August 25, 1999) and the notice of proposed amendment (the Notice)(73 FR 63200, October 23, 2008).

DATES: *Effective Date:* Except as otherwise specified herein, the amendment is effective as of August 25, 1999.

Written Comments: The Department received one comment with respect to the Notice, which was filed by the Applicants. The Applicants' commentary, a discussion of the Department's views in response thereto and the modifications to the proposed exemption are discussed below.

The Applicants noted that the proposed amendments to sections II(c)(3) and II(i) would deem certain disclosure conditions of the exemption to be satisfied with respect to Bear Stearns Affiliate loans ''for the period between March 16, 2008, and April 15, 2008,'' provided that the required information was furnished to the plans no later than April 15, 2008. The special relief would expire on April 15, 2008, and then preexisting disclosure conditions, which require disclosure prior to participating in a securities lending program and before any loans are effected, would apply. Applicants believe that loans to Bear Stearns Affiliates that were made before April 15, 2008, in reliance on the special relief, might be deemed non-compliant after April 15, 2008. Additionally, according to the Applicants, reinstating the general rule as of April 15, 2008, might also mean that further loans to Bear Stearns Affiliates could not be made after that date even though the required information has now been provided.

The Applicants suggest that removing the end date on the period for which relief is provided would address this concern. Relief would be limited to loans for those Client Plans that were clients of FMP during the March 16 to April 15 period, because those are the only plans that will have received the required disclosures by the April 15, 2008 date. For post-April 15 clients, the general rules of the exemption would apply. With that understanding of the applicability of the special relief, the Department has revised the final exemption accordingly.

The Applicants also suggest that with respect to section II(i), language be added to clarify that the special relief would not supersede the requirement to update the provided information in the event of a material adverse change to the borrower's financial condition. The Applicants provided the following sentence to be added to section II(i):

> Loans of securities by such Client Plans to a Bear Stearns Affiliate entered into on or after April 15, 2008, under the same securities loan agreement terms disclosed in accordance with the second paragraph of section II(c)(3) above shall be deemed to satisfy this section II(i), absent a material adverse change in the financial condition of the particular Bear Stearns Affiliate since April 15, 2008 (in which event the provisions of the first paragraph of this section II(i) shall apply).

The Department has added Applicants' proposed sentence at the end of the new paragraph in section II(i).

Applicants request that an additional sentence be added to the new paragraphs in section II(c)(3) and II(i) to give effect to certain provisions previously only described in the disclosure provisions of these paragraphs. The disclosure provisions in question require that FMP notify each Client Plan of its ability to object to continued securities lending to Bear Stearns Affiliates, and detail the process that will occur if a Client Plan objects. Applicants' proposed sentence states that:

> If a written objection is received from a Client Plan within the 10-day period, FMP shall cease to make any new securities loans on behalf of that Client Plan to Bear Stearns Affiliates; any securities loans made on behalf of that Client Plan to Bear Stearns Affiliates prior to the date the objection is received shall be covered by this exemption, and FMP shall seek to expeditiously terminate such securities loan in a manner approved by the Client Plan.

The Department concurs; however, to avoid redundancy, the Department shortened the disclosure provisions preceding Applicants' requested sentences.

With respect to section II(n), which requires copies of the notice of proposed exemption and final exemption to be

provided to Client Plans, Applicants suggest that the section be amended to require disclosure of the notice of proposed amendment and final amendment. The Department has revised that section as suggested.

Applicants additionally request a revision of the definition of ''Independent Fiduciary,'' in particular, the language describing the relationships that will cause the fiduciary not to be independent. The language in question, section IV(f)(ii) of the exemption, reads: ''Such fiduciary, or any officer, director, partner, employee or relative of the fiduciary, is an officer, director, partner or employee of JPMCB or a Bear Stearns Affiliate (or is a relative of such persons).''

Applicants state that the firm that has been retained as Independent Fiduciary is U.S. Trust, Bank of America Private Wealth Management, a business unit of Bank of America, N.A. Bank of America has entered into a definitive agreement to sell the Special Fiduciary Services (''SFS'') business segment of U.S. Trust, which is performing the Independent Fiduciary services for purposes of the exemption, to Evercore Partners (Evercore), in a transaction expected to close in early 2009, before U.S. Trust will be issuing its Independent Fiduciary report. Following this transaction, SFS will operate as Evercore Trust Company, N.A., a subsidiary of Evercore, which will assume the Independent Fiduciary role.

Given the size of JPMCB and Bear Stearns, Applicants assert that relationships of individuals within these organizations would be difficult to monitor, and should not affect the fiduciary's independence unless they involve persons with responsibility for the particular transaction. More specifically, Applicants informed the Department that monitoring relatives of the various classes of people was administratively burdensome. Applicants additionally request that a director of the fiduciary who is also an officer, director, partner or highly compensated employee of JPMCB or a Bear Stearns Affiliate be permitted to abstain from participation in the Review rather than cause the fiduciary to fail to be independent. Finally, Applicants requested that the exemption contain a definition of the term ''officer.''

The Department has revised the language to reduce the administrative burden to Applicants while continuing to protect plan participants and beneficiaries. In particular, the Department notes that the definition requires tracking the relatives only of the members of the SFS business unit performing the independent fiduciary services. The language, as revised, reads:

(f) The term ''Independent Fiduciary'' means a fiduciary who is independent of and unrelated to JPMCB and Bear Stearns Affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to JPMCB and Bear Stearns Affiliates if:

* * *

(ii) Such fiduciary, or any employee of the fiduciary who will be involved in the Review (as defined in section IV(g)), or any officer, director, partner, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of the fiduciary, is an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate; or any member of the business segment performing the independent fiduciary services is a relative of an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate.

However, if an individual is a director of the fiduciary and an officer, director, partner or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of JPMCB or a Bear Stearns Affiliate, and if he or she abstains from participation in the Review, then this section IV(f)(ii) shall not apply.

For purposes of this section IV(f)(ii), the term officer means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for the fiduciary, JPMCB, or a Bear Stearns Affiliate.

Finally, Applicants address the definition of ''Review'' (section IV(g)(ii)) which states that the Independent Fiduciary will conduct a review of:

[w]hether the loan of securities by the Client Plan to Global Capital Markets was at market rates and terms which were at least as favorable to such Client Plan as if made at the same time and under the same circumstances to an unrelated party * * *.

Applicants' position is that the scope of the Independent Fiduciary's review is limited to securities loans to Bear Stearns Affiliates, and accordingly, references in this section to Global Capital Markets should be changed to Bear Stearns Affiliates. The Department has made the requested change.

DATES: *Effective Date:* Except as otherwise specified herein, the amendment is effective as of August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd of the Department at (202) 693–8554. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of March, 2009.

Ivan Strasfeld,

Director of Exemption, Determinations Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–6620 Filed 3–25–09; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. and Proposed Exemptions; D–11397, PNC Financial Services Group, Inc. (PNC Financial); D–11552, Barclays Bank PLC and Barclays Capital Inc. (Collectively, Barclays or the Applicants; D–11536 Through D–11550, Individual Retirement Accounts (the IRAs) for Ralph Hartwell, Harold Latin, Kenlon Johnson, Carol Johnson, Shanon Taylor, Michael Ball, Dianne Barkas, Roy Barkas, Harry DeWall, Alice Pike, Steven Larsen, C. Timothy Hopkins, Wayne Meuleman, Robert L. Miller, and Richard T. Scott (Collectively, the Participants), et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffitt.betty@dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

PNC Financial Services Group, Inc. (PNC Financial) Located in Pittsburgh, Pennsylvania [Application No. D–11397]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990):

Section I—Exemption for Receipt of Fees

In connection with the investment in an open-end investment company (a Fund or Funds), as defined, below, in Section IV(e), by certain employee benefit plans (Client Plan or Client Plans) for which PNC, as defined, below, in Section IV(a), serves as a fiduciary and is a party in interest with respect to such Client Plan(s), if the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (F) [1] of the Code, shall not apply, effective September 29, 2006, to:

(a) The receipt of fees by PNC from a Fund where BlackRock, as defined, below, in Section IV(b), acts as the investment adviser for such Fund, and the receipt of fees by BlackRock for the provision of investment advisory services, or similar services, to such Fund;

(b) the receipt of fees by PNC from a Fund for providing certain service(s) (Secondary Service(s)), as defined, below, in Section IV(i), to such Fund; and

(c) the receipt of fees by PNC from BlackRock in connection with administrative service(s) (Mutual Fund Administration Service(s)), as defined, below, in Section IV(l), provided to a Fund in which a Client Plan invests; provided that the conditions, as set forth in Section II and Section III, below, were satisfied, as of the effective date of this exemption and thereafter.

Section II—Specific Conditions

(a) PNC, serving as a fiduciary for a Client Plan, satisfies any one (but not all) of the following:

(1) A Client Plan invested in a Fund does not pay any plan-level investment management fee, investment advisory fee, or similar fee (Plan-Level Fee(s)) to PNC with respect to any of the assets of such Client Plan which are invested in shares of such Fund for the entire period of such investment (the Offset Fee Method). This condition does not preclude the payment of investment advisory fees or similar fees (Fund-Level Fee(s)) by a Fund to BlackRock under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act);

(2) A Client Plan invested in a Fund pays an investment management fee or similar fee based on total assets of such Client Plan from which a credit has been subtracted representing such Client Plan's *pro rata* share of

[1] For purposes of this exemption reference to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

investment advisory fees or similar fees paid by such Fund to BlackRock (the Subtraction Fee Method). If, during any fee period for which a Client Plan has prepaid its investment management or similar fee, such Client Plan purchases shares of such Fund, the requirement of this Section II(a)(2) shall be deemed met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the assets of such Client Plan invested in shares of such Fund: (i) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (ii) is returned to such Client Plan no later than during the immediately following fee period, or (iii) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this Section II(a)(2), a fee shall be deemed to be prepaid for any fee period, if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) A Client Plan invested in a Fund receives a ''a credit'' [2] (the Credit Fee Method) of such Client Plan's proportionate share of all fees charged to such Fund by BlackRock for investment advisory services or similar services for a particular month: (1) Effective for the period, September 29, 2006, through December 31, 2008, on the *earlier* of either: (a) The same day as PNC receives a fee from BlackRock for Mutual Fund Administration Services provided for that month to such Fund by PNC, or (b) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued, or (2) effective for the period beginning, January 1, 2009, and continuing thereafter, on a date which is no later than one business day after BlackRock receives fees from the Fund for investment advisory services, or similar services, provided for that month to such Fund by BlackRock. The crediting of all such fees to such Client Plan by PNC is audited by an independent accounting firm (the Auditor) on at least an annual basis to verify the proper crediting of such fees to such Client Plan.

[2] PNC Financial represents that it would be accurate to describe ''the credit'' as a ''credited dollar amount'' to cover situations in which the credited amount is used to acquire additional shares of a Fund, rather than being held by a Client Plan in the form of cash. It is represented that the standard practice is to reinvest the ''credited dollar amount'' in additional shares of the same Fund with respect to which the fees were credited.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share, as defined, below, in Section IV(f), at the time of the transaction, and is the same price which would have been paid or received for such shares by any other investor in such Fund at that time;

(c) PNC, including any officer or director of PNC, does not purchase shares of a Fund from any Client Plan or sell shares of a Fund to any Client Plan;

(d) A Client Plan does not pay sales commissions in connection with any purchase or sale of shares of a Fund, and a Client Plan does not pay redemption fees in connection with any sale of shares to a Fund, unless (1) such redemption fee is paid only to a Fund, and

(2) The existence of such redemption fee is disclosed in the prospectus for such Fund in effect both at the time of any purchase of such shares and at the time of such sale;

(e) The combined total of all fees received by PNC for services provided by PNC:

(1) To Client Plans, and

(2) To Funds in which Client Plans invest is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act;

(f) PNC does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the subject transactions;

(g) A Client Plan is not an employee benefit plan sponsored or maintained by PNC;

(h) A second fiduciary (Second Fiduciary), as defined, below, in Section IV(h), who is acting on behalf of a Client Plan receives, in advance of any initial investment by a Client Plan in a Fund, full and detailed written disclosure of information concerning such Fund, including but not limited to:

(1) A current prospectus for each Fund in which such Client Plan is considering investing;

(2) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(i) Any investment advisory or similar services to be paid by such Fund to BlackRock,

(ii) Any Secondary Services to be paid by such Fund to PNC,

(iii) Any Mutual Fund Administration Services to be paid by BlackRock to PNC, and

(iv) All other fees to be charged to or paid by a Client Plan and by such Fund;

(3) The reasons why PNC, acting as fiduciary for such Client Plan, may consider investment in such Fund to be appropriate for such Client Plan;

(4) A statement describing whether there are any limitations applicable to PNC with respect to which assets of a Client Plan that may be invested in such Fund, and if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary, acting on behalf of a Client Plan, a copy of the proposed exemption and a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) On the basis of the information described, above, in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan, authorizes in writing: (1) The investment of the assets of such Client Plan in shares of each particular Fund; and (2) the fees received by PNC and by BlackRock in connection with services provided by PNC and by BlackRock to such Fund. Such authorization by a Second Fiduciary must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(j)(1) All authorizations, described, above, in Section II(i), made by a Second Fiduciary, regarding: (i) Investments by a Client Plan in a Fund, (ii) fees paid for investment advisory services or similar services provided by BlackRock to such Fund, (iii) fees paid for Secondary Services provided by PNC to such Fund, and (iv) fees paid by BlackRock to PNC for Mutual Fund Administration Services provided by PNC to such Fund, shall be terminable at will by the Second Fiduciary, acting on behalf of such Client Plan, without penalty to such Client Plan, upon receipt by PNC of a written notice of termination. A form (the Termination Form), as defined, below, in Section IV(j), expressly providing an election to terminate the authorizations, described, above, in Section II(i), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually. However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) and (l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), unless at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided, pursuant to Section II(k) and (l), below.

(2) The instructions for the Termination Form must include the following statements:

(i) The authorization, described, above, in Section II(i), is terminable at will by the Second Fiduciary, acting on

behalf of a Client Plan, without penalty to such Client Plan, upon receipt by PNC of written notice from such Second Fiduciary.

(ii) Failure by such Second Fiduciary to return the Termination Form on behalf of such Client Plan will be deemed to be an approval by the Second Fiduciary and will result in the continuation of the authorization, as described, above, in Section II(i), of PNC to engage in the transactions which are the subject of this exemption.

(k) For a Client Plan invested in a Fund which uses one of the fee methods described, above, in Section II(a)(1), (a)(2), or (a)(3), in the event of a proposed change from one of the fee methods to another or in the event of a proposed increase in the rate of any fee paid by a Fund to BlackRock for any investment advisory service, or similar service that BlackRock provides to such Fund over an existing rate for such services or method of determining the fee for such services, which had been authorized, in accordance with Section II(i), above, by the Second Fiduciary for such Client Plan, at least thirty (30) days in advance of the implementation of such change from one of the fee methods to another or such increase in a fee, PNC will provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of such change from one of the fee methods to another or increase in fee) to the Second Fiduciary of each Client Plan affected by such change from one of the fee methods to another or increased fee. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above, in Section II(j).[3]

(l) In the event of:

(i) A proposed addition of a Secondary Service for which an additional fee is charged; or

(ii) A proposed addition of a Mutual Fund Administration Service provided by PNC to a Fund in which a Client Plan invests and for which an additional fee is charged; or

(iii) A proposed increase in the rate of any fee paid by a Fund to PNC for any Secondary Service, or

(iv) A proposed increase in the rate of any fee paid by BlackRock to PNC for Mutual Fund Administration Services provided to such Fund, or

(v) A proposed increase in the rate of any fee paid for Secondary Services or for Mutual Fund Administration Services that results from the decrease in the number or kind of services performed by PNC for such fee over an existing rate for services which had been authorized, in accordance with Section II(i), by the Second Fiduciary for a Client Plan invested in such Fund, PNC, at least thirty (30) days in advance of the implementation of such fee increase or additional service for which an additional fee is charged, will provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of the additional service for which an additional fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each Client Plan invested in such Fund which is proposing to increase fees or add services for which an additional fee is charged. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above in Section II(j).

(m) On an annual basis, PNC, serving as fiduciary to a Client Plan, provides the Second Fiduciary of such Client Plan invested in a Fund with:

(1) A copy of the current prospectus for such Fund in which such Client Plan invests;

(2) Upon the request of such Second Fiduciary, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by such Fund to PNC and all fees paid by BlackRock to PNC for Mutual Fund Administration Services;

(3) A copy of the annual financial disclosure report which includes information about Fund portfolios, as well as the audit findings of the independent Auditor, within sixty (60) days of the preparation of such report; and

(4) Oral or written responses to inquiries of the Second Fiduciary of such Client Plan, as such inquiries arise.

(n) All dealings between a Client Plan and a Fund are on a basis no less favorable to such Client Plan than dealings between such Fund and other shareholders invested in such Fund.

Section III—General Conditions

(a) PNC maintains for a period of six (6) years the records necessary to enable the persons described, below, in Section III(b) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of PNC, the records are lost or destroyed prior to the end of the six-year period, and

(2) No party in interest other than PNC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by Section III(b), below.

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of a Fund owned by such Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of PNC, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) The term, ''PNC,'' means PNC Financial, and any affiliate thereof, as defined, below in Section IV(c).

(b) The term, ''BlackRock,'' means BlackRock, Inc., and any affiliate thereof, as defined, below in Section IV(c).

(c) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

[3] It is represented that PNC furnished only disclosure, not advanced notice, of a mid-2007 advisory fee change to the Second Fiduciaries of Client Plans invested in Funds using the Credit Fee Method. The change, which resulted in increased fees to BlackRock of 0.5 basis points, (which it is represented was credited back to the Client Plans) occurred effective June 1, 2007, with the disclosure being provided in October 2007, after the effective date of such change. As the Second Fiduciaries of the Client Plans did not receive notification of such increase at least thirty (30) days in advance of the implementation of such increase, the Department, herein, is not providing relief for the receipt of such fee increase by BlackRock.

(d) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, ''Fund(s),'' shall mean any diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, for which BlackRock serves as an investment adviser (but not sub-adviser).

(f) The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales of shares of a Fund calculated by dividing the value of all securities, determined by a method as set forth in the prospectus for such Fund and in the statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(g) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term, ''Second Fiduciary,'' means a fiduciary of a Client Plan who is independent of and unrelated to PNC and BlackRock. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PNC and BlackRock if:

(1) Such fiduciary, directly or indirectly controls, through one or more intermediaries, is controlled by, or is under common control with PNC or with BlackRock;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary, is an officer, director, partner, or employee of PNC or of BlackRock (or is a relative of such persons); or

(3) Such fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of PNC or of BlackRock (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The choice of such Client Plan's investment adviser,

(ii) The approval of any such purchase or sale between such Client Plan and a Fund, and

(iii) The approval of any change in fees, as described, above, in Section II(k) or (l), charged to or paid by such Client Plan in connection with any of the transactions described in Section I above, then Section IV(h)(2), above, shall not apply.

(i) The term, ''Secondary Service(s),'' means a service or services which is/are provided by PNC to a Fund, including but not limited to custodial, accounting, or administrative services. The fees for providing Secondary Services to a Fund are paid to PNC by such Fund.

(j) The term, ''Termination Form,'' means the form supplied to a Second Fiduciary which expressly provides an election to such Second Fiduciary to terminate on behalf of a Client Plan the authorization described, above, in Section II(i).

(k) The term, ''business day,'' means any day that

(i) PNC Financial is open for conducting all or substantially all of its banking functions, and

(ii) The New York Stock Exchange (or any successor exchange) is open for trading.

(l) The term, ''Mutual Fund Administration Services,'' means a service or services which is/are provided by PNC to, or on behalf of, a Fund, including PNC's maintaining records of investments by Client Plans in such Fund, processing Fund transactions for Client Plans, transmitting account statements and shareholder communications, responding to inquiries from Client Plans regarding account balances and dividends, and providing information to such Fund on sales and assisting in monitoring possible market timing. The fees for providing Mutual Fund Administration Services to a Fund are paid to PNC by BlackRock, rather than by such Fund.

DATES: *Effective Date:* If granted, this proposed exemption will be effective as of September 29, 2006.

Summary of Facts and Representations

1. PNC Financial is a bank holding company that owns or controls two banks and a number of non-bank subsidiaries. PNC Financial provides, through its subsidiaries, a wide variety of trust and banking services to individuals, corporations, and institutions. Through its banking subsidiaries, PNC Financial provides investment management, fiduciary and trustee services to employee benefit plans and charitable and endowment assets, and provides non-discretionary services and investment options for defined contribution plans. PNC Financial also provides a range of tailored investment, trust, and private banking products to affluent individuals and families. In addition, PNC Financial and its affiliates provide various types of administrative services to mutual funds, including acting as transfer and disbursing agents and providing custodial and accounting services.

As of June 30, 2006, PNC Financial had $50 billion in assets under management.

2. The Funds are open-end investment companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended. The investment adviser to the Fund is BlackRock Advisors, Inc. (BlackRock Advisors), a wholly-owned subsidiary of BlackRock, Inc. which is a subsidiary of PNC Financial. BlackRock Advisors had $464.1 billion in assets under management, as of June 30, 2006. Based in New York, BlackRock Advisors currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management, and alternative investment products.

The overall management of the Funds, including the negotiation of investment advisory contracts, rests with the Board of Trustees that are elected by the shareholders of the Funds.

3. PFPC Inc. serves as co-administrator, transfer agent, and dividend disbursing agent for the Funds, and its parent company, PFPC Trust Company, serves as custodian for the Funds. Both are indirect wholly-owned subsidiaries of PNC Financial. The distributor for the Funds is BlackRock Distributors, Inc., a wholly-owned subsidiary of PFPC Inc. In the application file, PNC Financial represents that the Funds or their agents may pay fees to broker-dealers that are affiliates of PNC for omnibus account services with regard to shareholders that have invested through such broker-dealers. In this regard, PNC Financial has agreed to the exclusion from the scope of relief under this proposed exemption of brokerage services provided to the Funds by affiliated brokers for the execution of securities transactions engaged in by the Funds.[4]

4. The Client Plans which are the subject of this exemption, include employee benefit plans, as defined in section 3(3) of the Act, and plans, as defined in section 4975(e)(1) of the Code.

PNC Financial, through its subsidiaries and affiliates serves as trustee, investment manager, and in other similar fiduciary capacities with

[4] The Department, herein, is not providing any relief for brokerage services provided to the Funds by affiliated brokers for the execution of securities transactions engaged in by the Funds.

respect to retirement plans qualified under section 401(a) of the Code, individual retirement accounts (IRAs) described in section 408 of the Code, and welfare or other employee benefit plans that constitute ''employee plans,'' as defined in section 3(3) of the Act and/or plans, as defined in section 4975(e)(1) of the Code. These services include discretionary investment management programs under which PNC Financial and its affiliates invest the assets of plans in securities, including shares of open-end investment companies registered under the Investment Company Act, the investment advisers of which may or may not be affiliated with PNC Financial and its affiliates.

The specific Client Plans for which this exemption has been requested are Client Plans to which PNC Financial or one of its affiliates is a fiduciary with investment discretion and whose assets either: (1) Are currently invested in the Funds; or (2) may in the future be invested in the Funds.

The exemption is not being requested for in-house plans of PNC Financial or its affiliates.

5. PNC provides discretionary investment management services to a number of its Client Plans. As of June 30, 2006, PNC performed discretionary asset management services, including through the management of asset allocation models, for 1,102 employee benefit accounts with total assets of $4.299 billion. PNC receives asset-based compensation for its services to the Client Plans, which is paid for either by a Client Plan from its assets or by the sponsor of a Client Plan. In the course of managing assets for Client Plans, PNC may invest the assets of such Client Plans in the Funds as a means of obtaining more specialized management along with enhanced liquidity, economies of scale, and greater diversification than would be available through a separate account arrangement.

Investments by Client Plans in the Funds occur through direct purchases of shares of the Funds on an ongoing basis. PNC also offers an asset allocation product, Capital Directions, which utilizes the Funds.

6. Section 406(a)(1)(A) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a direct or indirect sale or exchange of any property with a party in interest. Section 406(a)(1)(D) of the Act prohibits a fiduciary with respect to a plan from causing such plan to engage in a transaction, if he knows or should know, that such transaction constitutes a transfer to, or use by or for the benefit of, a party in interest, of any assets of such plan.

Sections 3(14)(A) and (B) of the Act define the term, ''party in interest,'' to include, respectively, any fiduciary of a plan and any person providing services to a plan. Under section 3(21)(A)(i) of the Act, a person is a fiduciary with respect to a plan to the extent such person exercises authority or control with respect to the management or disposition of a plan's assets.

Under section 406(b) of the Act, a fiduciary with respect to a plan may not: (1) Deal with the assets of a plan in his own interest or for his own account, (2) in his individual or in any other capacity act in any transaction involving a plan on behalf of a party (or represent a party) whose interests are adverse to the interests of such plan or the interests of its participants or beneficiaries, or (3) receive any consideration for his own personal account from any party dealing with a plan in connection with a transaction involving the assets of such plan.

Where PNC is a fiduciary with respect to a Client Plan, the investment of that Client Plan's assets in a Fund advised by BlackRock may potentially raise issues under sections 406(a)(1)(D), 406(b)(1), 406(b)(2) and 406(b)(3) of the Act, unless an exemption is available.

Reliance on PTE 77–4

7. PTE 77–4 provides an exemption from section 406 of the Act and section 4975 of the Code for the purchase or sale by a plan of mutual fund shares where the investment adviser of such fund: (1) Is a plan fiduciary or affiliated with a plan fiduciary; and (2) is not an employer of employees covered by the plan. The conditions of the PTE 77–4 prohibit the payment of commissions by a plan, limit the payment of redemption fees by such plan, require prior disclosure to and approval by a second fiduciary, and prohibit the payment of double investment advisory fees.

PNC is considered a fiduciary with respect to Client Plans for which it has investment discretion. PNC has in the past used and continues using investment discretion to invest the assets of Client Plans in the Funds. In the past, PNC has relied on the relief provided by PTE 77–4.

Description of Merger

8. On September 29, 2006, Merrill Lynch and Co., Inc. (Merrill Lynch) merged its asset management group, Merrill Lynch Investment Managers (MLIM), with BlackRock Advisors, in return for an interest in BlackRock Advisors. The new company formed by the merger operates under the ''BlackRock'' name and is governed by a Board of Directors with a majority of independent members. As a result of the merger, Merrill Lynch holds a 49.8 percent (49.8%) economic stake and about 45 percent (45%) of the common stock of the new company, and the interest of PNC in the common stock was reduced from approximately 70 percent (70%) to approximately 34 percent (34%) of the new company. Further, as a result of the merger, mutual funds previously advised by MLIM now have BlackRock Advisors, acting as the investment adviser. The Funds previously advised by BlackRock continue to operate as before. It is represented that certain Funds with similar investment objectives will be merged to simplify investment offerings. All Funds will be labeled with the ''BlackRock'' name. For purposes of this proposed exemption, the term, ''Fund(s),'' includes those former Merrill Lynch funds that, following the merger, have BlackRock Advisors as the investment adviser.

Availability of PTE 77–4 after the Merger

9. As discussed above, PTE 77–4 provides relief for investments in a Fund by a Client Plan for which PNC is a fiduciary with investment discretion. However, PTE 77–4 applies only where the investment adviser to such Fund is also a fiduciary to such Client Plan, or an affiliate of such a fiduciary. BlackRock is the investment adviser to the Funds. However, because PNC, rather than BlackRock, is the fiduciary to the Client Plan, PNC is concerned with its reliance on the relief provided under PTE 77–4.

Retroactive Relief

10. The Applicant has requested retroactive relief pursuant to ERISA Technical Release 85–1.[5] It is represented that after the merger was initially approved in February of 2006, PNC decided in June of 2006, to seek an individual exemption. On September 26, 2006, the Department received an application for exemption filed on behalf of PNC which was dated September 25, 2006. It is represented that the application was submitted as soon as possible under the circumstances. In going forward on the basis of the requested relief, PNC represents that it acted in good faith in this matter. Accordingly, PNC requests that the proposed exemption be granted

[5] *Reprinted at* [August 1983–August 1985 Transfer Binder] Pens. Plan Guide (CCH) ¶ 23,672D.

retroactively to September 29, 2006, the date of the merger.

Receipt of Fees pursuant to the Fee Methods

11. PNC represents that, prior to the effective date of this proposed exemption, it relied on PTE 77–4 for exemptive relief for each of the fee methods: (a) The Offset Fee Method, (b) the Subtraction Fee Method, and (c) the Credit Fee Method,[6] as described in Section II(a)(1), (a)(2), and (a)(3) of this proposed exemption. PNC has confirmed that all three fee methods were in place on the effective date of this exemption, September 29, 2006. As of this effective date, the proposed exemption, if granted, would specifically permit PNC to use any one of these three (3) fee methods to comply with the prohibition against a Client Plan paying double investment management fees, investment advisory or similar fees for assets of Client Plans invested in a Fund, provided that the conditions of this exemption are satisfied.

It is represented that where a Client Plan is investing in a Fund, all Fund-Level Fees for advisory or similar services related to that Client Plan's investment in such Fund are subject to the same fee method. It is represented that the fee methods are not applied on a fund-by-fund basis. PNC Financial determines the fee method to be used, subject to plan approval. As a general rule, Client Plan accounts use the Credit Fee Method. An exception to the general rule involves Client Plan accounts investing through Capital Directions, an asset allocation program, which uses the Subtraction Fee Method. IRA's also use the Subtraction Fee Method. The fee method to be used is described in the disclosure provided at the opening of a Client Plan account, and affirmatively approved at that time by the Second Fiduciary for such Client Plan. It is represented that the Second Fiduciary of such Client Plan is notified in advance of any change in the fee method and is provided with a Termination Form. Failure by the Second Fiduciary of such Client Plan to return the Termination Form on behalf of such Client Plan is deemed to be an approval by the Second Fiduciary of a change in the fee method.

[6] It is the view of PNC that the Credit Fee Method is covered by PTE 77–4. The Department does not concur with PNC's view that the Credit Fee Method is covered under PTE 77–4. Accordingly, the Department has determined that no relief is available under 77–4 for PNC's use of the Credit Fee Method.

Offset Fee Method

12. With regard to the Offset Fee Method, PNC represents that it does not charge a Client Plan any direct fees for investment management with respect to such Client Plan's assets invested in the Funds. Such Client Plan pays fees to PNC solely for non-investment trust or custody services. The fees a Client Plan pays for those assets invested in the Funds come solely from the Funds in accordance with certain advisory agreements. The result is that the Plan-Level Fees are offset, and the Client Plan pays only an investment advisory or similar Fund-Level Fee with respect to those plan assets invested in a Fund.

Subtraction Fee Method

13. With regard to the Subtraction Fee Method, PNC represents that under this method, PNC charges a Client Plan a direct investment management fee but credits to the benefit of such Client Plan, as a subtraction to such Client Plan's Plan-Level Fees, its proportionate share of the investment advisory fee for Client Plan assets invested in a Fund and paid to BlackRock (as reduced by any waiver or rebate by BlackRock of such fees to the Fund due to state law or other limits on Fund expenses).[7] The result is that a Client Plan pays only one investment management fee with respect to those assets. The subtraction is solely against those Plan-Level Fees charged by PNC for serving as investment manager, and does not include non-investment management trustee fees.

The credit under this Subtraction Fee Method and the credit under the Credit Fee Method, as discussed below, do not include the co-administrator, custodial, transfer agent, or other non-advisory fees payable by the Funds to PNC, because these services rendered to the Fund are not duplicative of any services provided directly to a Client Plan. The co-administrator services assist in the administration and operation of a Fund, which are matters particular to such Fund. The custodial services provided by PNC to a Fund involve maintaining custody and providing reporting relative to the individual securities owned by such Fund. The custodial services provided by PNC to a Client Plan, by contrast, involve maintaining custody over all or a portion of the Client Plan's assets, which would include the Client Plan's shares in a Fund, but not the assets underlying such Fund shares. These Client Plan custody services are necessary regardless of whether such Client Plan's assets are invested in the Funds.

[7] It is represented that while fees above a certain limit may be waived or rebated by BlackRock, as a technical matter the Funds may pay the excess fees and then simultaneously receive a rebate of the excess amount. For purposes of the Subtraction Fee Method, described in this section, PNC intends to credit to Client Plans only the net fees that BlackRock receives, and not to credit any of the excess fees that have been rebated to the Funds.

Credit Fee Method

14. PNC represents that in 1989 at the time PNC converted its collective investment funds into mutual funds, it started using the Credit Fee Method to avoid duplicative investment advisory fees. PNC's understanding at the time was that the Credit Fee Method was covered by PTE 77–4.[8]

Under the Credit Fee Method, PNC charges standard fees, as applicable to each Client Plan, for serving as trustee and investment manager, without any offset. In this method, a Client Plan receives ''a credited dollar amount'' from BlackRock of such Client Plan's proportionate share of all investment advisory fees charged by BlackRock to the Funds for the particular month (as reduced by any waiver or rebate by BlackRock of such fees, as described above). The result of the Credit Fee Method is that a Client Plan pays its proportionate share of the Fund-Level Fees, but receives a ''credited dollar amount'' of such payment.

It is represented that the standard practice is to reinvest the ''credited dollar amount'' in additional shares of the same Fund with respect to which the fees were credited. The additional shares so acquired are valued at the net asset value on the date the purchase request is transmitted to the Fund, which is the same day the ''credited dollar amount'' is made to the Client Plan's account.

It is represented that the Client Plans could, in theory, request that the ''credited dollar amount'' be made in cash, instead of additional shares. No such request has occurred to date, because it has not been the practice of PNC to notify Client Plans that they have the option to request cash, rather than additional shares. If such a request were to be made, it is represented that the cash would be invested in a money market account pending an investment direction from the investment officer for the account.

The applicant points out that in other exemptions granted by the Department, the timing of the credits generally occurred within one business day of the date that the mutual fund investment adviser received investment advisory fees. In the subject case, the applicant represents that the fees for investment

[8] *See supra.*, footnote 6.

advisory services, or similar services, provided by BlackRock to a Fund that have accrued for a given month are not paid out to BlackRock until certain calculations are confirmed between BlackRock and the accountant for such Fund, which is generally not before the third week of the next month. For example, the fees for investment advisory services, or similar services, which accrue for the month of January, may not be paid to BlackRock until the third week of February, or later. However, it is represented that there is no consistent period of time after BlackRock receives such fees for investment advisory services, or similar services, that BlackRock then pays PNC the fees for Mutual Fund Administration Services provided by PNC to such Fund. For instance, under this example, BlackRock may not pay PNC until the following month, *i.e.*, March. For this reason, PNC has adopted a practice of crediting the accrued fees for investment advisory services, or similar services, for a given month to its Client Plans no later than the fifth business day before the end of the month following the month in which fees for investment advisory services or similar services accrued—in this example, by the fifth business day before the end of February—even if PNC has not yet received payment from BlackRock of the fees for the provision of Mutual Fund Administrations Services by PNC to such Fund. It is represented that PNC is implementing a system whereby it will be notified when BlackRock receives its fees for investment advisory services, or similar services, which will allow PNC to make the credits to its Client Plans within one business day of when BlackRock is paid. However, this system will not be in place until January 2009. Therefore, while PNC agrees that the credit of the fees for investment advisory services, or similar services, to the Client Plans will occur no later than one business day after the receipt of such fees by BlackRock, this condition is effective only for the fees for investment advisory services, or similar services, accrued after January 1, 2009. For prior periods, PNC has requested that consistent with the original language in its application for exemption and with PNC's practice prior to January 1, 2009, the requirement should be that the credit of the fees for investment advisory services, or similar services, accrued for a given month be made no later than the earlier of either: (1) The same day as the receipt by PNC of the fees from BlackRock for the provision of Mutual Fund Administration Services to a Fund for that month, or (2) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued. Accordingly, section II(a)(3) of this proposed exemption reads as follows:

> A Client Plan invested in a Fund receives a ''a credit'' of such Client Plan's proportionate share of all fees charged to such Fund by BlackRock for investment advisory services, or similar services, for a particular month: (1) Effective for the period, September 29, 2006, through December 31, 2008, on the *earlier* of either: (a) The same day as PNC receives a fee from BlackRock for Mutual Fund Administration Services provided for that month to such Fund by PNC, or (b) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued, or (2) effective for the period beginning, January 1, 2009, and continuing thereafter, on a date which is no later than one business day after BlackRock receives fees from the Fund for investment advisory services, or similar services, provided for that month to such Fund by BlackRock.

Audit of the Credit Fee Method

15. It is represented that there are sufficient safeguards to permit exemptive relief for the use by PNC of the Credit Fee Method. In this regard, PNC will establish and maintain a system of internal accounting controls for crediting the fees under the Credit Fee Method. In addition, PNC will retain the services of an independent Auditor to audit annually the crediting of fees to the Client Plans under the Credit Fee Method. Such audits will provide independent verification of the proper crediting to such Client Plans.

In the annual audit of the Credit Fee Method, the Auditor will use procedures designed to review and test compliance with the specific operational controls and procedures established by PNC for making the credits. Specifically, the Auditor will: (i) Verify on a test basis the investment advisory fees paid by the Funds to BlackRock; (ii) verify on a test basis the monthly factors used to determine the investment advisory fees; (iii) verify on a test basis the credits paid in total for a one-month period; (iv) re-compute, on a test basis, using the monthly factors described above, the amount of the credit determined for selected Client Plans; (v) verify on a test basis the proper assignment of identification fields for receipt of fee credits to the Client Plans; and (vi) verify on a test basis that the credits were posted to the Client Plans within the required timeframe.

In the event either the internal audit made by PNC or the independent audit made by the Auditor identifies an error in the crediting of fees to a Client Plan, PNC will correct the error. With respect to any shortfall in credited fees to a Client Plan, PNC will make a cash payment to such Client Plan equal to the amount of the error, plus interest paid at money market rates offered by PNC for the period involved. Any excess credits made to a Client Plan will be corrected by an appropriate deduction from such Client Plan or reallocation of cash during the next payment period after discovery of the error to reflect accurately the amount of total credits due to such Client Plan for the period involved.

Receipt of Secondary Services Fees

16. Prior to the effective date of this proposed exemption, it is represented that the receipt by PNC of fees paid out of the assets of a Fund for Secondary Services, such as custodial, administrative, accounting, and transfer agency services, provided by PNC to such Fund were treated as exempt under PTE 77–4, pursuant to Advisory Opinion 93–12A (Apr. 27, 1993, addressed to PNC Financial). It is further represented that Advisory Opinion 93–12A permits such fees for Secondary Services: (a) To be paid to PNC by a Fund where PNC also receives fees as the investment adviser to such Fund, and (b) to be retained by PNC without the need for PNC to offset or waive such fees.[9]

PNC requests an administrative exemption, effective as of September 29, 2006, for receipt of fees by PNC for the provision of Secondary Services to the Funds, because it is no longer clear that relief for the receipt of Secondary Services fees by PNC, which prior to the merger was treated as exempt under PTE 77–4, pursuant to Advisory Opinion 93–12A, continues to be available after the merger.

Receipt of Mutual Fund Administration Services Fees

17. It is represented that PNC also has provided in the past and continues to provide Mutual Fund Administration Services to, or on behalf of, the Funds. Mutual Fund Administration Services are part of an omnibus arrangement which includes maintaining records of investments by Client Plans in the Funds, processing Fund transactions for Client Plans, transmitting account

[9] With respect to the relief available under PTE 77–4, pursuant to Advisory Opinion 93–12A, no reference is made to the Credit Fee Method. Accordingly, the Department has determined that the relief available under PTE 77–4, pursuant to Advisory Opinion 93–12A was not in the past and is not now available for the Credit Fee Method.

statements and shareholder communications, responding to inquiries from Client Plans regarding account balances and dividends, and providing information to the Funds on sales and assisting in monitoring possible market timing.

PNC has received fees in the past and continues to receive fees for the provision of Mutual Fund Administration Services to the Funds. The Funds do not pay the fees for the Mutual Fund Administration Services provided by PNC. Instead, BlackRock, the investment adviser to the Fund, pays the fees to PNC for Mutual Fund Administration Services. It is represented that many mutual fund advisers have adopted the practice of covering service costs out of their own assets, a practice referred to as ''adviser pay.''

It is represented that the fees for the provision of Mutual Fund Administration Services by PNC are currently fifteen (15) basis points for assets in money market funds, twenty (20) basis points for assets in fixed income funds (except three funds as to which the fee is five (5) basis points), and twenty-five (25) basis points for assets in equity funds (except one fund as to which the fee is four (4) basis points). It is represented that the fees for such Mutual Fund Administration Services are subject to negotiation.

The Department believes that the receipt of fees by PNC from BlackRock for the provision of Mutual Fund Administration Services by PNC to the Funds is beyond the scope of relief provided by PTE 77–4. PNC has not requested, and the Department is not providing, relief in this proposed exemption for the payment, prior to the date of the merger, by BlackRock of fees for the provision of Mutual Fund Administration Services by PNC to the Funds.

However, PNC has requested an individual administrative exemption, effective as of September 29, 2006, the date of the merger, to cover the payment by BlackRock to PNC Bank, National Association (PNC Bank), an affiliate of PNC, of fees for the provision of Mutual Fund Administration Services by PNC Bank to the assets in a Fund for which BlackRock serves as investment adviser.

In the Interest of Client Plans

18. The applicant represents that the proposed exemption is in the interest of the Client Plans and their participants and beneficiaries. In this regard, the Funds provide advantages for Client Plans, including professional management, the ability to monitor performance on a daily basis, and the flexibility to purchase and redeem shares on a daily basis. It is represented that no sales commissions are charged to Client Plans in connection with the purchase or sale of shares in any of the Funds. In addition, these investments in the Funds by Client Plans are made in certain classes of shares, which are not subject to 12b–1 fees. Redemption fees are charged only if disclosed in the prospectuses in effect at both the time of the original investment in the shares of a Fund and the time of redemption.

It is further represented that the Funds provide a means for Client Plans with limited assets to achieve diversification of investment in a manner that may not be attainable through direct investment. For these reasons, the applicant maintains that the availability of the Funds as investments enable PNC, as investment manager, to better meet the investment goals and strategies of a Client Plan.

Protective of Client Plans

19. It is represented that the proposed exemption contains sufficient safeguards for the protection of the Client Plans invested in the Funds. In this regard, prior to any investment by a Client Plan in a Fund, the investment must be authorized in writing by the Second Fiduciary of such Client Plan, based on full and detailed written disclosure concerning such Fund.

In addition to the initial disclosures received by the Second Fiduciary of a Client Plan invested in a Fund, PNC provides to such Second Fiduciary ongoing disclosures regarding such Fund and the fee methods. Specifically, on an annual basis, such Second Fiduciary receives copies of the current Fund prospectuses, as well as copies of the annual financial disclosure reports containing information about the Funds and audit findings of the Auditor within sixty (60) days of the preparation of such report.

Further, it is represented that PNC Financial or an appropriate affiliate, thereof, will respond to inquiries from a Second Fiduciary. In addition, a Second Fiduciary, upon request, will receive copies of the Statements of Additional Information for the Funds and a copy of the proposed exemption and a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

Furthermore, each investment of the assets of a Client Plan in a Fund will be subject to the ongoing ability of the Second Fiduciary of such Client Plan to terminate the investment in such Fund without penalty to such Client Plan at any time upon written notice of termination to PNC. In this regard, a Termination Form, expressly providing an election to terminate the authorization, with instructions on the use of such Termination Form, will be supplied to the Second Fiduciary at least annually.

The Termination Form may be used to notify PNC, in writing to effect a termination by selling the shares of the Funds held by a Client Plan. Such sales are to occur within one (1) business day, as defined in Section IV(k) of this exemption, following receipt by PNC of the Termination Form. If, due to circumstances beyond the control of PNC, the sale cannot be executed within one (1) business day, PNC will be obligated to complete the sale within the next business day.

In addition, by using the Termination Form that PNC provides thirty (30) days in advance of any increase in the rate of fees and change in services, the Second Fiduciary will have sufficient opportunity to terminate a Client Plan's investment in a Fund, without penalty to the Client Plan, and withdraw the Client Plan's investment from such Fund in advance of any such increase in fee and change in services.

Feasibility

20. The applicant represents that the proposed exemption is feasible in that compliance with the terms of the exemption will be monitored by the Second Fiduciary of a Client Plan who is independent of PNC. Further, PNC provides internal accounting safeguards to ensure the accuracy of the calculation of the ''credited dollar amounts'' under the Credit Fee Method, and an independent Auditor will provide assurance that the Credit Fee Method is properly administered. For these reasons, the applicant maintains that the Department will not have to monitor the implementation and enforcement of the exemption.

Further, it is represented that the negative consent procedure, as described in the proposed exemption, for obtaining the approval from the Second Fiduciary of each Client Plan invested in a Fund for increases in fees and the addition of services for which a fee is charged is more efficient, cost effective, and administratively feasible than written affirmative consent approval, as described in PTE 77–4.

Under PTE 77–4, an increase in fees and any change in services may not be implemented until written approval of such increase or change is obtained from every Second Fiduciary of Client Plans invested in a Fund. A communication failure that results in not obtaining an affirmative written approval from a Second Fiduciary of a

Client Plan could force PNC to transfer a Client Plan's investments out of a Fund.

Under the negative consent procedure, as set forth in this proposed exemption, the difficulties of obtaining written affirmative approval from the Second Fiduciary of each Client Plan and coordinating any fee increases and any additional services for which a fee is charged will be avoided while such Second Fiduciary will still receive the necessary disclosures. Specifically, each Second Fiduciary of a Client Plan invested in a Fund will receive advanced notice in a statement separate from such Fund's prospectus of any proposed change from one fee method to another or any proposed increase in a rate of fee for investment advisory services, or similar services, paid to BlackRock that was previously disclosed in the Fund prospectus. In addition, each Second Fiduciary will receive advanced notice of any additional Secondary Service or Mutual Fund Administration Service for which a fee is charged and any increase of any rate of any fee paid for Mutual Fund Administration Services and any Secondary Services to PNC or an increase in a rate of any fee that results from an addition or elimination in the number or kind of service performed by PNC in connection with a previously authorized fee for such service. With regard to the affected Fund, the advanced notice will contain an explanation of the nature and amount of the increase in fees and the nature and amount of the addition (or elimination) of a service for which an additional fee is charged. The Second Fiduciary will receive such advanced notice thirty (30) days prior to the effective date of such increase in the rate of fees and change in services with respect to a Client Plan's investment in a Fund. Such advanced notice must be accompanied by a Termination Form that would allow the Second Fiduciary to terminate, without penalty to the Client Plan, the authorization to invest in the Funds. The notice requirement would not apply if an increase is the result of the cessation of a voluntary temporary waiver of fees by PNC, and the full fee level had previously been described in writing to and authorized by the Second Fiduciary. Failure to return the Termination Form by the thirtieth (30th) day will result in the negative consent of the Second Fiduciary to the increase in the fees and to the addition of services for which an additional fee is charged.

21. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Funds will provide Client Plans with an effective investment vehicle;

(b) The investment by Client Plan in the Funds and the payment of fees for Secondary Services by the Funds to PNC, the payment of fees for Mutual Fund Administration Services by BlackRock to PNC, and the payment of fees for investment advisory or similar services by the Funds to BlackRock in connection the investment in the Funds by Client Plans will require an authorization in writing in advance by a Second Fiduciary after full written disclosure, including current prospectuses for the Funds and a statement describing the fee method to be used;

(c) Any authorization made by a Second Fiduciary will be terminable at will by that Second Fiduciary, without penalty to the Client Plan, within one (1) business day or one additional business day, if necessary, following receipt by PNC of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization, which will be supplied to the Second Fiduciary at least annually, or any other written notice of termination;

(d) No sales commissions will be paid by Client Plans in connection with the acquisition or sale of shares of the Funds and only redemption fees disclosed in a Fund's prospectus will be paid by Client Plans;

(e) All dealings among the Client Plans, any of the Funds, PNC, and BlackRock will be on a basis no less favorable to such Client Plans than such dealings with the other shareholders of the Funds;

(f) Client Plans investing in the Funds will pay only a single level of investment management, investment advisory, or similar fees with respect to the assets of such Client Plans so invested; and

(g) PNC will require annual audits by an independent accounting firm to verify that the Client Plans using the Credit Fee Method receive proper credits for the fees paid to PNC by the Funds.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include the Second Fiduciary of each Client Plan invested in any of the Funds.

It is represented that notification will be provided to these interested persons by first class mail, within fifteen (15) calendar days of the date of the publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(b)(2), which will advise all interested person of their right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

Barclays Bank PLC and Barclays Capital Inc. (Collectively, Barclays or the Applicants)

Located, respectively, in London, England and New York, New York

[Application No. D–11552]

Background

Barclays has requested an individual exemption that would replace and modify exemptive relief, previously provided pursuant to Prohibited Transaction Exemption 96–62,[10] for its securitization activities, which generally permits employee benefit plans to purchase, hold, sell or exchange certain securities representing interests in asset-backed or mortgage-backed investment pools. Barclays requests exemptive relief for sales of ''pass through'' notes/securities to investors, including employee benefit plans, representing pools of secured notes and senior unsecured notes issued by small and mid-sized banks.

In response to the current financial and liquidity crisis, the FDIC adopted the TLG Program, which guarantees newly issued senior unsecured debt of certain financial institutions. The FDIC guarantee is backed by the full faith and credit of the United States. In general, the requested exemption would permit Barclays and its affiliates to underwrite and sell the pass through notes/securities and also to service, manage and operate the trust holding the pools of bank debt guaranteed under the TLG Program.

Because Barclays has represented that the FDIC is considering whether the Debt Guarantee Program should be extended to secured bank debt that supports new consumer lending, the Department also specifically solicits

[10] For more information, see item number 3 under the heading entitled ''Summary of Facts and Representations.''

comments on extending the scope of the proposed exemptive relief to include such debt. The Department believes that in order to make the requisite section 408(a) findings for the proposed exemptive relief with respect to such secured debt, the debt must be explicitly included in the Debt Guarantee Program and also must be subject to the same protections that the FDIC affords to senior unsecured debt. To the extent that this would not be the case, the Department will consider, based upon public comments, whether to retain or eliminate such secured debt issuances from the exemptive relief granted by the Department.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990):

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[11]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a), if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group, and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[12] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. The restrictions of sections 406(a), 406(b), and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer; [13] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code by reason of Code section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a

[11] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2)and 407 of the Act for any person rendering investment advice, within the meaning of section 3(21)(A)(ii) of the Act and regulation 29 CFR 2510.3–21(c), to an Excluded Plan.

[12] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to the term ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

person is deemed to be a party in interest or disqualified person (including a fiduciary), with respect to the plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as such terms would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories.

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement:

(a) The Trustee shall not be considered an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as a result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations as specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency, upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred on the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act.

(8) In order to ensure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one

independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or a Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer, nor any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this proposed exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consists solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interest

on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2) [14]; and/or

(f) Secured debt and senior unsecured debt (excluding mandatory convertible debt), issued by an eligible entity, as defined in 12 CFR 370.2(a), that are fully guaranteed as to timely payment of principal and interest by the Federal Deposit Insurance Corporation (FDIC) under the Debt Guarantee Program of the Temporary Liquidity Guarantee Program (TLG Program) and that are backed by the full faith and credit of the United States; and/or

(g) Fractional undivided interests in any of the obligations described in clauses (a)–(f) of this subsection B.(1).[15]

Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) the rights and interests evidenced by Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Trust and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement, and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this clause (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) Are either (A) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (B) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in section III.B.(1).

However, notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(e) and paragraph (g) (excluding fractional interests in any of the obligations described in paragraph (f) of this subsection B.(1)) of section III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of such Securities pursuant to this exemption. For purposes of this paragraph, Securities evidencing interests in investment pools containing assets described in Section III.B.(1)(f) are rated in one of the three highest generic rating categories by a Rating Agency at the time of such acquisition.

C. ''Underwriter'' means:

(1) The Applicants,

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Applicants, or

(3) Any member of an underwriting syndicate or selling group of which a person described in Section III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer, which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust, which issues Securities, and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created.

[14] In ERISA Advisory Opinion 99–05A (February 22, 1999), the Department expressed its view that mortgage pool certificates guaranteed and issued by the Federal Agricultural Mortgage Corporation meet the definition of a guaranteed governmental mortgage pool certificate as defined in 29 CFR 2510.3–101(i)(2).

[15] It is the Department's view that the definition of ''Issuer'' contained in section III.B. includes a two-tier structure under which Securities issued by the first Issuer, which contains a pool of receivables described above, are transferred to a second Issuer which issues Securities that are sold to plans. However, the Department is of the further view that, since the Underwriter Exemptions generally provide relief for the direct or indirect acquisition or disposition of Securities that are not subordinated, no relief would be available if the Securities held by the second Issuer were subordinated to the rights and interests evidenced by other Securities issued by the first Issuer, unless such Securities were issued in a Designated Transaction.

The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer, which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By a Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.; Moody's Investors Service, Inc.; Fitch Ratings; DBRS Limited; or DBRS, Inc.; or any successors thereto.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issue's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on

deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or 90 days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap.'' With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (*e.g.*, LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (*i.e.*, payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of Securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF. (1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under this exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM), [16] as defined under Part V(a) of Prohibited Transaction Exemption (PTE) 84–14, 49 FR 9494, 9506, (March 13, 1984), as amended by 70 FR 49305, August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[17] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (*e.g.*, LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF. (4);

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[16] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (*e.g.*, banks, insurance companies, registered investment advisers with total client assets under management in excess of $85 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[17] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ. (1)–(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B. (1), (2) and (3).

Effective Date: If granted, and except as otherwise provided, this proposed exemption will be effective as of February 4, 2004. The exemptive relief, if granted, for investment pools consisting solely of debt described in section III.B.(1)(f) will be effective as of February 27, 2009 and will expire on the later of: July 1, 2012; or the expiration of the FDIC's Debt Guarantee Program, which is part of the TLG Program.

Summary of Facts and Representations

1. Barclays Bank PLC is an authorized institution under the Banking Act of 1987 in the United Kingdom and is regulated by the Bank of England. As of December 31, 2007, Barclays Bank PLC (Consolidated Balance Sheet) had approximately £1,227,583,000,000 in assets and £31,821,000,000 in stockholders' equity. Barclays Bank PLC has several affiliates that are broker-dealers or banks. Barclays Capital Inc., a subsidiary of Barclays Bank PLC, is incorporated under the laws of the State of Connecticut and is registered and regulated by the Securities and Exchange Commission as a U.S. broker-dealer under Section 15 of the Securities and Exchange Act of 1934, as amended. As of June 30, 2008, Barclays Capital Inc. (Unaudited Consolidated Balance Sheet) has approximately US$ 269,433,856,000 in assets and US$ 2,518,536,000 in stockholders' equity.

2. Barclays Bank PLC and Barclays Capital Inc. (hereinafter Barclays), alone or together with other broker-dealers, act as underwriter or placement agent with respect to the sale of securities. Barclays also may act as the manager or co-manager for a syndicate of securities underwriters or selling group.

3. Barclays received authorization from the Department pursuant to Prohibited Transaction Exemption (PTE) 96–62, 67 FR 44622 (July 3, 2002), that certain prohibited transaction provisions do not apply to transactions substantially similar to transactions described in the Underwriter Exemptions as described in its 2003 ''EXPRO'' authorization request (File #: E00342). See Final Authorization Number (FAN) 04–03E, February 4, 2004 (hereinafter FAN 04–03E). The information contained in the administrative file for E00342 as well as the facts and representations contained in FAN 04–03E also were considered and relied upon by the Department for purposes of this notice.[18] The Underwriter Exemptions are a group of individual exemptions that provide substantially identical relief for the servicing, management and operation of certain asset-backed or mortgage-backed investment pools and the acquisition, holding, sale or transfer by employee benefit plans of certain securities representing interests in those investment pools. These exemptions provide relief from certain of the prohibited transaction restrictions of sections 406(a), 406(b) and 407(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986, as amended (the Code), by reason of certain provisions of section 4975(c)(1) of the Code.

4. The Applicants are requesting, among other things, individual exemptive relief that would add senior unsecured debt guaranteed by the Federal Deposit Insurance Corporation (FDIC) pursuant to its Temporary Liquidity Guarantee Program (TLG Program) to the permissible assets of an Issuer, which currently are restricted to certain secured receivables, certain secured instruments, certain secured obligations and guaranteed governmental mortgage pool certificates as defined in 29 CFR 2510.3–101(i)(2). If this proposed exemption is granted by the Department, it would replace and expand the exemptive relief authorized in FAN 04–03E.

5. The TLG Program was announced by the FDIC on October 14, 2008, as an initiative to deal with the recent disruptions in the financial markets that have impaired the ability of creditworthy companies to issue commercial paper, particularly at maturities longer than 30 days. The TLG Program is designed to encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers.

6. One component of the TLG Program is the Debt Guarantee Program, by which the FDIC will guarantee the payment of certain newly-issued senior unsecured debt by entities described in 12 CFR 370.2(a) (*i.e.,* insured depositary institutions, certain U.S. bank holding companies, certain U.S. savings and loan holding companies, and certain affiliates of an insured depositary institution that the FDIC designates as an eligible entity). The FDIC's payment obligation is triggered by a payment default rather than bankruptcy or receivership.

7. Under the TLG Program, effective as of December 6, 2008, the term ''senior unsecured debt'' excludes any obligation with a stated maturity of 30 days or less (including debt with a maturity of ''one month''). The guarantee on any previously issued senior unsecured debt instrument issued with a stated maturity of 30 days or less will expire on the earlier of: (i) the date the issuer ''opts out'' pursuant to the TLG Program, or the maturity date of the instrument.

8. The debt instruments covered by the TLG Program are unsecured borrowings that: (i) Are evidenced by a written agreement or trade confirmation; (ii) have a specific and fixed principal to be paid in full on demand or on a date certain; (iii) are not contingent and contain no embedded options, forwards, swaps or other derivatives; and (iv) are not, by their terms, subordinated to any other liability. The debt may pay interest at a fixed or floating rate. Any floating interest rate must be based on a commonly used reference rate, including a single index of a Treasury bill rate, the prime rate, or the London Interbank Offered Rate (LIBOR). For more information about the TLG Program, see the FDIC's final rule at 73 FR 72244 (November 26, 2008)[19] and the FDIC Internet site at *http://www.fdic.gov/.*

9. Barclays represents that the debt covered by the TLG Program is substantially similar to, and in some respects more secure, than guaranteed governmental mortgage pool certificates. The applicant states that although interest and principal payable pursuant to a guaranteed governmental mortgage

[18] The Underwriter Exemptions, including PTE 2002–41, 67 FR 54487 (August 22, 2002) and PTE 2000–58, 65 FR 67765 (November 13, 2000), and PTE 97–34, 62 FR 39021 (July 21, 1997), were amended by PTE 2007–05, 72 FR 13130 (March 20, 2007) and PTE 2008–08, 73 FR 27570 (May 13, 2008). Additional information about the Underwriter Exemptions also is available in the notices of proposed exemption with respect to each of the foregoing individual exemptions.

[19] On March 4, 2009, the FDIC published an interim rule that extends its guarantee to certain new issues of mandatory convertible debt into common shares of the issuing entity at a specified date no later than the expiration of the FDIC's guarantee. Because the requested exemptive relief relates to pools of debt, the proposed exemption would not apply to such mandatory convertible debt.

pool certificate are guaranteed by an agency of instrumentality thereof (*e.g.*, Freddie Mac, Fannie Mae and Farmer Mac), such agencies are not backed by the full faith and credit of the United States unlike the FDIC. The full faith and credit backing is significant because it represents an unconditional commitment from the United States to pay interest on defaulted notes. The Applicant further represents that because of the full faith and credit backing of the debt, there likely also will be a ready market for these notes. In this regard, Barclays states that plans already may invest directly in senior unsecured bank debt under the TLG PROGRAM in accordance with investor-based exemptions.[20]

10. The FDIC board announced on January 16, 2009, that it will soon propose rule changes to its Temporary Liquidity Guarantee Program to extend the maturity of the guarantee from three to up to 10 years where the debt is supported by collateral and the issuance supports new consumer lending.[21] Barclays also has requested in its application that the individual exemptive relief apply to such debt.

11. The underwriter (*i.e.*, Barclays, their affiliates, or a member of an underwriting syndicate or selling group of which Barclays or their affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of securities.

12. The issuer is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of an issuer selects assets to be included in a trust, partnership, special purpose corporation or limited liability company.

13. As a general matter, Securityholders will be entitled to receive distributions of principal and/or interest, adjusted, in the case of payments of interest, to a specified rate—the pass through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

14. The trustee of a trust is the legal owner of the obligations in the trust and is responsible for enforcing all the rights in favor of securityholders pursuant to the documents and instruments deposited in the trust. The trustee will be an independent entity, and therefore will be unrelated to any member of the Restricted Group (as defined in section III.M.) other than an underwriter.

15. The servicer of an issuer administers the receivables on behalf of the securityholders (*e.g.*, notifying borrowers of amounts due on receivables, maintaining payment records, and instituting foreclosure or similar proceedings in the event of default). The issuer will be maintained as an essentially passive entity. Therefore, both the plan sponsor's discretion and the servicer's discretion with respect to assets included in an issuer are severely limited.

16. The Applicants request that the exemptive relief, for bank debt guaranteed under the TLG Program by the FDIC, if granted, be made retroactive to February 27, 2009.

Notice to Interested Persons and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address above, within time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made part of the record. Comments received will be available for public inspection with the application at the address set forth above.

With respect to notification of interested persons, the Applicants will distribute this notice of proposed exemption by first class mail to an independent plan fiduciary for all ERISA pension plans for which the Applicants and their subsidiaries provide fiduciary services. All notifications will be mailed within three business days after publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Exemption Determinations, Employee Benefits Security Administration, US. Department of Labor, telephone (202) 693–8532. (This is not a toll-free number).

Individual Retirement Accounts (the IRAs) for Ralph Hartwell, Harold Latin, Kenlon Johnson, Carol Johnson, Shanon Taylor, Michael Ball, Dianne Barkas, Roy Barkas, Harry DeWall, Alice Pike, Steven Larsen, C. Timothy Hopkins, Wayne Meuleman, Robert L. Miller, and Richard T. Scott (Collectively, the Participants), Located in Idaho Falls, Idaho, and Elsewhere [Exemption Application Numbers: D–11536 through D–11550]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the cash sales (the Sales) of certain shares of closely held common stock (the Stock) of the Bank of Idaho Holding Company (the Company) by the IRAs[22] to the Participants, disqualified persons with respect to their respective IRAs, provided that the following conditions are satisfied:

(a) The Sale of the Stock by each IRA is a one-time transaction for cash;

(b) The terms and conditions of each Sale are at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) Each IRA receives the fair market value of the Stock on the date of the Sale as determined by a qualified, independent appraiser; and

(d) Each IRAs does not pay any commissions, costs, or other expenses in connection with each Sale.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in section 408(a) of the Code. Each of the IRAs is self-directed. Among the assets of each IRA are shares of closely-held stock in the Company, a one-bank holding company domiciled in the state of Idaho and registered with the Board of Governors of the Federal Reserve System. The sole asset of the Company is the Bank of Idaho (the Bank), located in Idaho Falls, Idaho. The applicants describe the Participants, the IRAs, and their holdings of the Stock as follows:

(a) The IRA of Ralph Hartwell, a Director of the Bank, currently holds total assets of approximately $975,897.07, which includes 41,004 shares of the Stock. The IRA of Ralph Hartwell acquired all of the Stock from the Company on August 28, 1985.

(b) The IRA of Harold Latin, a Director of the Bank, currently holds total assets of approximately $28,703.51, which includes 1,071 shares of the Stock. The IRA of Harold Latin acquired all of the

[20] See, for example, PTE 84–14 and PTE 96–23, which are referenced, respectively, in earlier footnotes to this proposed exemption.

[21] See FDIC Press Release (PR) 4–2009. To date, the FDIC has not published such a rule in the Federal Register. See the caption in the preamble entitled ''Supplementary Information'' as to the Department's solicitation of comments with respect to secured debt.

[22] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Stock from the Company on August 28, 1985.

(c) The IRA of Kenlon Johnson, a Director of the Bank, currently holds total assets of approximately $448,673.63, which includes 400 shares of the Stock. The IRA of Kenlon Johnson acquired all of the Stock from the Company on July 12, 2004.

(d) The IRA of Carol Johnson, the spouse of Kenlon Johnson, currently holds total assets of approximately $120,165.26, which includes 1,000 shares of the Stock. The IRA of Carol Johnson acquired all of the Stock from the Company on February 16, 2000.

(e) The IRA of Shanon Taylor, an employee of the Bank, currently holds total assets of approximately $23,641.36, which includes 910 shares of the Stock. The IRA of Shanon Taylor is a Roth IRA that acquired all of the Stock from the Company on November 15, 1996.

(f) The IRA of Michael Ball currently holds total assets of approximately $27,438.54, which includes 1,050 shares of the Stock. The IRA of Michael Ball acquired all of the Stock from the Company on January 18, 1999.

(g) The IRA of Dianne Barkas currently holds total assets of approximately $162,479.85, which includes 6,380 shares of the Stock. The IRA of Dianne Barkas acquired all of the Stock from the Company on August 28, 1985.

(h) The IRA of Roy Barkas currently holds total assets of approximately $83,554.74, which includes 3,262 shares of the Stock. The IRA of Roy Barkas acquired all of the Stock from the Company on August 28, 1985.

(i) The IRA of Harry DeWall currently holds total assets of approximately $419,921.88, which includes 10,000 shares of the Stock. The IRA of Harry DeWall acquired all of the Stock from the Company on September 11, 1999.

(j) The IRA of Alice Pike currently holds total assets of approximately $36,165.72, which includes 1,117 shares of the Stock. The IRA of Alice Pike acquires all of the Stock from the Company on September 28, 2000.

(k) The IRA of Steven Larsen currently holds total assets of approximately $792,100.40, which includes 3,877 shares of the Stock. The IRA of Steven Larsen acquired all of the Stock from the Company on August 28, 1985.

(l) The IRA of C. Timothy Hopkins currently holds total assets of approximately $488,139.96, which includes 2,000 shares of the Stock. The IRA of C. Timothy Hopkins acquired all of the Stock from the Company on September 11, 1999.

(m) The IRA of Wayne Meuleman currently holds total assets of approximately $42,651.09, which includes 1,680 shares of the Stock. The IRA of Wayne Meuleman acquired all of the Stock from the Company on August 28, 1985.

(n) The IRA of Robert L. Miller currently holds total assets of approximately $39,816.46, which includes 1,543 shares of the Stock. The IRA of Robert L. Miller acquired all of the Stock from the Company on August 28, 1985.

(o) The IRA of Richard T. Scott currently holds total assets of approximately $17,209.21, which includes 653 shares of the Stock. The IRA of Richard T. Scott acquired all of the Stock from the Company on February 16, 2000.

The applicants represent that the Bank is the custodian for all of the IRAs, except that: (i) The custodian of the IRA of Kenlon Johnson is Wachovia Securities (Wachovia); (ii) the custodian of the IRA of Michael Ball is TD Ameritrade Institutional (TD Ameritrade); (iii) the custodian of the IRA of Steven Larsen is Merrill Lynch Pierce Fenner & Smith (Merrill Lynch); and (iv) the custodian of the IRA of C. Timothy Hopkins is Raymond James Financial Services, Inc (Raymond James). Wachovia, TD Ameritrade, Merrill Lynch, and Raymond James are all national brokerage firms.

2. The applicants request an administrative exemption for the Sale of the Stock by each individual IRA to its respective Participant. The applicants also represent that the IRAs acquired the Stock directly from the issuer (*i.e.*, the Company).[23] Prior to January 1, 2007, the applicants represent that the Company was a Subchapter C corporation. The applicants state that business and income tax considerations caused the Company to elect to be taxed as a Subchapter S corporation pursuant to the Code, effective on January 1, 2007. The applicants further represent that, while section 1361(c)(2)(vi) of the Code permits an IRA to be an eligible shareholder in a bank holding company upon the company's conversion to a Subchapter S corporation, the applicants nevertheless remain liable for unrelated business tax income (UBTI) in their respective IRAs subsequent to the conversion, which negatively impacts the accounts. Accordingly, the applicants seek to effectuate the Sale of the Stock from their IRAs.[24] The applicants also represent that the acquisition of the Stock by each IRA was done for investment purposes and that, in fact, each IRA made a profit on its original investment.

3. The Stock was initially appraised by the valuation firm of Southard Financial, which is located in Memphis, Tennessee. In an appraisal report dated October 9, 2008, Southard Financial

[23] The Department notes that, to the extent that the Company or the other sellers were not disqualified persons with respect to the IRAs under section 4975(e) of the Code, the purchase of the Stock would not have constituted a prohibited transaction under section 4975(c)(1) of the Code. Accordingly, to the extent that there were violations of section 4975(c)(1) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions.

Further, the purchase and holding of the Stock by the IRAs whose Participants are officers or directors of the Company and/or the Bank raises questions under section 4975(c)(1)(D) and (E) of the Code depending on the degree (if any) of the IRA Participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the income or assets of a plan and prohibits a fiduciary from dealing with the income or assets of a plan in his own interest or for his own account. Those IRA Participants who are officers and/or directors of the Company or of the Bank, may have had interests in the transactions which affected their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may have violated sections 4975(c)(1)(D) and (E) of the Code. See Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent that there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions.

[24] Section 4975(d)(16) of the Code provides a statutory exemption from the prohibited transaction provisions of the Code for the sale of stock held by a trust which constitutes an individual retirement account under section 408(a) of the Code to the individual for whose benefit such account is established, provided that: (i) Such stock is in a bank (as defined in section 581 of the Code) or a depository institution holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1)); (ii) such stock is held by such trust as of the date of the enactment of this paragraph; (iii) such sale is pursuant to an election under section 1362(a) of the Code by such bank or company; (iv) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party; (v) such trust does not pay any commissions, costs, or other expenses in connection with the sale; and (vi) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.

The applicants represent that, because the Stock of the Company was not sold within 120 days of the Company's S Corporation election on January 1, 2007, the proposed Sales of the Stock would not qualify for exemptive relief under section 4975(d)(16) of the Code. The applicants further represent that advisors to the Company at the time of the Subchapter S election were unaware of the negative income tax ramifications of the election on the IRA holders, and did not inform the holders that the election had been made. The applicants also represent that, had the IRA holders been made aware of the election, the IRA holders would have taken action consistent with the statutory exemption. Accordingly, the applicants have applied to the Department for an administrative exemption under section 4975(c)(2) of the Code for the proposed Sale of the Stock.

offered its opinion of the fair market value of the Stock as of August 31, 2008. The appraisal report was signed by Mr. Douglas K. Southard (Mr. Southard), Mr. David A. Harris (Mr. Harris), and Mr. Mark A. Orndorff (Mr. Orndorff), each of whom is an accredited appraiser with the firm. Mr. Southard, Mr. Harris, and Mr. Orndorff (collectively, the Appraisers) each represent that they are full-time, qualified appraisers and are senior members of the American Society of Appraisers (ASA). In addition, Mr. Southard and Mr. Harris, as principals of Southard Financial, represent that they and their firm are independent of, and unrelated to, the Participants, the Company, and the Bank.

In arriving at a value for the Stock, the Appraisers utilized a combined valuation methodology, according weight to both the income approach and the market approach (in the latter approach, the Appraisers took into account the price/book valuation method, the price/earnings method, and the prior transactions method). Applying these combined methodologies, the Appraisers arrived at a per share value for the Stock of $23.82. In this connection, the Appraisers determined that, because there is often local demand for the ownership of closely held community bank stock (as opposed to other businesses in a local market), no discount for a lack of marketability of the Stock should be taken in the appraisal. The Appraisers rounded the $23.82 figure for the value of the Stock to $23.80 to reflect what they believed was the imprecision inherent in the various assumptions used in the fair market value determination.

Applying the $23.80 per share valuation, the aggregate fair market value of the Stock held by the respective IRAs of the Participants as of August 31, 2008 is reflected in the following table:

Individual retirement account (IRA) of	Number of shares of stock held in each IRA	Fair market value of the stock in each IRA as of 8/31/2008	Percentage of total IRA assets represented by the stock
Ralph Hartwell	41,004	$975,895.20	99.99
Harold Latin	1,071	25,489.80	88.80
Kenlon Johnson	400	9,520	2.12
Carol Johnson	1,000	23,800	19.81
Shanon Taylor	910	21,658	91.61
Michael Ball	1,050	24,990	91.08
Dianne Barkas	6,380	151,844	93.45
Roy Barkas	3,262	77,635.60	92.92
Harry DeWall	10,000	238,000	56.68
Alice Pike	1,117	26,584.60	73.51
Steven Larsen	3,877	92,272.60	11.65
C. Timothy Hopkins	2,000	47,600	9.75
Wayne Meuleman	1,680	39,984	93.75
Robert L. Miller	1,543	36,723.40	92.23
Richard T. Scott	653	15,541.40	90.31

4. The applicants represent that the combined Stock held by each of the IRAs (*i.e.*, 75,947 shares) represents only 5.75% of the 1,319,757 shares of the Stock of the Company that are currently outstanding. The applicants also represent that the proposed Sales of the Stock by the IRAs will not result in any of the Participants becoming holders of 10% or more of the shares of the Company, nor will the Sales give any of the Participants a controlling interest in the Company. The applicants further state that, if the Department grants an administrative exemption for the proposed Sales, an updated appraisal will be undertaken by a qualified, independent appraiser to determine the fair market value of the Stock as of the date that the Sales are consummated.

5. The applicants represent that the transactions are administratively feasible because each Sale will be a one-time transaction for cash. The applicants also represent that the transactions are in the interests of the IRAs because each IRA will dispose of all its shares of the Stock at a price which equals the Stock's fair market value at the time of the Sale. As a result, greater diversification of the IRAs' assets will be achieved by reinvesting the proceeds of the Sales in other assets. Furthermore, the applicants represent that the transactions are protective of the rights of the Participants and beneficiaries of the IRAs because each IRA will receive the fair market value of the Stock currently owned by each IRA as of the date of the Sale, as determined by a qualified, independent appraiser. Finally, the IRAs will not incur any commissions, costs, or other expenses as a result of the Sales.

6. In summary, the applicants represent that the transactions will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Sale of the Stock by each IRA is a one-time transaction for cash; (b) The terms and conditions of each Sale is at least as favorable to each IRA as those obtainable in an arm's length transaction with an unrelated party; (c) Each IRA receives the fair market value of the Stock on the date of the Sale as determined by a qualified, independent appraiser; and (d) Each IRAs does not pay any commissions, costs, or other expenses in connection with each Sale.

Notice To Interested Persons: Because the applicants are the only participants in the IRAs, it has been determined that there is no need to distribute this notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8339. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of March, 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–6619 Filed 3–25–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Wage and Hour Division

Withdrawal of Interpretation of the Fair Labor Standards Act Concerning Relocation Expenses Incurred by H–2A and H–2B Workers

AGENCY: Employment and Training Administration, Department of Labor in concurrence with the Wage and Hour Division, Employment Standards Administration, Department of Labor.

ACTION: Notice of withdrawal of interpretation.

SUMMARY: The Department of Labor (DOL or the Department) withdraws for further consideration an interpretation of the Fair Labor Standards Act (FLSA) published on December 18 and 19, 2008. The interpretation, which was published at 73 FR 77148–52 (H–2A program) and 73 FR 78039–41 (H–2B program), articulated an opinion that the FLSA and its implementing regulations do not require employers to reimburse workers under the H–2A and H–2B nonimmigrant visa programs, respectively, for relocation expenses even when such costs result in the workers being paid less than the minimum wage. This interpretation is hereby withdrawn for further consideration by the Department and may not be relied upon as a statement of agency policy.

DATES: *Effective Date:* March 26, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Brennan, Director of Office of Interpretations and Regulatory Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3506, Washington, DC 20210; Telephone (202) 693–0051 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, requires covered employers to pay their nonexempt employees a federal minimum wage and overtime premium pay of time and one-half the regular rate of pay for hours worked in excess of 40 in a week. The agency responsible for administration of the FLSA is the Wage and Hour Division, Employment Standards Administration, of the Department of Labor. The FLSA and its regulations prohibit an employer from either deducting from an employee's pay or imposing an expense upon an employee for costs that are primarily for the benefit of the employer, if to do so results in an employee receiving less than the minimum wage. 29 U.S.C. 203(m); 29 CFR part 531. Thus, during the first workweek, workers must be compensated at a rate that would bring their wages up to minimum wage, taking into account pre-employment expenses that primarily benefit the employer. In *Arriaga* v. *Florida Pacific Farms, L.L.C.*, 305 F.3d 1228 (11th Cir. 2002), the U.S. Court of Appeals for the Eleventh Circuit held that, under the FLSA regulations, the transportation from Mexico to Florida and visa costs of temporary nonimmigrant workers coming to the U.S. under the H–2A visa program, *see* 8 U.S.C. 1101(a)(15)(H)(ii)(a), were primarily for the grower's benefit because such costs were necessary and incident to the employment of such workers. A number of U.S. district courts have extended the *Arriaga* holding regarding the FLSA requirements to temporary nonimmigrant workers admitted into the U.S. under the H–2B visa program, 8 U.S.C. 1101(a)(15)(H)(ii)(b). *See, e.g., De Leon-Granados* v. *Eller & Sons Trees Inc.*, 2008 WL 4531813 (N.D. Ga., Oct. 7, 2008); *Rosales* v. *Hispanic Employee Leasing Program*, 2008 WL 363479 (W.D. Mich. Feb. 11, 2008); *Rivera* v. *Brickman Group*, 2008 WL 81570 (E.D. Pa. Jan. 7, 2008); *Recinos-Recinos* v. *Express Forestry Inc.*, 2006 WL 197030 (E.D. La. Jan. 24, 2006); *but see Castellanos-Contreras* v. *Decatur Hotels LLC*, No. 07–30942 (5th Cir. Feb. 11, 2009), *pet. for reh'g filed* (Mar. 11, 2009), *rev'g*, 488 F. Supp. 2d 565 (E.D. La. 2007).

On December 18, 2008, DOL published final regulations revising the procedures for the issuance of labor certifications to employers sponsoring H–2A nonimmigrants for admission to perform temporary agricultural labor or services and the procedures for enforcing compliance with attestations made by those employers. 73 FR 77110. The H–2A Final Rule became effective on January 17, 2009. The preamble accompanying the H–2A Final Rule included a discussion of the *Arriaga* issue, concluding that the Eleventh Circuit's decision was wrongly decided and that inbound travel expenses of H–2A workers do not primarily benefit their employers. 73 FR 77148–52. DOL characterized this discussion as an interpretation of the FLSA, 73 FR 77151, and did not seek public comment on the issue when it issued the H–2A Notice of Proposed Rulemaking, 73 FR 8538 (Feb. 13, 2008). Prior to the issuance of the preamble discussion, courts uniformly had held that relocation expenses were primarily for the benefit of employers.

On December 19, 2008, DOL published final regulations revising the procedures for the issuance of labor certifications to employers sponsoring H–2B nonimmigrants for admission to perform temporary nonagricultural labor or services and the procedures for enforcing compliance with attestations made by those employers. 73 FR 78019. The Final Rule became effective on January 18, 2009. The preamble accompanying the Final H–2B Rule included a discussion of the *Arriaga* issue, concluding that the Eleventh Circuit's decision and the district court

decisions that followed its reasoning in the H–2B context were wrongly decided and that inbound travel expenses of H–2B workers do not primarily benefit their employers. 73 FR 78039–41. DOL characterized this discussion as an interpretation of the FLSA, 73 FR 78041, and did not seek public comment on the issue when it issued the H–2B Notice of Proposed Rulemaking, 73 FR 29941 (May 22, 2008). Prior to the issuance of the preamble discussion, courts uniformly had held that relocation expenses were primarily for the benefit of employers.

This matter concerns important issues as to whether various pre-employment expenses incurred by workers lawfully may result in workers' weekly wages being reduced below the minimum wage. Because of the reach of FLSA coverage, any interpretation of FLSA regulations has wide-ranging effects; the interpretation of section 203(m) of the FLSA and its regulations in the preamble of the H–2A and H–2B Final Rules may have ramifications well beyond the workers and employers subject to the H–2A and H–2B rules. Indeed, the H–2A and H–2B preamble interpretation of the FLSA is not codified in any regulatory requirement set out in the H–2A and H–2B rules, and DOL did not seek public comment on the issue from the H–2A and H–2B regulated communities. DOL is especially sensitive to potential adverse impacts an interpretation, which was included in the preamble in order to state a policy position of the prior Administration, might have on our Nation's most vulnerable workers, including low-wage U.S. workers and foreign guest workers. For these reasons, DOL believes that this issue warrants further review. Consequently, in accordance with authority granted under the FLSA, 29 U.S.C. 203(m) and 259, as well as the INA, 8 U.S.C. 1101(a)(15)(h)(ii)(a), 1101(a)(15)(h)(ii)(b), 1103(a)(6), 1184(c), 1188; 8 CFR 214.2(h); and 20 CFR 655.50(a), DOL withdraws the FLSA interpretation at 73 FR 77148–52 and at 73 FR 78039–41 for further consideration and the interpretation may not be relied upon as a statement of agency policy for purposes of the Portal-to-Portal Act, 29 U.S.C. 259 or otherwise.[1] After reconsideration of this issue, DOL will provide the public with interpretive guidance through a mechanism established for disseminating the Department's opinions and interpretations of the FLSA.

Signed in Washington, DC, this 20th day of March 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

Shelby Hallmark,

Acting Assistant Secretary, Employment Standards Administration.

[FR Doc. E9–6623 Filed 3–25–09; 8:45 am]

BILLING CODE 4510–FP–P

[1] On March 17, 2009, DOL proposed to suspend the H–2A Final Rule. 74 FR 11408. The proposed suspension is open to public comment, but regardless of the outcome of the notice of proposed rulemaking, the Department withdraws for further consideration the interpretation of the FLSA that appeared in the preamble to the H–2A Final Rule.

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Determination of Lower Living Standard Income Level.

SUMMARY: Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105–220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses described in the law. WIA defines the term ''Low Income Individual'' as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher level of the poverty line or 70 percent of the LLSIL. This issuance provides the Secretary's annual LLSIL for 2009 and references the current 2009 Health and Human Services ''Poverty Guidelines.''

DATES: *Effective Date:* This notice is effective on the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to: Mr. Samuel Wright, Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4510, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Please contact Mr. Samuel Wright, Telephone (202) 693–2870; Fax (202) 693–3015 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 ''to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.''

The LLSIL is used for several purposes under WIA. Specifically, WIA Section 101(25) defines the term ''low income individual'' for eligibility purposes, and Sections 127(b)(2)(C) and 132(b)(1)(B)(v)(IV) define the terms ''disadvantaged youth'' and ''disadvantaged adult'' in terms of the poverty line or LLSIL for state formula allotments. The Governor and state/local workforce investment boards (WIBs) use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and state/local WIBs to consult WIA regulations and the preamble to the WIA Final Rule (published at 65 FR 49294 August 11, 2000) for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services (HHS) published the annual 2009 update of the poverty-level guidelines in the **Federal Register**, Vol. 74, No. 14, January 23, 2009, pp. 4199–4201. The HHS 2009 Poverty guidelines may also be found on the Internet at: *http://aspe.hhs.gov/poverty/09fedreg.pdf*. ETA plans to have the 2009 LLSIL available on its Web site at [*http://www.doleta.gov/llsil/2009/*].

WIA Section 101(24) defines the LLSIL as ''that income level (adjusted for regional, metropolitan, urban and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary.'' The most recent lower living family budget was issued by the Secretary in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently, BLS provides data to ETA through which ETA develops the LLSIL tables, as provided in the Appendices.

ETA published the 2008 updates to the LLSIL in the **Federal Register** of April 25, 2008, at 73 FR 22435 and the corrections to tables 4 and 5 in the **Federal Register** of June 10, 2008, at 73 FR 32740. These notices again updates the LLSIL to reflect cost of living increases for 2008, by applying the percentage change in the most recent 2008 Consumer Price Index for All Urban Consumers (CPI–U) for an area, compared with the 2007 CPI–U to each

of the April 25, 2008 LLSIL figures. Those updated figures for a family-of-four are listed in Appendix A, Table 1, by region for both metropolitan and non-metropolitan areas. This year the LLSIL figures for some areas have decreased because the over-the-year change in CPI–U was negative due to the economic downturn. Figures in all of the accompanying tables, in the Appendices, are rounded up to the nearest dollar. Since low income individuals, ''disadvantaged adult'' and ''disadvantaged youth'' may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections 101(25), 127(b)(2)(C), and 132(b)(1)(B)(v)(IV), respectively, those figures are listed as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut,
Maine,
Massachusetts,
New Hampshire,
New Jersey,
New York,
Pennsylvania,
Rhode Island,
Vermont,
Virgin Islands.

Midwest

Illinois,
Indiana,
Iowa,
Kansas,
Michigan,
Minnesota,
Missouri,
Nebraska,
North Dakota,
Ohio,
South Dakota,
Wisconsin.

South

Alabama,
American Samoa,
Arkansas,
Delaware,
District of Columbia,
Florida,
Georgia,
Northern Marianas,
Oklahoma,
Palau,
Puerto Rico,
South Carolina,
Kentucky,
Louisiana,
Marshall Islands,
Maryland,
Micronesia,
Mississippi,
North Carolina,
Tennessee,
Texas,
Virginia,
West Virginia.

West

Arizona,
California,
Colorado,
Idaho,
Montana,
Nevada,
New Mexico,
Oregon,
Utah,
Washington,
Wyoming.

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Appendix B, Table 2.

For Alaska, Hawaii, and Guam, the year 2008 figures were updated from the April 2008 ''State Index'' based on the ratio of the urban change in the state (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected MSAs are also available. These are based on semiannual CPI–U changes for a 12-month period ending in June 2008. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Appendix C, Table 3.

Appendix D, Table 4 lists each of the various figures at 70 percent of the updated 2008 LLSIL for family sizes of one to six persons. Because tables 1–3 only list the LLSIL for a family of four, table 4 can be used to determine the LLSIL for families of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. A modified Excel version of Appendix D, Table 4, with the area names, will be available on the Department of Labor, Employment and Training Administration LLSIL Webpage at [*http://www.doleta.gov/llsil/2009/*]. Appendix E, Table 5, indicates 100 percent of LLSIL for family sizes of one to six and is used to determine self-sufficiency as noted at 20 CFR 663.230 of the WIA regulations and WIA Section 134(d)(3)(A)(ii).

Use of These Data

Governors should designate the appropriate LLSILs for use within the state from Appendices A, B, and C, containing Tables 1 through 3. Appendices D and E, which contain Tables 4 and 5, may be used with any LLSIL designated. The Governor's designation may be provided by disseminating information on MSAs and metropolitan and non-metropolitan areas within the state or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures for Northeast metropolitan, Northeast non-metropolitan, portions of the state in the New York City MSA, and those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.110, a state's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

Disclaimer on Statistical Uses

It should be noted, the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Lower Living Standard Income Level for 2009

Under Title I of the Workforce Investment Act of 1998 (Public Law 105–220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL). This Notice announces the LLSIL Tables for 2009. WIA requires the Department of Labor to update and publish the LLSIL tables annually. The LLSIL tables are used for several purposes under WIA, including determining eligibility for youth and for the Work Opportunity Tax Credit.

Signed at Washington, DC, this 16th day of March 2009.

Douglas F. Small,

Deputy Assistant Secretary.

Appendix A

TABLE 1—LOWER LIVING STANDARD INCOME LEVEL

(For a family of four persons) by Region [1]

Region [2]	2009 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro	$37,703	$26,392
Non-Metro [3]	36,086	25,260
Midwest		
Metro	33,198	23,239
Non-Metro	31,817	22,272
South		
Metro	32,143	22,500
Non-Metro	30,986	21,690
West		
Metro	36,664	25,665
Non-Metro [4]	35,126	24,588

[1] For ease of use, these figures are rounded to the next highest dollar.
[2] Metropolitan area measures were calculated from the weighted average CPI–Us for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI–Us for city size class D.
[3] Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI–U for city size class D.
[4] Non-metropolitan area percent changes for the West region are unpublished data.

Appendix B

TABLE 2—LOWER LIVING STANDARD INCOME LEVEL

(For a family of four persons)—Alaska, Hawaii and Guam [1]

Region	2009 Adjusted LLSIL	70 percent LLSIL
Alaska		
Metro	$44,250	$30,975
Non-Metro [2]	44,073	30,851
Hawaii, Guam		
Metro	47,622	33,335
Non-Metro [2]	47,051	32,936

[1] For ease of use, these figures are rounded to the next highest dollar.
[2] Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI–Us for city size class D in the Western Region.

Appendix C

TABLE 3—LOWER LIVING STANDARD INCOME LEVEL

(For a family of four persons) 23 MSAs [1]

Metropolitan Statistical Areas (MSAs)	2009 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$45,356	$31,749
Atlanta, GA	30,799	21,559
Boston—Brockton—Nashua, MA/NH/ME/CT	41,150	28,805
Chicago—Gary—Kenosha, IL/IN/WI	34,947	24,463
Cincinnati—Hamilton, OH/KY/IN	33,753	23,627
Cleveland—Akron, OH	34,542	24,179
Dallas—Ft. Worth, TX	31,333	21,933
Denver—Boulder—Greeley, CO	35,307	24,715
Detroit—Ann Arbor—Flint, MI	31,957	22,370
Honolulu, HI	48,670	34,069
Houston—Galveston—Brazoria, TX	29,759	20,831
Kansas City, MO/KS	32,479	22,735
Los Angeles—Riverside—Orange County, CA	38,822	27,175
Milwaukee—Racine, WI	33,405	23,384
Minneapolis—St. Paul, MN/WI	33,585	23,510
New York—Northern NJ—Long Island, NY/NJ/CT/PA	40,205	28,144
Philadelphia—Wilmington—Atlantic City, PA/NJ/DE/MD	36,317	25,422
Pittsburgh, PA	40,379	28,265
St. Louis, MO/IL	31,917	22,342
San Diego, CA	42,827	29,979
San Francisco—Oakland—San Jose, CA	38,904	27,233

TABLE 3—LOWER LIVING STANDARD INCOME LEVEL—Continued

(For a family of four persons) 23 MSAs [1]

Metropolitan Statistical Areas (MSAs)	2009 Adjusted LLSIL	70 percent LLSIL
Seattle—Tacoma—Bremerton, WA	40,221	28,155
Washington—Baltimore, DC/MD/VA/WV [2]	41,013	28,709

[1] For ease of use, these figures are rounded to the next highest dollar.
[2] Baltimore and Washington are now calculated as a single metropolitan statistical area.

Appendix D

Table 4—Seventy Percent of Updated 2009 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. After locating the appropriate region or metropolitan statistical area, find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult table 4 and the instructions below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the ''family of four'' column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure appears in a shaded block. Individuals from these size families may consult the 2009 HHS poverty guidelines found in the **Federal Register**, Vol. 74, No. 14, January 23, 2009, pp. 4199–4201 (on the Internet at *http://aspe.hhs.gov/poverty/09fedreg.pdf*) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$7,505	$12,296	$16,876	$20,831	$24,585	$28,751
7,762	12,722	17,470	21,559	25,444	29,754
7,815	12,802	17,571	21,690	25,597	29,935
7,901	12,947	17,771	21,933	25,887	30,272
8,024	13,144	18,044	22,272	26,288	30,742
8,049	13,187	18,101	22,342	26,367	30,832
8,056	13,199	18,123	22,370	26,398	30,870
8,104	13,278	18,225	22,500	26,556	31,058
8,184	13,416	18,421	22,735	26,831	31,379
8,366	13,714	18,824	23,239	27,422	32,075
8,418	13,798	18,943	23,384	27,596	32,272
8,467	13,874	19,048	23,510	27,747	32,449
8,508	13,945	19,144	23,627	27,884	32,608
8,707	14,272	19,588	24,179	28,536	33,369
8,807	14,439	19,815	24,463	28,871	33,766
8,853	14,509	19,921	24,588	29,019	33,939
8,901	14,587	20,025	24,715	29,166	34,110
9,096	14,909	20,467	25,260	29,812	34,859
9,157	15,002	20,595	25,422	30,004	35,085
9,240	15,142	20,790	25,665	30,285	35,422
9,505	15,578	21,379	26,392	31,148	36,424
9,784	16,034	22,013	27,175	32,068	37,507
9,809	16,073	22,060	27,233	32,138	37,587
10,133	16,609	22,797	28,144	33,210	38,845
10,142	16,613	22,809	28,155	33,226	38,856
10,181	16,683	22,901	28,265	33,359	39,011
10,340	16,945	23,258	28,709	33,884	39,626
10,372	16,997	23,339	28,805	33,995	39,752
10,798	17,689	24,287	29,979	35,379	41,377
11,111	18,203	24,992	30,851	36,406	42,575
11,157	18,277	25,094	30,975	36,554	42,753
11,435	18,739	25,720	31,749	37,471	43,815
11,861	19,437	26,681	32,936	38,866	45,453
12,007	19,670	27,007	33,335	39,339	4,6010
12,270	20,102	27,596	34,069	40,203	47,022

Appendix E

Table 5—Updated 2009 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the State or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. Then locate the appropriate region or metropolitan statistical area and then find the 2009 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four in the column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
$10,722	$17,566	$24,109	$29,759	$35,121	$41,073
11,089	18,174	24,957	30,799	36,348	42,505
11,164	18,289	25,101	30,986	36,567	42,764
11,287	18,496	25,387	31,333	36,982	43,246
11,463	18,777	25,777	31,817	37,554	43,917
11,499	18,838	25,858	31,917	37,667	44,046
11,509	18,855	25,890	31,957	37,712	44,100
11,577	18,969	26,036	32,143	37,937	44,369
11,692	19,166	26,316	32,479	38,330	44,827
11,952	19,592	26,891	33,198	39,174	45,822
12,026	19,712	27,062	33,405	39,423	46,103
12,095	19,820	27,211	33,585	39,638	46,355
12,154	19,922	27,348	33,753	39,834	46,583
12,438	20,389	27,983	34,542	40,766	47,670
12,582	20,627	28,307	34,947	41,244	48,237
12,647	20,727	28,458	35,126	41,455	48,484
12,716	20,838	28,607	35,307	41,665	48,729
12,994	21,299	29,239	36,086	42,589	49,799
13,081	21,432	29,421	36,317	42,863	50,121
13,200	21,632	29,700	36,664	43,264	50,603
13,578	22,254	30,542	37,703	44,497	52,034
13,977	22,905	31,447	38,822	45,811	53,582
14,013	22,961	31,514	38,904	45,911	53,696
14,476	23,727	32,567	40,205	47,443	55,493
14,489	23,733	32,584	40,221	47,466	55,508
14,544	23,833	32,715	40,379	47,656	55,730
14,771	24,207	33,226	41,013	48,405	56,609
14,817	24,282	33,341	41,150	48,564	56,789
15,426	25,270	34,696	42,827	50,541	59,110
15,873	26,004	35,703	44,073	52,009	60,821
15,938	26,110	35,849	44,250	52,220	61,075
16,336	26,770	36,743	45,356	53,530	62,593
16,944	27,767	38,115	47,051	55,523	64,933
17,153	28,100	38,581	47,622	56,199	65,728
17,528	28,717	39,423	48,670	57,433	67,174

[FR Doc. E9–6618 Filed 3–25–09; 8:45 am]
BILLING CODE

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0006]

Reports of Injuries to Employees Operating Mechanical Power Presses; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Provision on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

DATES: Comments must be submitted (postmarked, sent, or received) by May 26, 2009.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0006, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2009–0006). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

In the event an employee is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and employee's names, workplace address and location, injury sustained, task being performed when the injury occurred, number of operators required for the operation and the number of operators provided with controls and safeguards, cause of the accident, type of clutch, safeguard(s), and feeding method(s) used, and means used to actuate the press stroke. OSHA's Directorate of Safety Standards Programs (currently, the Directorate of Standards and Guidance), or the State agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health, collects the information. These reports are a source of up-to-date information on power press machines. Particularly, this information identifies the equipment used and conditions associated with these injuries.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirement specified by the Provision from 16 hours to 13 hours, for a total decrease of 3 hours. This adjustment is a result of a decline in the number of reports received by OSHA annually.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Report of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0070.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 38.

Frequency of Response: On occasion.

Average Time per Response: Varies from five minutes (.08 hour) for a secretary to prepare the report to send to OSHA to 15 minutes (.25 hour) for a supervisor to obtain the information and prepare the written report.

Estimated Total Burden Hours: 13.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0006). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office

for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Donald G. Shalhoub, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on March 23, 2009.

Donald G. Shalhoub,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–6733 Filed 3–25–09; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

Notice of Inquiry and Request for Comments on the Topic of Facilitating Access to Copyrighted Works for the Blind or Persons With Other Disabilities; Notice of Public Meeting

AGENCY: United States Copyright Office, Library of Congress.

ACTION: Notice of inquiry and request for comments; notice of public meeting.

SUMMARY: The United States Copyright Office (Copyright Office) and the United States Patent and Trademark Office (USPTO) seek comment on the topic of facilitating access to copyrighted works for ''blind or persons with other disabilities'' [1] in connection with a forthcoming meeting of the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization. Interested parties are invited to submit comments on the topics outlined in the supplementary information section of this notice. The Copyright Office and USPTO also announce a public meeting on the same topic.

DATES: Initial comments on the Notice of Inquiry and Request for Comments are due on April 21, 2009. Reply comments are due on May 4, 2009. The public meeting will be held Monday, May 18, 2009, from 9:30 a.m. to 5:30 p.m.

ADDRESSES:

Notice of Inquiry and Request for Comments

If hand-delivered by a private party, an original and five copies of a comment or a reply comment should be brought to the Library of Congress, U.S. Copyright Office, Public Information Office, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of Policy and International Affairs, U.S. Copyright Office. If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (CCAS) located at 2nd and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of Policy and International Affairs, U.S. Copyright Office, Room LM–403, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Fedex, United Parcel Service, or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Office of Policy and International Affairs, Copyright GC/I & R, P.O. Box 70400, Washington, DC 20024.

Public Meeting

The public meeting will be held in the Montpelier Room of the Library of Congress, James Madison Building, 6th Floor, 101 Independence Avenue, SE., Washington, DC 20559. The process for submitting requests to attend and observe or participate in the meeting, as well as the agenda, will be published on the Web site of the U.S. Copyright Office no later than April 8, 2009.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Associate Register, Policy and International Affairs, or Michele Woods, Senior Counsel for Policy and International Affairs, by telephone at 202–707–1027, by facsimile at 202–707–8366 or by electronic mail at *mpall@loc.gov* or *mwoo@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The United States is a Member State of the World Intellectual Property Organization (WIPO) and an active member of the Standing Committee on Copyright and Related Rights (SCCR). At recent meetings of the SCCR, WIPO facilitated discussions on the topic of copyright limitations and exceptions, including limitations and exceptions for ''blind, visually impaired and other reading-disabled persons.'' [2] At its next meeting (May 25–29, 2009), the SCCR will continue to consider this topic, among others, and will exchange information and experiences in order to deepen its collective understanding of the issues. As part of the process, the SCCR is looking to the copyright limitations and exceptions that are currently available for the benefit of the blind, visually impaired and other reading-disabled persons around the world, and has invited Member States to provide supplementary information regarding their national laws and experiences.

In preparation for the meeting, the Copyright Office and the USPTO have been gathering relevant information. To date, the Copyright Office and USPTO have participated in a series of informal meetings and conference calls (primarily with stakeholders from the blind community, but also with representatives of the library, book publishing, software, motion picture, and nonprofit sectors) in which multiple specific issues have been identified and a number of common points have emerged.

On the basis of these preliminary discussions, the Copyright Office and the USPTO understand that blind and other persons with disabilities in the United States navigate many complex challenges when it comes to accessing copyrighted works. Common refrains include delays in obtaining accessible texts (with timeliness of accessible materials a particular problem for students at all levels), compatibility problems between available formats and the hardware devices employed by the reader, and inconsistencies in the quality and accuracy of the available, reformatted works. At the international level, the Copyright Office and the USPTO were made aware of the existing framework through which accessible works move across borders (*i.e.* through private agreement and interlibrary

[1] Various terms are used formally and informally throughout the world. When inquiring about experiences within the United States, the term used in this Notice of Inquiry is that which appears in U.S. copyright law. *See* 17 U.S.C. 121(d)(2). There, the term ''blind or persons with other disabilities'' is defined to include individuals who are eligible or who may qualify in accordance with the Act entitled ''An Act to provide books for the adult blind,'' approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487).

[2] This term appears in some relevant WIPO documents. *See e.g.* ''Conclusions of the SCCR,'' November 5–7, 2008, at *http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_www_112533.pdf* (last visited on March 20, 2009).

programs), as well as some of the difficulties the framework presents.

Possible Actions

Through discussions with stakeholders and previous meetings of the SCCR, the Copyright Office and USPTO are aware of some measures that might be appropriate for action at the national or international levels (through Member States, WIPO or other mechanisms). Such possible actions include the following: (1) Developing standardized accessibility formats and other technical norms; (2) establishing trusted intermediaries to coordinate resources, eliminate unnecessary duplication of accessible works, and ensure best practices; (3) providing technical assistance, coordination, and educational outreach; (4) promoting market-based solutions achieved through private sector copyright licenses or other agreements; and (5) developing binding or non-binding international instruments, including a treaty that would establish minimum requirements for limitations and exceptions for blind, visually impaired and other reading-disabled persons. The Copyright Office and the USPTO are interested in learning how these areas of focus might address existing difficulties with access to copyright works, whether applied alone or in combination with each other. Suggestions as to measures not covered above are also welcome.

Please note that WIPO posts various documents from its meetings on its Web site, including reports and agendas related to the consideration of copyright limitations and exceptions. Documents from SCCR meetings that included consideration of this issue can be found by starting at *http://www.wipo.int/meetings/en/topic.jsp?group_id=62* and following the link to information for each specific meeting. A study on copyright limitations and exceptions for the visually impaired can be found at *http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696*.

Subjects of Inquiry

At this time, in order to allow further opportunity for interested persons to provide their views, the Copyright Office and the USPTO are seeking comment on several focused topics related to the provision of access to copyrighted works for blind and other persons with disabilities. Unless otherwise specified, the focus of the inquiry is the experiences of interested parties residing or doing business in the United States. Nevertheless, parties should not feel constrained from describing transnational experiences and situations if they are illustrative of a problem or success.

A. Experiences of Persons Within the United States With Respect To Accessing U.S. Works or Sharing Accessible Copies Within the United States

In general, the Copyright Office and the USPTO seek to learn more about the experiences of the blind or persons with other disabilities with respect to accessing and sharing U.S. copyrighted works within the United States. Please reference any specific policies, practices and projects that exist or are emerging in the education, library and business sectors while considering the questions set forth below.

1. *Applicable Statutory or Regulatory Provisions:* The United States has relevant existing limitations on exclusive rights in the Copyright Act. Section 121 (the so-called ''Chafee Amendment'') authorizes the reproduction of copyrighted works for blind or other persons with disabilities under certain circumstances. Section 121(a) contains general language providing that it is not copyright infringement ''for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are produced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.'' Section 121(c) provides a specific limitation applicable to publishers of ''print instructional materials for use in elementary or secondary schools'' so that they may create and distribute electronic files consistent with the Individuals with Disabilities Education Act (IDEA). 17 U.S.C. 21(c). Those electronic files must use the National Instructional Material Accessibility Standard (NIMAS). *Id.* How have the Chafee Amendment and related statutory and regulatory provisions worked in practice?

2. *Private Sector Initiatives:* The Copyright Office and the USPTO are aware that book publishers have been involved in the development and implementation of Section 121 and other laws applicable to disabilities and education. What are additional ways in which the private sector facilitates, or plans to facilitate, access to copyrighted works? Please identify and describe in detail any existing business models, licensing schemes, or technological innovations that are relevant, not only for books but for other copyrighted works, *e.g.,* magazines, newspapers, motion pictures, and software. To date, what has been the result of these efforts in terms of achieving accessible content? Do best practices exist? Turning to the nonprofit sector, what are the activities, business models, or technology platforms that have emerged and what has been the result to date? What if any are the additional projects under consideration?

3. *Library Programs:* Libraries play an important role in providing access to copyrighted works for the blind or persons with other disabilities. The Library of Congress, through its National Library Service for the Blind and Physically Handicapped, provides Braille and audio materials (*e.g.,* talking books) to eligible borrowers through cooperating libraries in the United States. NLS also provides interlibrary loan services to citizens of other countries through qualified libraries or other institutions in those countries. Private organizations, such as Bookshare, provide access to digital materials through an online searchable library. What other sorts of libraries or library services currently facilitate access to copyrighted works? What physical and digital delivery methods are being used? What initiatives have libraries taken to develop new services and to respond to evolving needs and technologies? What coordination exists among national and international library services?

4. *Standardized Formats, Programs and Devices:* In recent years, entrepreneurs and other representatives of the blind or persons with other disabilities have made significant progress in efforts to upgrade and standardize the technical formats, programs and devices that allow access to books and other text. These include the talking-book format of DAISY (Digital Accessible Information System) that is compatible with screen readers, as well as stationary and portable DAISY players that feature synthetic-voices, and various versions of scan-and-read software. Paper-based Braille has evolved into digital formats that offer refreshable displays and nonlinear search capabilities when used with applicable devices. Are there additional innovations in use or under development today and, if so, what is their focus? What are the impediments, and possible solutions, for improving existing standardized formats, programs and devices, developing new ones, and/or facilitating their interoperability?

5. *Resources:* To what degree is a lack of sufficient resources a factor in providing access to the blind or persons with other disabilities? What governmental, private sector, nonprofit, or philanthropic resources exist? What types of resources are most needed?

What approaches to expanding available resources are most promising? What objectives could be met and in what time frame if additional resources were available?

B. Experiences of Persons Within the United States With Respect To Accessing Foreign Works or Sharing Accessible Copies of U.S. Works With Foreign Persons

Please comment on the experiences of the blind or persons with other disabilities with respect to accessing foreign works within the United States, or sharing accessible copies of U.S. works with similarly-situated persons outside the United States. What kinds of specific policies, practices and projects exist or are emerging in the education, library and business sectors? How do existing laws create incentives or constrain efforts? Please describe the ways in which technology has influenced or could assist in providing access to foreign works or the sharing of accessible copies. What are the legal or practical impediments to transnational access and how are they interrelated?

C. Other Comments on Facilitating and Enhancing Access to Copyrighted Works

Please comment on the likely success of measures identified above under the subsection entitled ''Possible Actions'' under **SUPPLEMENTARY INFORMATION**. How might the measures best be leveraged, alone or in combination, to enhance access for the blind or other persons with disabilities? Are there additional governmental or private sector actions that might serve the objective of enhancing access to copyrighted works for the blind or persons with other disabilities?

Dated: March 20, 2009.

Maria Pallante,

Associate Register for Policy & International Affairs, U.S. Copyright Office.

[FR Doc. E9–6637 Filed 3–25–09; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Meeting; Sunshine Act

March 20, 2009.

TIME AND DATE: 10 a.m., Thursday, March 26, 2009.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Peter J. Phillips* v. *A&S Construction Co.,* Docket No. WEST 2008–1057–DM. (Issues include whether, under section 105(c)(2) of the Mine Act, an order of temporary reinstatement remains in effect after the Secretary of Labor has determined, following her investigation, that no unlawful discrimination has occurred.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. E9–6843 Filed 3–24–09; 11:15 am]

BILLING CODE

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 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 shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by May 26, 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 Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpton@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: DUE Project Data Form.

OMB Control No.: 3145–0201.

Expiration Date of Approval: August 31, 2009.

Abstract: The Division of Undergraduate Education (DUE) Project Data Form is a component of all grant proposals submitted to NSF's Division of Undergraduate Education. This form collects information needed to direct proposals to appropriate reviewers and to report the estimated collective impact of proposed projects on institutions, students, and faculty members. Requested information includes the discipline of the proposed project, collaborating organizations involved in the project, the academic level on which the project focuses (*e.g.*, lower-level undergraduate courses, upper-level undergraduate courses), characteristics of the organization submitting the proposal, special audiences (if any) that the project would target (*e.g.*, women, minorities, persons with disabilities), strategic foci (if any) of the project (*e.g.*, research on teaching and learning, international activities, integration of research and education), and the number of students and faculty at different educational levels who would benefit from the project.

Respondents: Investigators who submit proposals to NSF's Division of Undergraduate Education.

Estimated Number of Annual Respondents: 2,500.

Burden on the Public: 20 minutes (per response) for an annual total of 833 hours.

Dated: March 23, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–6746 Filed 3–25–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

U.S. Chief Financial Officer Council; Grants Policy Committee

ACTION: Notice of open stakeholder Webcast meeting and publication of draft Implementation Plan.

SUMMARY: This notice announces an open stakeholder Webcast meeting sponsored by the Grants Policy Committee (GPC) of the U.S. Chief Financial Officers (CFO) Council.

DATES: The GPC will hold a Webcast meeting on Tuesday, April 21, 2009 from 2–3:30 p.m., Eastern Time. The Webcast will be broadcast live. Relevant meeting materials will be posted on *http://www.GPC.gov* in advance of the meeting.

ADDRESSES: The GPC April 21st Webcast meeting will be broadcast from and held in Room B–180 of the U.S. Department of Housing and Urban Development (HUD), 451 7th Street SW., Washington, DC 20410. Seating is limited—the first 50 people to respond, and receive confirmation of the response, can be part of the live audience. Both federal and non-federal employees must R.S.V.P. to reserve a seat by contacting Charisse Carney-Nunes at *GPCWebcast@nsf.gov*. All who have reserved seating must arrive at the HUD building fifteen minutes prior to broadcast (arrive on the North side of the building). You must have a government-issued photo ID to gain access and will have to go through security screening. The GPC encourages non-Federal organizations staffs and members to attend the meeting in person or via Webcast.

Overview: This Webcast will serve several purposes: (1) To update the public on the latest news of the GPC; (2) to discuss topics related to electronic data in the grants community and OMB's latest implementation guidelines regarding the American Recovery and Reinvestment Act 2009 (Recovery Act); and (3) to provide an overview of how Research.gov is implementing new government-wide post-award reporting standards including the Federal Financial Report (FFR) and the Research Performance Progress Report (RPPR). Research.gov is the federal grants management consortium lead for research grants management, offering research information and a menu of grants management services for multiple federal research agencies in one place and providing transparency into federal research spending and results. Webcast presenters will be available for a question and answer period after the presentations.

Further Information About the GPC Webcast: Questions on the Webcast should be directed to Charisse Carney-Nunes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; e-mail, *GPCWebcast@nsf.gov*. Information and materials that pertain to this Webcast meeting, including the call-in telephone number and the agenda will be posted on the Grants Policy Committee's Web site at *http://www.GPC.gov* on the ''Webcasts and Outreach'' page. The link to view the Webcast will be posted on this site, along with Webcast instructions. After the meeting, a link to its recording will be posted on http://www.GPC.gov for at least 90 days.

Comment Submission Information: You may submit webcast related questions in advance of the webcast to *GPCWebcast@nsf.gov*. You may also submit comments during the Webcast meeting via telephone or e-mail. The call-in telephone number, which may be used only *DURING* the live Webcast, is 202–708–0995. The e-mail address for comments, which should be used only *DURING* the Webcast is *HUDTV@HUD.GOV*. After the Webcast, you may submit comments via e-mail through the close of business on Friday, May 1, 2009. The e-mail address for comments before and after the Webcast is *GPCWebcast@nsf.gov*.

SUPPLEMENTARY INFORMATION: This Webcast meeting has been made possible by the cooperation of the National Science Foundation, HUD, and the GPC.

Webcast Materials: Webcast materials including the agenda, Webcast meeting slides, and feedback form are posted at *http://www.GPC.gov* on the Webcasts and Outreach page.

Purpose of the Webcast meeting: The purpose of the Webcast meeting is threefold: (1) To update the public on the latest news of the GPC; (2) to discuss topics related to electronic data in the grants community and OMB's latest implementation guidelines regarding the American Recovery and Reinvestment Act 2009 (Recovery Act); and (3) to provide an overview of how Research.gov is implementing new government-wide post-award reporting standards including the Federal Financial Report (FFR) and the Research Performance Progress Report (RPPR). Research.gov is the federal grants management consortium lead for research grants management, offering research information and a menu of grants management services for multiple Federal research agencies in one place and providing transparency into Federal research spending and results. Presenters will be available for a question and answer period after the presentations.

A key purpose of the Webcast meeting is to share information with stakeholders on decisions and requirements related to the Recovery Act and to provide agencies with best practices for implementation of the FFR and PPR. Generally, the purpose of the Webcast is to receive input from stakeholders to inform government efforts as they relate to streamlining and stewardship of Federal policy and practice relating to grants, cooperative agreements, and Federal financial assistance.

Meeting structure and agenda: The April 21st Webcast meeting will have the following structure and agenda:

(1) GPC Update;

(2) Grant Community Information Collection and Dissemination and the Recovery Act;

(3) Overview of how Research.gov is implementing new government-wide post-award reporting standards including the Federal Financial Report (FFR) and the Research Performance Progress Report (RPPR); and

(4) Participants' discussion, questions and comments.

Background: The GPC is a committee of the U.S. Chief Financial Officers (CFO) Council. The Office of Management and Budget (OMB) sponsors the GPC; its membership consists of grants policy subject matter experts from across the Federal Government. The GPC is charged with improving the management of federal financial assistance government-wide. To carry out that role, the committee recommends financial assistance policies and practices to OMB and coordinates related interagency activities. The GPC serves the public interest in collaboration with other Federal Government-wide grants initiatives.

Dated: March 23, 2009.

Thomas N. Cooley,

Director, Office of Budget, Finance and Award Management of the National Science Foundation and Chair of the Grants Policy Committee of the U.S. CFO Council.

Submitted for the National Science Foundation on March 23, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–6743 Filed 3–25–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0500]

Proposed Revisions to the License Renewal Interim Staff Guidance Process and Regulatory Issue Summary 2007–16; Request for Public Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Request for public comment.

SUMMARY: The NRC requests public comment on a proposed draft License Renewal Interim Staff Guidance (LR–ISG) Process, Revision 1. This draft incorporates changes to the existing LR–ISG process, dated December 12, 2003, and basic framework for developing and implementing LR–ISGs. The NRC also requests public comment on a proposed revision to NRC Regulatory Issue Summary (RIS) 2007–16. This revision clarifies the role of the LR–ISG process for including ''newly identified'' systems, structures, and components in accordance with § 54.37(b) of Title 10, Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' of the Code of Federal Regulations (10 CFR 54.37(b)). The proposed revisions to the LR–ISG process and RIS are available in the NRC's Agencywide Documents Access and Management System (ADAMS), under Accession Nos. ML082180346 and ML083500028, respectively.

DATES: Comments must be filed no later than April 27, 2009. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available to the public in their entirety on the Federal Government's rulemaking Web site *http://www.regulations.gov.* Personal information, such as name, address, telephone, e-mail address, etc., will not be removed from your submission.

E-mail comments to: The Federal e-Rulemaking Portal at *http://www.regulations.gov;* search Docket ID NRC–2008–0500.

Mail comments to: Michael Lesar, Chief, Rulemaking and Directives Branch, Mailstop TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Documents created or received after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS. If you do not have access to the Internet or if there are any problems in accessing the documents located in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1683; or e-mail *Matthew.Homiack@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC posts its issued interim staff guidance on the NRC public Web page at *http://www.nrc.gov/reading-rm/doc-collections/isg.* The NRC staff requests public comment on draft LR–ISG–2007–01 entitled, ''License Renewal Interim Staff Guidance Process, Revision 1'' (ADAMS Accession No. ML082180346). Once approved, this LR–ISG will supersede the existing process entitled, ''Process for Interim Staff Guidance,'' issued December 12, 2003 (ML023520620). The NRC staff is proposing revisions to this process in order to address certain recommendations made in a report issued by the NRC's Office of the Inspector General, OIG–07–A–15, ''Audit of the NRC's License Renewal Program,'' dated September 6, 2007 (ML072490486). The revision also extends the LR–ISG process to include certain guidance documents associated with environmental reviews for license renewal applications. These documents are NUREG–1555, ''Environmental Standard Review Plan,'' Supplement 1, ''Operating License Renewal,'' dated March 2000 (ML003702019), and NRC Regulatory Guide 4.2, Supplement 1, ''Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses,'' dated September 2000 (ML003710495). The staff is also proposing to eliminate the previous ''clarification'' and ''compliance'' LR–ISG designations. As an alternative, the staff will document the basis for applicability of 10 CFR 54.37(b) or 10 CFR 50.109 in a proposed new backfitting discussion section of each LR–ISG. In addition, the draft LR–ISG process includes administrative changes, such as references to the NRC's organizational structure.

The NRC staff also requests public comment on a proposed revision to RIS 2007–16. The NRC staff identified the need to revise this RIS to be consistent with the revision to the LR–ISG process. This revised RIS, once approved, will supersede the original version entitled, ''Implementation of the Requirements of 10 CFR 54.37(b) for Holders of Renewed Licenses,'' issued August 23, 2007 (ML071080338).

The NRC staff is issuing this notice to solicit public comments on draft LR–ISG–2007–01. After the NRC staff considers any public comments, it will make a determination regarding the draft LR–ISG.

Dated at Rockville, Maryland, this 18th day of March 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–6757 Filed 3–25–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d1–1; SEC File No. 270–526; OMB Control No. 3235–0584.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under current law, an investment company (''fund'') is limited in the amount of securities the fund (''acquiring fund'') can acquire from another fund (''acquired fund''). In general under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act''), a registered fund (and companies it controls) cannot: (i) Acquire more than three percent of another fund's securities; (ii) invest more than five percent of its own assets in another fund; or (iii) invest more than ten percent of its own assets in other funds

in the aggregate.[1] In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell that fund's shares to another fund if, as a result: (i) The acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or (ii) all acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.[2] Rule 12d1–1 under the Act (17 CFR 270.12d1–1) provides an exemption from these limitations for ''cash sweep'' arrangements, in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments. An acquiring fund relying on the exemption may not pay a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the acquiring fund's investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.[3] The acquired fund may be a fund in the same fund complex or in a different fund complex. In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) and rule 17d–1, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.[4] These provisions could otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,[5] or prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.[6]

The rule also permits a registered fund to rely on the exemption to invest in an unregistered money market fund that limits its investments to those in which a registered money market fund may invest under rule 2a–7 under the Act (17 CFR 270.2a–7), and undertakes to comply with all the other provisions of rule 2a–7. In addition the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a–7, (ii) complies with sections 17(a), (d), (e), 18, and 22(e) of the Act[7] as if it were a registered open-end fund, (iii) has adopted procedures designed to ensure that it complies with these statutory provisions, (iv) maintains the records required by rules 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9);[8] and (v) preserves permanently, the first two years in an easily accessible place, all books and records required to be made under these rules.

Rule 2a–7 contains certain collection of information requirements. An unregistered money market fund that complies with rule 2a–7 would be subject to these collection of information requirements. In addition, the recordkeeping requirements under rule 31a–1 with which the acquiring fund reasonably believes the unregistered money market fund complies are collections of information for the unregistered money market fund. By allowing funds to invest in registered and unregistered money market funds, rule 12d1–1 is intended to provide funds greater options for cash management. In order for a registered fund to rely on the exemption to invest in an unregistered money market fund, the unregistered money market fund must comply with certain collection of information requirements for registered money market funds. These requirements are intended to ensure that the unregistered money market fund has established procedures for collecting the information necessary to make adequate credit reviews of securities in its portfolio, as well as other recordkeeping requirements that will assist the acquiring fund in overseeing the unregistered money market fund (and Commission staff in its examination of the unregistered money market fund's adviser).

Commission staff estimates that registered funds currently invest in 60 unregistered money market funds in excess of the statutory limits under rule 12d1–1, and will invest in approximately 6 new unregistered money market funds each year[9] Staff estimates that each of these unregistered money market funds spends 1220 hours to perform the record of credit risk analysis and other determinations annually, and each of the 6 unregistered money market funds in which an acquiring fund invests in for the first time under the rule will spend 21 hours to implement the board procedures. Finally, Commission staff estimates that 15 unregistered money market funds each spend 4.5 hours to review and amend procedures annually. The estimated total of annual responses under rule 12d1–1 is 10,713,[10] and the estimate of burden hours associated with these responses is 80,714 hours.[11]

Commission staff estimates that unregistered money market funds also incur costs to preserve records, as required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records. In its rule 2a–7 Paperwork Reduction Act (''PRA'') submission, Commission staff estimated that the amount an individual money market fund may spend ranged from $100 per year to $300,000. We have no reason to believe the range is different for unregistered money market funds. The Commission does not have specific information on the amount of assets managed by unregistered money market funds. Accordingly, Commission staff estimates that an unregistered money market fund in which registered funds invest in reliance on rule 12d1–1 have, on average, $380 million in assets under management.[12] Based on a cost of $0.0000005 per dollar of assets under management for medium-sized funds,

[1] *See* 15 U.S.C. 80a–12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

[2] *See* 15 U.S.C. 80a–12(d)(1)(B).

[3] *See* Rule 12d1–1(b)(1).

[4] *See* 15 U.S.C. 80a–17(a), 15 U.S.C. 80a–17(d); 17 CFR 270.17d–1.

[5] An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person. *See* 15 U.S.C. 80a–2(a)(3)(C) (definition of ''affiliated person''). Most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex. Funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds. *See* 15 U.S.C. 80a–2(a)(9). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n.11. To the extent that an acquiring fund in a fund complex is under common control with a money market fund in the same complex, the funds would rely on the rule's exemptions from section 17(a) and rule 17d–1.

[6] *See* 15 U.S.C. 80a–2(a)(3)(A), (B).

[7] *See* 15 U.S.C. 80a–17(a), 15 U.S.C. 80a–17(d), 15 U.S.C. 80a–17(e), 15 U.S.C. 80a–18, 15 U.S.C. 80a–22(e).

[8] *See* 17 CFR 270.31a–1(b)(2)(ii), 17 CFR 270.31a–1(b)(2)(iv), 17 CFR 270.31a–1(b)(9).

[9] This estimate is based on the number of applications filed with the Commission in 2005 (40), increased by investment in 6 new funds each year since 2005 (18), and rounded to the nearest tenth (60). This estimate may be understated because applicants generally do not identify the name or number of unregistered money market funds in which registered funds intend to invest, and each application also applies to unregistered money market funds to be organized in the future.

[10] This estimate is based on the following calculation: $(60 \times 162) + (6 \times 162) + (6 \times 1) + (15 \times 1) = 10{,}713$.

[11] This estimate is based on the following calculation: $(60 \times 1220) + (6 \times 1220) + (6 \times 21) + (15 \times 4.5) = 80{,}714$.

[12] This estimate is based on the average of assets under management of medium-sized registered money market funds ($50 million to $999 million).

the staff estimates compliance with rule 2–7 costs each of these unregistered money market funds $11,400 annually.[13] Commission staff estimates that unregistered money market funds will not incur any capital costs to create computer programs for maintaining and preserving compliance records for rule 2a–7.[14]

The collections of information required for unregistered money market funds by rule 12d1–1 are necessary in order for acquiring funds to be able to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: March 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6656 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[13] This estimate was based on the following calculation: 60 unregistered money market funds × $380 million in assets under management × $0.0000005 = $11,400. The estimate of cost per dollar of assets is the same as that used for medium-sized funds in the rule 2a–7 PRA submission.

[14] This estimate is based on information Commission staff obtained in its survey for the rule 2a–7 PRA submission. Of the funds surveyed, no medium-sized funds incurred this type of capital cost. The funds either maintained record systems using a program the fund would be likely to have in the ordinary course of business (such as Excel) or the records were maintained by the fund's custodian.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–1, SEC File No. 270–208, OMB Control No. 3235–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1 (17 CFR 270.17g–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–17(g)) governs the fidelity bonding of officers and employees of registered management investment companies (''funds'') and their advisers. Rule 17g–1 requires, in part, the following:

Independent Directors' Approval

The form and amount of the fidelity bond must be approved by a majority of the fund's independent directors at least once annually, and the amount of any premium paid by the fund for any ''joint insured bond,'' covering multiple funds or certain affiliates, must be approved by a majority of the fund's independent directors.

Terms and Provisions of the Bond

The amount of the bond may not be less than the minimum amounts of coverage set forth in a schedule based on the fund's gross assets; the bond must provide that it shall not be cancelled, terminated, or modified except upon 60-days written notice to the affected party and to the Commission; in the case of a joint insured bond, 60-days written notice must also be given to each fund covered by the bond; a joint insured bond must provide that the fidelity insurance company will provide all funds covered by the bond with a copy of the agreement, a copy of any claim on the bond, and notification of the terms of the settlement of any claim prior to execution of that settlement; and a fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the bond.

Filings With the Commission

Upon the execution of a fidelity bond or any amendment thereto, a fund must file with the Commission within 10 days a copy of the executed bond or any amendment to the bond, the independent directors' resolution approving the bond, and a statement as to the period for which premiums have been paid on the bond. In the case of a joint insured bond, a fund must also file (i) a statement showing the amount the fund would have been required to maintain under the rule if it were insured under a single insured bond and (ii) the agreement between the fund and all other insured parties regarding recovery under the bond. A fund must also notify the Commission in writing within five days of any claim or settlement on a claim under the fidelity bond.

Notices to Directors

A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination, or modification of the fidelity bond at least 45 days prior to the effective date, and (ii) the filing or settlement of any claim under the fidelity bond when notification is filed with the Commission.

Rule 17g–1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement and the required notices to directors seek to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also seek to facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

Based on conversations with representatives in the fund industry, the Commission staff estimates that for each of the estimated 3885 active funds,[1] the average annual paperwork burden associated with rule 17g–1's requirements is two hours, one hour each for a compliance attorney and the board of directors as a whole. The time spent by compliance attorney includes time spent filing reports with the Commission for any fidelity losses (if any) as well as paperwork associated with any notices to directors, and managing any updates to the bond and the joint agreement (if one exists). The

[1] Based on statistics compiled by Commission staff, we estimate that there are approximately 3885 funds that must comply with the collections of information under rule 17g–1.

time spent by the board of directors as a whole includes any time spent initially establishing the bond, as well as time spent on annual updates and approvals. The Commission staff therefore estimates the total ongoing paperwork burden hours per year for all funds required by rule 17g–1 to be 7770 hours (3885 funds × 2 hours = 7770 hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by rule 17g–1 is mandatory and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: March 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6657 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 20a–1, SEC File No. 270–132, OMB Control No. 3235–0158.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 20a–1 (17 CFR 270.20a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a registered investment company (''fund'') be in compliance with Regulation 14A (17 CFR 240.14a–1 *et seq.*), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). It also requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation. In addition, rule 20a–1 instructs registered investment companies, that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited, to refer to the Commission's rules governing information statements.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for fund proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that funds file approximately 1,225 proxy solicitations annually with the Commission. That figure includes multiple filings by some funds. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 130,095 hours (1,225 responses × 106.2 hours per response).

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: March 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6658 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 6c–7, SEC File No. 270–269, OMB Control No. 3235–0276.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6c–7 (17 CFR 270.6c–7) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''1940 Act'') provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity

contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 100 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes of professional time per response for each of approximately 3000 purchasers annually (at an estimated $63 per hour),[1] for a total annual burden of 150 hours (at a total annual cost of $9,450).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N–3 (17 CFR 274.11b) and Form N–4 (17 CFR 274.11c).)

The Commission requests written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: March 20, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6723 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[1] $63/hour figure for a Compliance Clerk is from *SIFMA's Office Salaries in the Securities Industry 2008*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC—28652; 812–13645]

UBS AG, et al.; Notice of Application and Temporary Order

March 19, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against UBS AG on March 19, 2009 by the United States District Court for the District of Columbia (''Injunction'') until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: UBS AG; UBS Financial Services Inc. (''UBSFS''); UBS Fund Advisor, L.L.C. (''UBSFA''); UBS Willow Management, L.L.C. (''UBS Willow''), UBS Eucalyptus Management, L.L.C., UBS Tamarack Management, L.L.C., UBS Juniper Management, L.L.C., and UBS Enso Management, L.L.C. (collectively, ''UBSFA Advisers''); UBS Global Asset Management (Americas) Inc. (''UBS Global AM Americas''); UBS Global Asset Management (US) Inc. (''UBS Global AM US''); and UBS IB Co-Investment 2001 GP Limited (''ESC GP'') (collectively, ''Applicants'').[1]

Filing Dates: The application was filed on March 19, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected 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: UBS AG and ESC GP, c/o UBS Investment Bank, 677 Washington Boulevard, Stamford, CT 06901; UBSFS, 1200 Harbor Boulevard, Weehawken, NJ 07086; UBSFA and UBSFA Advisers, 51 West 52nd Street, 23rd Floor, New York, NY 10019; UBS Global AM US, 51 West 52nd Street, 16th Floor, New York, NY 10019; UBS Global AM Americas, One North Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at 202–551–6878, or Marilyn Mann, Branch Chief, at 202–551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. UBS AG is a company established under the laws of Switzerland that directly or through its subsidiaries provides global wealth management, securities and retail and commercial banking services. Each of the Applicants is either directly or indirectly controlled by UBS AG. UBS AG and ESC GP provide investment advisory services to employees' securities companies (''ESCs''), as defined in section 2(a)(13) of the Act, which provide investment opportunities for highly compensated key employees, officers, directors and current consultants of UBS AG and its affiliates. UBSFS, UBSFA, UBSFA Advisers and UBS Global AM Americas are registered as investment advisers under the Investment Advisers Act of 1940 (''Advisers Act'') and currently serve as investment advisers to registered management investment companies (''Funds''). UBSFS is registered as a broker-dealer under the Securities Exchange Act of 1934

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which UBS AG is or may become an affiliated person (together with the Applicants, the ''Covered Persons'').

(''Exchange Act'') and acts as depositor and principal underwriter to various registered unit investment trusts (''UITs''). UBS Global AM US is registered as a broker-dealer under the Exchange Act and as an investment adviser under the Advisers Act and serves as principal underwriter to various open-end Funds.

2. On March 19, 2009, the United States District Court for the District of Columbia entered a judgment, which included the Injunction, against UBS AG (''Judgment'') in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that UBS AG violated section 15(a) of the Exchange Act and section 203(a) of the Advisers Act by acting as an unregistered broker-dealer and investment adviser. The Complaint alleged that UBS AG, largely through individuals known as client advisers, used United States jurisdictional means to provide cross-border brokerage and investment advisory services to thousands of United States clients. The Complaint further alleged that this cross-border business was serviced primarily from Switzerland. The Complaint further alleged that at all times UBS AG was aware that it could provide these services to United States cross-border clients only through an entity registered with the Commission as a broker-dealer or investment adviser. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, UBS AG consented to the entry of the Injunction, the payment of disgorgement and certain undertakings to take various remedial actions.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that UBS AG is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, sub-adviser or depositor to any registered investment company or ESC, or in the capacity of principal underwriter for any open-end Fund or UIT (''Fund Service Activities''). Applicants note that none of the current or former directors, officers, or employees of the Applicants (other than UBS AG) had any knowledge of, or had any involvement in, the conduct alleged in the Complaint. Applicants further state that the personnel at UBS AG who were involved in the violations alleged in the Complaint have had no and will not have any future involvement in Fund Service Activities.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the registered investment companies they serve and the registered investment companies' shareholders or unitholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establishing an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect over 425 employees that are involved in those activities. Applicants also state that disqualifying UBS AG and ESC GP from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, directors and current consultants of UBS AG and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with UBS AG to manage the ESCs. In addition, participants in the ESCs have subscribed for interests in the ESCs with the expectation that the ESCs would be managed by an affiliate of UBS AG.

7. Applicants state that UBS AG and certain other Applicants have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption

[2] *Securities and Exchange Commission* v. *UBS AG*, Judgment as to UBS AG, 1:09–CV–00316 (D.D.C.) (entered March 19, 2009).

from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from March 19, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6655 Filed 3–25–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59608; File No. SR–NYSE–2009–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending the Listed Company Manual Section 902.08 To Establish an Initial Listing Fee and an Annual Listing Fee for Securities Listed Under Section 102.03 and Traded on the NYSE Bonds System

March 19, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 16, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Listed Company Manual (the ''Manual'') Section 902.08 to establish an initial listing fee and an annual listing fee for all securities listed under Section 102.03 and traded on NYSE BondsSM system (''NYSE Bonds''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Listed Company Manual (the ''Manual'') Section 902.08 to establish an initial listing fee and an annual listing fee for all securities listed under Section 102.03 and traded on NYSE BondsSM system (''NYSE Bonds''). Specifically, the Exchange seeks to implement an initial listing fee of $5,000 and an annual listing fee of $5,000 for the securities listed in Section 102.03 of the Manual.

I. Background

Currently, the Exchange imposes a $15,000 listing fee for bonds and other fixed income debt securities that list on the Exchange pursuant to Section 102.03 of the Manual. Specifically, the Exchange charges the $15,000 listing fee to non-NYSE issuers.

NYSE issuers, however, are not charged any listing fee for these bonds and other fixed income debt securities. In November 2006, the Exchange filed a proposed rule change establishing rules for the trading of unlisted debt securities on NYSE Bonds.[4] Specifically, this filing established NYSE Rules 1400 and 1401 in connection with the NYSE Exemption Request. As a result of the November 2006 rule filing, NYSE issuers were permitted to trade their unlisted bonds on the Exchange. Non-NYSE issuers, however, would not be permitted to trade their bonds on NYSE Bonds unless they were listed on the Exchange.

II. Proposed Amendments

The Exchange now proposes to amend the listing fees for NYSE and non-NYSE issuers. Under amended Section 902.08 of the Manual, the initial listing fee for non-NYSE issuers of bonds and other fixed income debt securities that list on the Exchange pursuant to Section 102.03 of the Manual will be a flat fee of $5,000. The annual listing fee for these bonds and other fixed income debt securities will also be $5,000.00. If an NYSE issuer opts to have its bonds or other fixed income debt securities listed on the Exchange, the NYSE issuer will be subject to the $5,000 initial listing fee and $5,000 annual listing fee. These fees will cover administrative and regulatory costs incurred by the Exchange. If an NYSE issuer does not choose to have its bonds or other fixed income debt securities listed on the Exchange, then the NYSE issuer is exempt from paying any listing fees but may still trade its bonds on the Exchange.

Because revenue is needed to pay for the operation and regulation of these listings, the Exchange has determined that the proposed $5,000 initial and $5,000 annual listing fees provide an attractive pricing strategy to its customers and is sufficient for covering the Exchange's costs to provide its services to the issuers.

U.S. Government issues are exempt from securities registration under the Securities and Exchange Act of 1934. Because these U.S. Government issues are not subject to the Acts' listing requirements, the Exchange is not required to perform an administrative and regulatory review of these listed bonds. Accordingly, U.S. Government issues will continue to list on the Exchange free of charge, as set forth in Section 902.08 of the Manual.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[5] of the Securities Exchange Act of 1934 (the ''Act'')[6] in general and Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] See Securities Exchange Release No. 54767 (November 16, 2006), 71 FR 67680 (November 22, 2006) (SR–NYSE–04–69).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78a

[7] 15 U.S.C. 78f(b)(4).

Exchange believes that the proposed initial and annual listing fees for all securities listed under Section 102.03 and traded on NYSE Bonds are reasonable to cover the costs incurred for the administrative and regulatory services provided by the Exchange. These fees are applicable to both NYSE and non-NYSE issuers that seek to have their Section 102.03 bonds or securities listed on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–31 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2009–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2009–31 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6720 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59603; File No. SR–NYSEArca–2009–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.62 To Provide Additional Order Types

March 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.62 to provide additional order types which will give investors greater control over the circumstances in which their orders are executed. Changes to the rule text are shown in the attached Exhibit 5. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide additional order types which will give market participants greater control over the circumstances in which their orders are executed.

NYSE Arca's options market has a price-time priority market structure, with automated routing if an incoming order is marketable against the National Best Bid/Offer (''NBBO''), but not immediately marketable on the Exchange. While the Exchange considers this to be a highly desirable market structure, some investors and market participants wish to provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

liquidity in some but not all circumstances; others wish to not have orders routed but still be available for execution on NYSE Arca. To help meet these desires, the Exchange proposes the following order types:

Tracking Order

A Tracking Order is an undisplayed limit order that is eligible for execution in the Working Order Process against orders equal to or less than the size of the Tracking Order. While Tracking Orders are ranked at their limit price, they are only eligible for execution at a price that matches the NBBO. A Tracking Order is intended only to provide liquidity in the event a marketable order would otherwise route to another exchange.

Tracking Orders have no standing with regard to open outcry trading, as they are not displayed, nor (unlike a Price Improving Order or Quote) are they represented in the disseminated bid or offer at an indicative price. Tracking Orders only have standing if contra interest in the NYSE Arca System would otherwise be routed to another market center at the NBBO. If a Floor Broker needs to enter an order into the System in order to clear the NBBO prior to executing at a worse price on the Floor, that order will trade with any eligible Tracking Orders.

For instance, the NBBO market in a series is 2.05–2.15, with a 2.10 Tracking Order to buy 10 contracts, but the NYSE Arca displayed bid is 2.00. An order is received to sell 6 contracts at 2.05; this order will be matched against the 2.10 buy Tracking Order at a price of 2.05, matching the NBBO.

Similarly, with the same initial scenario, a second Tracking Order to buy 20 contracts paying 2.05 is placed in the Consolidated Book. An order is received to sell 15 contracts at 2.05. This order is matched against the second Tracking Order, rather than the first Tracking Order, because it is greater in size than the first Tracking Order, but not greater in size than the second Tracking Order. It will be executed at 2.05, the NBBO price.

If a Tracking Order is executed but not exhausted, the remaining portion of the order shall be cancelled, without routing the order to another market center or market participant. A Tracking Order shall not trade-through the NBBO.

Attempts to use a Tracking Order to execute a cross transaction would be considered a violation of NYSE Arca Rule 6.47A, as that rule requires an order to be exposed (displayed) if it is part of a cross transaction.

Liquidity Adding Order

A Liquidity Adding Order is a limit order that will only be accepted if it is not marketable at the time of receipt. It is intended to provide liquidity and also will receive a liquidity adding credit if entered into an issue that credits a Post Liquidity Fee. Liquidity Adding Orders are not eligible for routing, but will be rejected if marketable against the NBBO. If a Liquidity Adding Order will lock or cross the market at the time of entry it will be rejected. Liquidity Adding Orders that, at the time of entry, would otherwise interact with undisplayed orders will be rejected. Liquidity Adding Orders may have a time-in-force of Day or GTC, but not IOC.

PNP-Blind Order

NYSE Arca has an existing order type known as PNP (Post No Preference) [3] which is a limit order that is only to be executed on the Exchange, and may be ranked in the Consolidated Book if not marketable, but is never to be routed. A PNP order that is marketable against the NBBO when entered is cancelled back to the entering OTP Holder.

Certain OTP Holders have asked for a similar order type that will also not route if marketable against the NBBO, but, unlike a PNP order, will not be cancelled if similarly marketable.

A PNP Blind order is a limit order that is to be executed on the Exchange, but never routed to another market. The unexecuted portion of a PNP Blind order is to be ranked in the Consolidated Book. Unlike a conventional PNP order, a PNP Blind Order that is marketable against the NBBO will not be cancelled; however, the price and size will not be disseminated to OPRA. If the NBBO moves so that the PNP Blind Order no longer locks or crosses the NBBO, the order's price and size will be disseminated. When a PNP Blind order is not displayed, it provides price improvement to any incoming contra-side order. A PNP Blind order will be executed at its limit price, if displayed, or at a price that matches the contra side of the NBBO, if undisplayed.

PNP Light Order

A conventional PNP Order is a Limit Order that is to be executed in whole or in part on the Exchange, and the portion that is not so executed is to be ranked in the Consolidated Book, without routing any portion of the order to another market center; provided, however, the Exchange shall cancel a PNP Order that would lock or cross the NBBO. A PNP Order is eligible for execution against any displayed and undisplayed trading interest in the Consolidated Book, such as a PNP Blind Order, or the undisplayed portion of a Reserve Order.[4]

A PNP Light Order is a PNP order that carries the added instruction to cancel the order if it is marketable against interest that is not displayed in the Consolidated Book. This provides OTP Holders greater ability to control the circumstances in which their orders are executed.

As with a conventional PNP order, a PNP Light order is to be executed in whole or in part on the Exchange, and the portion not so executed is to be ranked in the Consolidated Book, without routing any portion of the order to another market center; provided, however, the Exchange shall cancel a PNP-Light Order that would (i) lock or cross the NBBO, or (ii) be marketable against undisplayed interest in the Consolidated Book. For example, if there is a resting PNP Blind order in the Consolidated Book that is not displayed, a contra sided PNP Light order will be cancelled.

A PNP Light order will execute against a Price Improving Order or Quote,[5] or against the displayed portion of a Reserve Order, since such orders are represented and displayed in the Consolidated Book.

A PNP Light order will be executed at the NBBO if executed upon receipt, or else at its limit price (unless price-improved by a Price Improving Order or Quote).

PNP, PNP Blind, and PNP Light orders will never execute against Tracking Orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by providing investors with additional order types that allow greater flexibility in managing the circumstances in which their orders are executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[3] *See* NYSE Arca Rule 6.62(p).

[4] *See* NYSE Arca Rule 6.62(d)(3).

[5] *See* NYSE Arca Rule 6.62(s).

[6] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2009–21 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca-2009–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2009–21 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6702 Filed 3–25–09; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59601; File No. SR–CBOE–2009–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Short Term Option Series

March 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to make permanent its Short Term Option Series pilot program (the ''Weeklys Program''). In addition, the Exchange is proposing certain non-substantive changes to reorganize its rule text related to the Weeklys Program so that applicable terms are located within a single section of the relevant rules. Conforming, non-substantive changes are being proposed to the text of the Exchange's Quarterly Option Series Pilot Program (the ''Quarterlys Program''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 12, 2005, the Commission approved the Weeklys Program.[3] The Weeklys Program allows CBOE to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the Weeklys Program, CBOE can select up to five approved option classes on which Short Term Option Series could be opened. If selected for the Weeklys Program, the Exchange may open up to twenty Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series are fixed at a price per share, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened.[4] If the Exchange opens less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying security or index moves substantially from the exercise price or prices of the series already opened. In any event, the total number of series for a given expiration date will not exceed twenty series.

The Exchange has selected the following four options classes to participate in the Weeklys Program: S&P 500 Index options (SPX), S&P 100 Index American-style options (OEX), Mini-S&P 500 Index options (XSP), and S&P 100 Index European-style options (XEO). CBOE believes the Weeklys Program has been successful and well received by its members and the investing public for the nearly four years that it has been in operation as a pilot.

CBOE is now proposing to make the Weeklys Program permanent. In support of approving the Weeklys Program on a permanent basis, and as required by the Weeklys Program Approval Order, the Exchange has submitted to the Commission a Weeklys Program report (the ''Report'') detailing the Exchange's experience with the Weeklys Program. Specifically, the Report contains data and written analysis regarding the four options classes included in the Weeklys Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the Weeklys Program to warrant its permanent approval. The Exchange believes that, for the nearly four years that it has been in operation, the Weeklys Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Short Term Option Series. The Exchange also represents that is has the necessary system capacity to continue to support the option series listed under the Weeklys Program.

In seeking permanent approval, the Exchange is taking this opportunity to propose certain non-substantive changes to reorganize the rule text related to the Weeklys Program so that applicable terms are located within a single section of Rules 5.5, and 24.9. Conforming, non-substantive changes are being proposed to the text of the Exchange's Quarterlys Program. The revisions do not change the substance of either the Weeklys Program or the Quarterlys Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[5] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that permanent approval of the Weeklys Program will result in an ongoing benefit to investors, and will continue to allow them additional means to manage their risk exposures and carry out their investment objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules.sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[3] *See* Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63) (''Weeklys Program Approval Order''). The Weeklys Program has since been extended and is currently scheduled to expire on July 12, 2009. *See* Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR–CBOE–2006–48) (immediately effective rule change extending the Weeklys Program, which would have otherwise expired on July 12, 2006, through July 12, 2007), 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR–CBOE–2007–76) (immediately effective rule change extending the Weeklys Program through July 12, 2008); and 58094 (July 3, 2008), 73 FR 40000 (July 11, 2008) (SR–CBOE–2008–70) (immediately effective rule change extending the Weeklys Program through July 12, 2009); *see also* Securities Exchange Act Release Nos. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR–CBOE–2006–49) (order approving an amendment to the Weeklys Program that increased the number of series that may be listed for a class selected to participate in the Weeklys Program from five series to seven series), and 58870 (October 28, 2008), 73 FR 65430 (November 3, 2008) (SR–CBOE–2008–110) (immediately effective rule change increasing the number of series that may be listed for a classes selected to participate in the Weeklys Program from seven series to twenty series).

[4] For example, if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security or calculated index value.

[5] 15 U.S.C. 78s(b)(1).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Number SR–CBOE–018 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2009–018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–018 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59605; File No. SR–FINRA–2008–055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 2114 (Recommendations to Customers in OTC Equity Securities) in the Consolidated FINRA Rulebook

March 19, 2009.

I. Introduction

On November 4, 2008, 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''), 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 adopt FINRA Rule 2114 (Recommendations to Customers in OTC Equity Securities) in the consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on December 10, 2008.[3] The Commission received three comments in response to the proposed rule change.[4] On February 13, 2009, FINRA filed Amendment No. 1 to amend the proposed rule change and respond to the comment letters.[5] This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change as amended on an accelerated basis.

II. Description of the Proposed Rule Change

FINRA proposed to adopt NASD Rule 2315 (Recommendations to Customers in OTC Equity Securities) as FINRA Rule 2114 in the Consolidated FINRA Rulebook, subject to certain amendments including those contained in Amendment No. 1 discussed further below.

1. The Current Rule

NASD Rule 2315 is intended to address potential fraud and abuse in transactions involving securities not listed on an exchange and certain other higher risk securities. The rule mandates that a member conduct a due diligence review of an issuer's current financial and business information before recommending a covered security. The rule supplements existing FINRA rules and the Federal securities law, including suitability obligations and the requirement that any recommendation to a customer have a reasonable basis. The rule requirements go beyond the basic suitability obligations to ensure that a registered representative has, at a minimum, confirmed the existence of and reviewed essential information that reveals the financial condition and business prospects of these riskier issuers.

Specifically, the rule requires a member to review ''current financial statements'' and ''current material business information'' before it recommends the purchase or short sale of those securities that are published or quoted in a ''quotation medium'' and are either (1) not listed on Nasdaq or a national securities exchange or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape. Such securities may be more susceptible to fraud and abuse because they often are thinly capitalized or lack the profitability, liquidity or available business and financial information that listing standards require. The rule does not apply to recommendations to sell long positions and also exempts certain other transactions, including those with an ''institutional account'' under NASD Rule 3110(c)(4), a ''qualified institutional buyer'' under Rule 144A of the Securities Act of 1933 (''Securities Act''), or a ''qualified purchaser'' under Section 2(a)(51) of the Investment Company Act of 1940.[6]

The rule defines ''current financial statements'' to include balance sheets, statements of profit and loss and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59075 (December 10, 2008), 73 FR 76429 (December 16, 2008) (SR–FINRA–2008–055) (''Rulemaking Notice'').

[4] *See* Ronald C. Long, Director of Regulatory Affairs, Wachovia Securities LLC, dated December 9, 2008 (''Wachovia Letter''); Dale E. Brown, CAE, President and CEO, Financial Services Institute, dated January 6, 2009 (''FSI Letter''); and Amal Aly, Esq., Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 6, 2009 (''SIFMA Letter'').

[5] Amendment No. 1 permits a General Securities Sales Supervisor (*i.e.*, a Series 8 or Series 9/10 qualified supervisor) to perform certain reviews the proposed rule would otherwise have required a Series 24 principal to perform or supervise.

[6] Among the other exemptions, the Rule's requirements also do not apply to transactions that meet the requirements of Rule 504 of Regulation D of the Securities Act; those involving a security of an issuer with at least $50 million in total assets and $10 million in shareholder's equity; and those involving a security with worldwide average daily trading volume value of at least $100,000 during each of the six months preceding the recommendation.

publicly available financial statements and reports. The definition makes certain distinctions between foreign private issuers and all other issuers. FINRA has interpreted the term ''current material business information'' to mean information that is available or relates to events that have occurred in the 12 months prior to the recommendation. The proposed definition of ''current material business information,'' discussed below, would supersede this prior interpretation.[7]

The required review must be conducted by a Series 24 principal or someone supervised by a Series 24 principal. Members are required to keep a written record of the information reviewed, the date of the review and the name of the person who conducted the review.

2. Proposed Changes to the Current Rule

The proposed rule change would expand the scope of the rule to cover a recommendation to buy any ''OTC Equity Security,'' irrespective of whether the security is published on a quotation medium. The term ''OTC Equity Security'' would have the same meaning as in NASD Rule 6610 (which has been renumbered as FINRA Rule 6420 in the Consolidated FINRA Rulebook[8]) and encompasses any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade dissemination. FINRA believes that those OTC Equity Securities not published on a quotation medium pose the same, if not greater, risk of fraud and manipulation that the rule seeks to redress.

The proposed rule change also would add a definition of ''current material business information'' to include ''information that is ascertainable through the reasonable exercise of professional diligence and that a reasonable person would take into account in reaching an investment decision.''

The proposed rule change would eliminate the exemption from the rule for a security with a worldwide average daily trading volume value of at least $100,000 during each of the six calendar months preceding the recommendation, as well as a related exemption for a convertible security where the underlying security satisfies the trading volume exemption requirements. FINRA believes that the advent of the Internet and the increased number of trading venues has rendered that threshold unreliable to screen out less risky securities.

Finally, as modified by Amendment No. 1, the proposed rule requires that the due diligence review must be conducted by a person registered as a General Securities Principal (Series 24) or General Securities Sales Supervisor (Series 8 or 9/10), or someone supervised by a General Securities Principal or General Securities Sales Supervisor.[9] Members are required to keep a written record of the information reviewed, the date of the review and the name of the person who conducted the review. The proposed rule change would add a requirement that, in the event the person designated to perform the review is not registered as a General Securities Principal or General Securities Sales Supervisor, the member must document the name of the General Securities Principal or General Securities Sales Supervisor who supervised the designated person. FINRA believes this change will help document the person with supervising responsibility in association with review.[10]

III. Comment Letters

The Commission received three comments on the proposal,[11] as well as FINRA's response to comments,[12] all of which are discussed below. Two commenters, a full service brokerage firm and a trade association of securities firms, banks and asset managers, offered qualified support for the proposed rule change.[13] One commenter, a trade association for the independent broker-dealer community, opposed the proposed rule change.[14]

1. Review by a Series 24 Principal

Proposed Rule 2114 would require a member to conduct a due diligence review of an issuer's current financial and business information before recommending a covered security. The proposed rule provides that the due diligence review must be performed by a Series 24 registered principal, or by a designee of the Series 24 registered principal, in which case the member must keep a record of the Series 24 principal who supervised the review. Two commenters suggested that a person with a Series 9/10 registration should be permitted to perform the reviews instead of Series 24 principals under the rule.[15] One of those commenters also suggested that a person with a Series 8 registration also should be permitted to perform these reviews.[16] In response to these comments, FINRA amended the proposed rule to provide that either a General Securities Principal (*i.e.*, a Series 24 principal) or a General Securities Sales Supervisor (*i.e.*, a Series 8 or 9/10 supervisor) may perform the due diligence review.[17]

2. Expanded Scope of the Rule to Any Non-Exempt OTC Equity Security

FINRA's proposed rule is based on existing NASD Rule 2315. This rule requires a member to review ''current financial statements'' and ''current material business information'' before it recommends the purchase or short sale of securities that are published or quoted in a ''quotation medium'' and are either (1) not listed on Nasdaq or a national securities exchange or (2) are listed on a regional securities exchange and do not qualify for dissemination of transaction reports via the Consolidated Tape.[18] The proposed rule change would expand the scope of the rule to cover a recommendation to buy any ''OTC Equity Security,'' irrespective of whether the security is published on a quotation medium.

The proposed rule would also eliminate the exemption in NASD Rule 2315(e)(1)(E) for a security with a worldwide average daily trading volume value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation, and a related exemption for a convertible security

[7] Telephone conference among Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA, and Haimera Workie, Branch Chief, Securities and Exchange Commission, and Darren Vieira, Attorney Advisor, Commission, on December 3, 2008.

[8] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029).

[9] Series references relate to the relevant FINRA qualifying examination series. The Series 8 examination was replaced by the Series 9 and 10 examinations effective August 16, 1999. A list of qualifying series examinations is available at FINRA's Web site, *http://www.finra.org*.

[10] Telephone conference among Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA, and Haimera Workie, Branch Chief and Darren Vieira, Attorney Advisor, on December 3, 2008.

[11] Ronald C. Long, Director of Regulatory Affairs, Wachovia Securities LLC, dated December 9, 2008 (''Wachovia Letter''); Dale E. Brown, CAE, President and CEO, Financial Services Institute, dated January 6, 2009 (''FSI Letter''); and Amal Aly, Esq., Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 6, 2009 (''SIFMA Letter'').

[12] Letter from Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA, dated February 13, 2009 (''FINRA Letter'').

[13] *See* SIFMA and Wachovia Letters.

[14] *See* FSI Letter.

[15] Wachovia and SIFMA Letters.

[16] SIFMA Letter.

[17] Amendment No. 1 to SR–FINRA–2008–055.

[18] NASD Rule 2315 had not been amended to reflect Nasdaq's registration as a national securities exchange.

where the underlying security meets the requirements of NASD Rule 2315(e)(1)(E). Two commenters opposed eliminating this exemption.[19] One commenter indicated that the elimination of the exemption would require a due diligence review to be conducted for large, well-capitalized companies whose securities, in the commenter's opinion, likely do not pose the type of risk that is intended to be addressed by the proposed rule.[20] The commenter also suggested, as an alternative or in addition to the exemption for securities with a worldwide average daily trading volume value of over $100,000, that FINRA adopt an exemption based on the underlying company's market capitalization.[21] FINRA responded that it proposed to eliminate average daily trading volume and convertible security exemptions out of concern that the advent of the Internet and the increased number of trading venues has rendered the trading volume threshold unreliable to screen out less risky securities.[22] FINRA noted that bringing certain larger companies within the purview of the rule does not dissipate this investor protection concern, and FINRA additionally noted that certain larger companies may qualify for another exemption to the rule applying to the securities of issuers that have at least $50 million of total assets and $10 million in shareholders' equity.[23]

One commenter opposed any expansion of the scope of the proposed rule beyond the scope of the NASD rule.[24] In this commenter's view, the expansion of the scope of the proposed rule would: (1) ''result in reduced investor access to these securities by increasing the barriers to entry in the marketplace''; (2) delay the processing of purchases of non-exempt OTC Equity Securities; (3) reduce competition as firms leave the market of providing OTC Equity Security execution; (4) subject firms that remain in the market to higher compliance burdens; and (5) cause ''overwhelming'' recordkeeping and compliance burdens. FINRA disagreed that the proposed amendment would cause such deleterious effects.[25] FINRA stated that it believes investors will be better protected by the proposed rule amendment because recommendations of OTC Equity Securities that trade in the unlisted market, absent the due diligence required by the rule, pose substantial risk to investors.[26] FINRA also noted that the proposal would apply only to recommendations (as does the current rule), and not to unsolicited transactions, and therefore would not deny investors access to the OTC Equity Securities market. FINRA also disagreed that the proposal will result in processing delays for purchases of OTC Equity Securities, noting that the required due diligence should be completed before the recommendation is made.[27]

3. Miscellaneous Comments

One commenter suggested that FINRA provide an exemption from the proposed rule for firms that (1) generate less than 5% of their commission revenue from OTC Equity Securities transactions, and (2) do not make a market in such securities.[28] The commenter asserted that such an exemption would allow FINRA to meet its investor protection goals without causing ''unintended consequences'' such as increasing compliance burdens or reducing competition.[29] FINRA stated that it believes that such an exemption would undermine the purpose of the rule by allowing a significant volume of OTC Equity Securities to escape the rule's review requirements.[30]

IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comments, and FINRA's response to the comments, 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.[31] In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] 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 will help protect investors against fraud in the trading of unlisted and certain other securities and will clarify and streamline NASD Rule 2315 for adoption as a FINRA Rule in the new Consolidated FINRA Rulebook. The Commission has found NASD Rule 2315, upon which the proposed rule is based, to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[33]

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 1 clarifies the operation of the proposed rule in response to a comment. The changes in Amendment No. 1 do not significantly alter the proposed rule which was subject to a full notice and comment period. The Commission finds that it is in the public interest to approve the proposed rule change, as modified by Amendment No. 1, as soon as possible to expedite its implementation. Accordingly, the Commission finds that there is good cause, consistent with and in furtherance of the objectives of Sections 6(b)(5)[34] and 19(b)[35] of the Act, to approve Amendment No. 1 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–055 on the subject line.

Paper Comments

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

[19] SIFMA and FSI Letters.

[20] SIFMA Letter.

[21] *Id.*

[22] FINRA Letter.

[23] *Id.*

[24] FSI Letter.

[25] FINRA Letter.

[26] *Id.*

[27] *Id.*

[28] FSI Letter.

[29] *Id.*

[30] FINRA Letter.

[31] 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).

[32] 15 U.S.C. 78o–3(b)(6).

[33] *See* Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule, Securities Exchange Act Release No. 46376 (August 19, 2002), 67 FR 54832 (August 26, 2002) (SR–NASD–99–04).

[34] 15 U.S.C. 78f(b)(5).

[35] 15 U.S.C. 78s(b).

All submissions should refer to File Number SR–FINRA–2008–055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–055 and should be submitted on or before April 16, 2009.

VI. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–FINRA–2008–055), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6659 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59600; File No. SR–ISE–2009–09]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 623 (Communications to Customers)

March 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 11, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the Exchange. ISE has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove or otherwise amend elements of ISE Rule 623 (''Communications to Customers'') that incorporate provisions of the Securities Act of 1933 (''Securities Act'')[4] because options traded on the Exchange consist solely of standardized options issued by the Options Clearing Corporation (''OCC''), a registered clearing agency, that are exempt under Rule 238 of the Securities Act from all provisions of the Securities Act except the antifraud provisions of Section 17. Additionally, the proposed amendments expand the types of communications governed by Rule 623 to include independently prepared reprints and other communications between a member or member organization and a customer. The proposed amendments also exempt certain options communications from the pre-approval requirement by a Registered Options Principal (''ROP''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240 19b–4(f)(6).

[4] 15 U.S.C. 77a *et seq.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 23, 2002, the Commission published final rules that exempt standardized options, as defined in Rule 9b–1[5] of the Exchange Act, that are issued by a registered clearing agency and traded on a registered national securities exchange or on a registered national securities association, from all provisions of the Securities Act (other than the anti-fraud provisions) and the registration requirements of the Exchange Act.[6] Because the Securities Act and the rules thereunder (other than the anti-fraud provisions) are no longer applicable to such standardized options, the Exchange proposes to remove elements of the Securities Act that are embedded in ISE Rule 623. In particular, ISE proposes to remove all references to a ''prospectus'' from Rule 623. Prospectuses are no longer required for such standardized options, and the OCC has, in fact, ceased publication of a prospectus.[7] In addition, the proposed amendments will update and reorganize Rule 623. The proposed amendments are similar to amendments filed with and approved by the Commission by the Financial Industry Regulatory Authority, Inc. and the Chicago Board Options Exchange, and, if adopted, would provide a more uniform

[5] 17 CFR 240.9b–1.

[6] *See* Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule, Securities Act Release No. 8171 and Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003).

[7] The options disclosure document (''ODD'') prepared in accordance with Rule 9b–1 under the Exchange Act is not deemed to be a prospectus. 17 CFR 230.135b. *See, e.g.*, Securities Act Release No. 8049 (Dec. 21, 2001), 67 FR 228 (Jan. 2, 2002).

approach to communications to customers regarding standardized options.[8]

a. Deletion of Certain Provisions

As noted above, ISE Rule 623 contains a number of references to a prospectus and other Securities Act requirements. The Exchange proposes to delete the following from Rule 623: Rule 623(a)(4), which references the Securities Act definition of prospectus; Rule 623(e), which incorporates Securities Act principles in that it prohibits written material concerning options from being furnished to any person who has not previously or contemporaneously received the ODD; Rule 623(a)(2), which defines the term ''Educational Material;'' [9] Rule 623(g), which outlines what is permitted in an ''Advertisement;'' [10] and Rule 623(h), which concerns educational material.[11]

b. Redesignation of Rule 623(a) to Proposed Rule 623(d) and Related Amendments

Rule 623(a) currently contains an outline of the ''General Rule'' for options communications. ISE proposes to redesignate paragraph (a) as paragraph (d), and to incorporate limitations on the use of options communications contained in Rule 623(f) into proposed Rule 623(d). In addition, proposed Rule 623(d)(3) would amend Rule 623(a)(3) by clarifying the types of cautionary statements and caveats that are prohibited. Also, as previously noted, ISE proposes to delete Rule 623(a)(4). Further, current Rule 623(i) sets forth the standards applicable to Sales Literature and (i)(1) sets forth the requirement that Sales Literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data, will be supplied upon request. The Exchange proposed to redesignate Rule 623(i)(1) as proposed Rule 623(d)(7).

c. Redesignation of Rule 623(c) to Proposed Rule 623(b) and Proposed Amendments

ISE proposes to redesignate paragraph (c) as paragraph (b). ISE also proposes to amend this paragraph to include the types of communications proposed to be added to the definition of ''Options Communications'' in proposed Rule 623(a). Proposed Rules 623(b)(2) and (b)(3) would also amend the current requirements to obtain advance approval by a ROP for most options communications by exempting certain options communications, defined as ''Correspondence'' and ''Institutional Sales Material.'' Specifically, proposed Rule 623(b)(2) would exempt correspondence from the pre-approval requirement unless the correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence would be subject to general supervision and review requirements. Proposed Rule 623(b)(3) would exempt institutional sales material from the pre-approval requirement if the material is distributed to ''qualified investors'' (as defined in Section 3(a)(54) of the Exchange Act).[12] Pre-approval by a ROP would, however, be required with respect to independently prepared reprints. In addition, Proposed Rule 623(b)(4) would require that firms retain options communications in accordance with the record-keeping requirements of Rule 17a–4 under the Exchange Act.[13] Proposed Rule 623(b)(4) would also require that firms retain other related documents in the form and for the time periods required for options communications by Rule 17a–4.

d. Redesignation of Rule 623(d) to Proposed Rule 623(c) and Related Amendments

ISE proposes to redesignate paragraph (d) as paragraph (c). Rule 623(d) currently requires members to obtain approval for every advertisement and all educational material from the Exchange. This requirement applies regardless of whether the options communications are used before or after the delivery of a current ODD. ISE proposes to amend this provision to require approval by the Exchange only with respect to options communications used prior to the delivery of a current ODD. The Exchange pre-approval requirement for options communications used subsequent to the delivery of the ODD is being eliminated because the ODD should help alert the customer to the characteristics and risks associated with trading in options and because Rule 623(b) requires the Registered Options Principal of a member organization to pre-approve options communications (with certain exceptions for ''Correspondence'' and ''Institutional Sales Material''). This provision would also be amended to include the types of communications added to the definition of ''Options Communications'' in proposed Rule 623(a).

e. Redesignation of Rule 623(b) to Proposed Rule 623(a) and Related Amendments

Rule 623(b) currently defines terms used in Rule 623. ISE proposes to redesignate paragraph (b) as paragraph (a). ISE also proposes to amend the definition of ''Options Communications'' in proposed Rule 623(a) to expand the types of communications governed by Rule 623 to include independently prepared reprints and other communications between a member or member organization and a customer. The Exchange proposes to amend the definitions of ''Advertisement'' and ''Sales Literature;'' and define ''Correspondence,'' ''Institutional Sales Material,'' ''Public Appearances,'' and ''Independently Prepared Reprints;'' to clarify the rule. In addition, as previously noted, ISE proposes to delete the definition of ''Educational Material.''

f. Proposed Rule 623(e)

Proposed Rule 623(e) would set forth (i) standards for options communications that are not preceded or accompanied by an ODD and (ii) standards for options communications used prior to delivery of an ODD. These requirements generally would clarify and restate the requirements contained in the current Rule 623(i). Proposed Rule 623(e)(1)(B) would require options communications to contain contact information for obtaining a copy of the ODD. As previously noted, the provisions of Rule 623(g) that outline what is permitted in an advertisement are proposed to be deleted and the provisions relating to standards for options communications used prior to delivery of the ODD are proposed to be incorporated into proposed Rule 623(e)(2).

[8] *See* Exchange Act Release No. 57720 (Apr. 25, 2008), 73 FR 24332 (May 2, 2008) (SR FINRA–2008–13), and Exchange Act Release No. 58823 (October 21, 2008), 73 FR 63747 (October 28, 2008) (SR–CBOE 2007–30).

[9] This paragraph essentially incorporates language of Securities Act Rule 134a. While this amendment would eliminate the separate educational material category, as discussed below the Exchange also proposes to revise the definition of Sales Literature to include educational material.

[10] This paragraph essentially incorporates language of Securities Act Rule 134.

[11] *See* note 9, *supra.*

[12] 15 U.S.C. 78c(a)(54).

[13] 17 CFR 240.17a–4. More specifically, Rule 17a–4(b)(4) requires that a broker-dealer retain ''originals of all communications received and copies of all communications sent * * * including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.''

g. Redesignation of Portions of Rule 623(i) to Proposed Rule 623(g), Proposed Rule 623(h), Proposed Rule 623(i), and Related Amendments

As stated above, the Exchange proposes to redesignate Rule 623(i)(1) as proposed Rule 623(d)(7). Current Rule 623(i)(2) pertains to standards for Sales Literature that contains projected performance figures and current Rule 623(i)(3) pertains to standards for Sales Literature that contains historical performance figures. The Exchange proposes to redesignate Rule 623(i)(2) as proposed Rule 623(g)(1) and Rule 623(i)(3) as proposed Rule 623(h). Rule 623(i) currently requires that a copy of the ODD precede or accompany options related sales literature. The Exchange is proposing to modify the ODD delivery requirement applicable to sales literature to provide that an ODD must precede or accompany any communication that conveys past or projected performance figures involving options or constitutes a recommendation pertaining to options. A notice providing the name and address of a person from whom the ODD may be obtained would be required in sales literature that does not contain a recommendation or past or projected performance figures. Because ISE is proposing to merge educational material into the sales literature category,[14] this amendment would continue to allow communications that are educational in nature to be disseminated without being preceded or accompanied by a copy of the ODD.

The Exchange proposes to redesignate current Rule 623(i)(4) as proposed Rule 623(i). The Exchange proposes to delete Rules 623(i)(5), (i)(6), and (i)(7). The Exchange believes that (i)(5) and (i)(6) are unnecessary because worksheets are included in the definition of ''Sales Literature.'' The Exchange believes that (i)(7) is no longer necessary because the Exchange is proposing to clarify the record-keeping requirements applicable to options communications in proposed Rule 623(b)(4).

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, this proposed rule change will promote consistency between ISE and other SRO rules and provide the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition and (3) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. However, Rule 19b–4(f)(6)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay period to permit the proposed rule change to be implemented immediately. The Commission notes that the proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,[21] and does not raise any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay[22] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2009–09 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2009–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[14] *See* Proposed Rule 623(a)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] ISE's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange (''CBOE'') that was recently approved by the Commission. *See* Exchange Act Release No. 58823 (October 21, 2008), 73 FR 63747 (October 28, 2008) (SR–CBOE–2007–30).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–09 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6617 Filed 3–25–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59602; File No. SR–MSRB–2009–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Electronic Municipal Market Access System Pilot

March 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is proposing to extend the MSRB's pilot of its Electronic Municipal Market Access system, currently operating as a facility of the MSRB's Municipal Securities Information Library system (the ''EMMA pilot''), to the earlier of July 1, 2009 or the date on which the MSRB places into operation EMMA's permanent primary market disclosure service for electronic submission and public availability on EMMA's Internet portal (the ''EMMA portal'') of official statements, advance refunding documents and related primary market documents and information (the ''primary market disclosure service'') and permanent transparency service making municipal securities transaction price data publicly available on the EMMA portal (the ''trade price transparency service'' and, together with the primary market disclosure service, the ''permanent EMMA services''). The proposed rule change does not effect a change in existing rule language.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has previously approved the operation by the MSRB of the EMMA pilot for a period of one year from the date the EMMA pilot became operational.[5] The EMMA pilot became operational on March 31, 2008. The MSRB expects to file with the Commission in the near future a proposed rule change to establish the permanent EMMA services, with a proposed date for commencement of operation of the permanent EMMA services on the later of (i) May 11, 2009 or (ii) the date announced by the MSRB in a notice published on the MSRB Web site, which date shall be no earlier than ten business days after Commission approval of the permanent EMMA services and shall be announced no fewer than five business days prior to such date. Upon the permanent EMMA services being approved and placed into operation, the permanent EMMA services would replace the EMMA pilot, at which time the EMMA pilot would be terminated.

In order to maintain the EMMA pilot in operation until the permanent EMMA services become operational, the MSRB is requesting that the Commission extend the EMMA pilot to the earlier of July 1, 2009 or the date on which the MSRB places into operation the permanent EMMA services.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The extension of the EMMA pilot will continue to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and will in general promote investor protection and the public interest by ensuring equal access for all market participants to the critical disclosure information needed by investors in the municipal securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06).

[6] 15 U.S.C. 78o–4(b)(2)(C).

appropriate in furtherance of the purposes of the Act. Documents and information provided through the EMMA pilot will continue to be available to all persons on an equal basis. The MSRB will continue to make its official statement and advance refunding document collection available by subscription on an equal basis without imposing restrictions on subscribers from re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber. The MSRB believes that any incidental impact of the extension of the EMMA pilot on commercial enterprises would not create an unequal burden among such enterprises and would be substantially outweighed by the benefits provided by the continuation of the EMMA pilot in removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, assisting in the prevention of fraudulent and manipulative acts and practices, and generally promoting investor protection and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the extension of the EMMA pilot.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder[8] because it: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

The MSRB has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing and ensure that the EMMA pilot is extended before its scheduled expiration. The Commission hereby grants the MSRB's request and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[10] The extension of the EMMA pilot will ensure that there is no lapse in the availability to the public of the documents and information currently made available on the EMMA portal prior to the commencement of operations of the permanent EMMA services.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2009–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MSRB–2009–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–01 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6616 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] The MSRB provided the written notice required under Rule 19b–4(f)(6)(iii) on March 13, 2009 and requested that the Commission waive the five business day notification period. The Commission hereby grants the MSRB's request and believes that waiving the five business day notification period is consistent with the protection of investors and the public interest. For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59610; File No. SR–NASDAQ–2009–023]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading the Two-Character Ticker Symbol ''UG''

March 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to trade the common stock of United-Guardian, Inc. on Nasdaq using the two-character symbol ''UG''.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Historically, securities listed on Nasdaq have traded using four or five character symbols.[5] In 2005, however, Nasdaq announced its intent to allow companies listed on Nasdaq to also use one, two or three character symbols beginning on January 31, 2007.[6] This announcement was designed to provide market participants and vendors the time needed to make required changes to their own systems that may be affected by the change. Since February 20, 2007, Nasdaq has had the ability to accept and distribute Nasdaq-listed securities with one, two or three character symbols. Nasdaq reminded market participants about this change again on March 1, 2007, stressing that ''[a]ll customers should have completed their coding and testing efforts to ensure their readiness to support 1-, 2- and 3-character NASDAQ-listed issues,'' [7] and on March 22, 2007, Delta Financial Corporation transferred to Nasdaq from the American Stock Exchange and maintained its three-character symbol, DFC.[8] Subsequently, the Commission approved a rule change to permit any company to transfer from another exchange to Nasdaq and maintain its three-character symbols.[9] During 2008, several companies transferred from the New York Stock Exchange and the American Stock Exchange (now NYSE Amex) and maintained their two-character symbols.[10] There have been no trading problems reported to Nasdaq as a result of listing securities on Nasdaq with two-character or three-character symbols.

Nasdaq now proposes to allow United-Guardian, Inc, which currently trades on NYSE Amex with the two-character symbol UG, to transfer its common stock to Nasdaq and continue using that two-character symbol. Nasdaq believes that allowing this company to maintain its symbol will reduce investor confusion and promote competition among exchanges. Specifically, allowing United-Guardian to maintain its trading symbol will reduce investor confusion associated with its transfer to Nasdaq because investors will continue to be able to obtain quotations and execute trades using the same familiar symbol and will allow the issuer to maintain a symbol that has become a part of its identity to investors.[11] Further, Nasdaq believes that permitting United-Guardian to maintain its symbol will enhance competition among exchanges by removing concerns about investor confusion surrounding its symbol from the factors a company must consider when choosing where to list its equities. This proposal is also consistent with the historical practice of allowing companies to maintain their symbols when they switch among national securities exchanges [12] and with the Commission's recent approval of a national symbology plan, which, when operative, will permit the portability of symbols.[13]

Given the foregoing, Nasdaq believes that market participants were provided adequate notice of this change and are prepared to accommodate the trading of this company on Nasdaq using the symbol UG. Further, Nasdaq believes that any change to the symbol will cause confusion among investors and market participants. As such, Nasdaq proposes to begin trading the common stock of United-Guardian, Inc. on Nasdaq using the symbol UG on March 16, 2009.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general and with Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. As described above, the proposed rule change will reduce investor confusion and encourage competition between national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[4] 17 CFR 240.19b–4(f)(6) [sic].

[5] This includes securities listed on Nasdaq's predecessor market, operated as a facility of the NASD.

[6] *See* Head Trader Alert 2005–133 (November 14, 2005), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2005-133* and Vendor Alert 2005–070 (November 14, 2005), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2005-070. See also* Head Trader Alert 2006–144 (September 29, 2006), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-144,* Head Trader Alert 2006–193 (November 16, 2006), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2006-193* and Vendor Alert 2006–065 (October 4, 2006), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=nva2006-065.*

[7] Head Trader Alert 2007–050 (March 1, 2007), available at: *http://www.nasdaqtrader.com/TraderNews.aspx?id=hta2007-050.*

[8] *See* Securities Exchange Act Release No. 55519 (March 26, 2007) 72 FR 15737 (April 2, 2007) (SR–NASDAQ–2007–025).

[9] *See* Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (approving SR–NASDAQ–2007–031). Over 45 companies with three-character symbols have listed on Nasdaq.

[10] *See* Securities Exchange Act Release No. 57696 (April 22, 2008) 73 FR 22987 (April 28, 2008) (SR–NASDAQ–2008–034 relating to CA, Inc. listing on Nasdaq using the symbol CA); Exchange Act Release No. 57875 (May 27, 2008) 73 FR 31524 (June 2, 2008) (SR–NASDAQ–2008–047 relating to Hawaiian Holdings, Inc. listing on Nasdaq using the symbol HA); Exchange Act Release No. 58684 (September 30, 2008.) 73 FR 58281 (October 6, 2008) (SR–NASDAQ–2008–075 relating to Tech/Ops Sevcon, Inc. listing on Nasdaq using the symbol TO).

[11] A market transfer will still be transparent to investors because, under the Commission's rules, a company must announce the transfer of its listing on a Form 8–K. *See* Form 8–K, item 3.01(d). In addition, the issuer must publish notice of its intent to withdraw a class of securities from listing and/or registration, along with its reasons for such withdrawal, via a press release and, if it has a publicly accessible Web site, on that Web site. *See* Exchange Act Rule 12d2–2(c)(2)(iii), 17 CFR 240.12d2–2(c)(2)(iii).

[12] *See, e.g.*, Darwin Professional Underwriters, Inc (from NYSE Arca to NYSE keeping the symbol DR), Chile Fund, Inc. (from NYSE to Amex keeping the symbol CH), and iShares NYSE 100 (from NYSE to NYSE Arca keeping the symbol NY).

[13] *See* Securities Exchange Act Release No. 58904 (November 6, 2008) 73 FR 67218 (November 13, 2008) (File No. 4–533, approving the National Market System Plan for the selection and reservation of securities symbols).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(5) thereunder [15] in that it effects a change to an order-entry or trading system that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. As such, this proposed rule change is effective upon the Commission's receipt of this filing.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–023 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2009–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–023 and should be submitted on or before April 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6719 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59607; File No. SR–NSCC–2009–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Tiered Trade Netting Fee

March 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 27, 2009, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [2] and Rule 19b–4(f)(2) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the methodology of the calculation of NSCC's tiered trade netting fee from being computed on the basis of daily average volume to a monthly volume basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend NSCC's fee structure as set forth in Addendum A to NSCC's Rules to change the methodology of the calculation of NSCC's tiered trade netting fee from being calculated on the basis of daily average volume to the basis of monthly volume. The current tiered structure for the netting fee became effective on January 2, 2009; [5] however, that calculation methodology caused systems difficulties that will be remedied by computing the charge on the basis of monthly volume. This change will not have a material impact on the total fee amounts charged members on their monthly billing statements. NSCC will commence use of the revised methodology for billing statements reflecting February 2009 activity.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s–1(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 59285 (January 23, 2009), 74 FR 5875 (February 2, 2009) (File No. SR–NSCC–2008–13).

thereunder because it updates NSCC's fee schedule. As such, it provides for the equitable allocation of fees among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] promulgated thereunder because the proposal changes a due, fee, or other charge applicable only to a member. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2009–02 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NSCC–2009–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2009–02 and should be submitted on or before April 16, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6721 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59606; File No. SR–NYSE–2009–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Establish Fees for NYSE Trades

March 19, 2009.

I. Introduction

On January 27, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce its NYSE Trades service, a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE reports to the Consolidated Tape Association (''CTA'') for inclusion in the CTA's consolidated data stream and certain other related data elements (''NYSE Last Sale Information''), and to establish fees for that service. The proposed rule change was published for comment in the **Federal Register** on February 4, 2009.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to introduce NYSE Trades, a new service pursuant to which it will allow vendors, broker-dealers, and others (''NYSE-Only Vendors'') to make available NYSE Last Sale Information on a real-time basis. NYSE Last Sale Information would include last sale information for all securities that are traded on the Exchange. The Exchange will make NYSE Last Sale Information available through its new NYSE Trades service at the same time as it provides last sale information to the processor under the CTA Plan. In addition to the information that the Exchange provides to CTA, NYSE Last Sale Information will also include a unique sequence number that the Exchange assigns to each trade and that allows an investor to track the context of the trade through other Exchange market data products, such as NYSE OpenBook® and NYSE Info Tools®.

The Exchange proposes to charge $1500 per month for the receipt of access to all of the datafeeds of NYSE Last Sale Information that the Exchange will make available.[4] In addition, the Exchange proposes to charge each subscriber to an NYSE-Only Vendor's NYSE Trades service $15 per month per display device for the receipt and use of NYSE Last Sale Information.[5]

NYSE represents that no investors or broker-dealers are required to subscribe to the product, as they can find the same NYSE last sale prices either in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59309 (January 28, 2009), 74 FR 5955 (February 4, 2009).

[4] Currently, the Exchange trades only Network A securities. The Exchange does not propose to impose any program classification charges for the use of NYSE Trades.

[5] The Exchange proposes to use the revised unit of count methodology to determine the device fees payable by data recipients applicable to NYSE OpenBook® products. *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

Exchange's NYSE Realtime Reference Prices service,[6] or integrated with the prices that other markets make available under the CTA Plan. NYSE anticipates that, even though NYSE Trades' Last Sale Information provides a less expensive alternative to the consolidated price information that investors and broker-dealers receive from CTA, the information that NYSE contributes to the CTA consolidated datafeed and the low latency of the CTA datafeed will continue to satisfy the needs of the vast majority of individual and professional investors. The Exchange developed NYSE Trades primarily at the request of traders who are very latency sensitive and anticipates that demand for the product will derive primarily from investors and broker-dealers who desire to use NYSE Trades to power certain trading algorithms or smart order routers.[7]

The Exchange will require NYSE-Only Vendors to enter into the form of ''vendor'' agreement into which the CTA Plan requires recipients of the Network A last sale prices information datafeeds to enter (the ''Network A Vendor Form''). The Network A Vendor Form will authorize the NYSE-Only Vendor to provide the NYSE Trades service to its subscribers and customers. The Network A Participants drafted the Network A Vendor Form, it is sufficiently generic to accommodate NYSE Trades, and it has been in use in substantially the same form since 1990.[8] The Exchange will require professional and non-professional subscribers to NYSE Trades to undertake to comply with the same contract, reporting, payment, and other administrative requirements as to which the Network A Participants subject them in respect of Network A last sale information under the CTA Plan.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, it is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[12] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[13] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[14]

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[15] In the NYSE Arca Order, the Commission stated that ''when possible, 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.'' [16] It noted that 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 Commission will approve a proposal unless it 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]

As noted in the NYSE Arca Order, the standards in Section 6 of the Act and Rule 603 of Regulation NMS do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data. Core data is the best-priced quotations and comprehensive last-sale reports of all markets that the Commission, pursuant to Rule 603(b), requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans.[19] In contrast, individual exchanges and other market participants distribute non-core data voluntarily. The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees. Non-core data products and their fees are, by contrast, much more sensitive to competitive forces. The Commission therefore is able to use competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6 and Rule 603. Because NYSE's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order.

In the NYSE Arca Order, the Commission discussed two broad types of competitive forces that generally apply to exchanges in their distribution of a non-core data product—the need to attract order flow and the availability of data alternatives. These forces also applied to NYSE in setting the terms of this proposal for the NYSE Trades data product: (i) NYSE's compelling need to attract order flow from market participants; and (ii) the availability to

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[6] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR–NYSE–2007–04).

[7] The latency difference between accessing last sales through the NYSE datafeed or through the CTA datafeed can be measured in tens of milliseconds.

[8] *See* Securities Exchange Act Release Nos. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990); and 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(6).

[13] 17 CFR 242.603(a).

[14] NYSE is an exclusive processor of NYSE Trades under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[15] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (''NYSE Arca Order''). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[16] *Id.* at 74771.

[17] *Id.* at 74782.

[18] *Id.* at 74781.

[19] *See* 17 CFR 242.603(b). (''Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor.'').

market participants of alternatives to purchasing NYSE's data.

Table 1 below provides a recent snapshot of the state of competition in the U.S. equity markets in the month of January 2009: [20]

TABLE 1—REPORTED SHARE VOLUME IN U.S.-LISTED EQUITIES DURING JANUARY 2009 (%)

Trading venue	All stocks	NYSE-listed	NASDAQ-listed
NASDAQ	27.1	20.5	39.9
All Non-Exchange	26.7	26.2	31.0
NYSE Arca	17.9	15.7	15.8
NYSE	14.8	26.2	0.0
BATS	10.7	9.0	10.8
International Stock Exchange	1.3	1.4	1.4
National Stock Exchange	0.6	0.7	0.7
Chicago Stock Exchange	0.4	0.4	0.3
CBOE Stock Exchange	0.2	0.0	0.1
NYSE Alternext	0.1	0.0	0.0
NASDAQ OMX BX	0.0	0.0	0.0

The market share percentages in Table 1 strongly indicate that NYSE must compete vigorously for order flow to maintain its share of trading volume. The need to attract order flow imposes significant pressure on NYSE to act reasonably in setting its fees for NYSE market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom NYSE must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. Moreover, distributing data widely among investors, and thereby promoting familiarity with the exchange and its services, is an important exchange strategy for attracting order flow.[21]

In addition to the need to attract order flow, the availability of alternatives to NYSE Trades significantly affect the terms on which NYSE can distribute this market data.[22] In setting the fees for its NYSE Trades, the Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.[23] Of course, the most basic source of information generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.[24] In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.[25]

The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition in non-core data products. As Table 1 illustrates, share volume in U.S.-listed equities is widely dispersed among trading venues, and these venues are able to offer competitive data products as alternatives to NYSE Trades. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. No comments were submitted on this proposal, and the Commission notes that the proposal does not unreasonably discriminate among types of users.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSE–2009–04), 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. E9–6722 Filed 3–25–09; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11690 and # 11691]

Texas Disaster # TX–00334

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of Texas dated 03/10/2009.

Incident: Bastrop County Wildland Fire.

Incident Period: 02/28/2009 through 03/13/2009.

Effective Date: 03/17/2009.

Physical Loan Application Deadline Date: 5/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/10/2009.

[20] Source: ArcaVision (available at *www.arcavision.com*).

[21] *See* NYSE Arca Order at 74784 nn. 218–219 and accompanying text (noting exchange strategy of offering data for free as a means to gain visibility in the market place).

[22] *See* Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). *See also* U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. *See, e.g., FTC* v. *Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC* v. *Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. *See, e.g., Leegin Creative Leather Products* v. *PSKS, Inc.*, 127 S. Ct. 2705 (2007); *Atlanta Richfield Co.* v. *United States Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574 (1986); *State Oil Co.* v. *Khan*, 522 U.S. 3 (1997); *Northern Pacific Railway Co.* v. *U.S.*, 356 U.S. 1 (1958).

[23] *See* NYSE Arca Order at 74783.

[24] *Id.*

[25] *Id.*

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration in the State of Texas, dated 03/10/2009, is hereby amended to establish the incident period for this disaster as beginning 02/28/2009 and continuing through 03/13/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 18, 2009.

Darryl K. Hairston,

Acting Administrator.

[FR Doc. E9–6742 Filed 3–25–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs; Meeting Notice

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: Tuesday, April 21, 2009, from 9 a.m. to 5 p.m. and Wednesday, April 22, 2009, from 9 a.m. to 5 p.m., Eastern Standard Time.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include: The purpose for this meeting is to study, research, and recommend Veterans Business Development topics for the SBA's Administrator, the Congress, and to the President.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by February 2, 2009, by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, Telephone number: (202) 619–1697, Fax number: 202–481–6085, e-mail address: *cheryl.simms@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619–1697; e-mail address: *cheryl.simms@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/vets.*

Dated: March 11, 2009.

Bridget E. Bean,

Acting SBA Committee Management Officer.

[FR Doc. E9–6744 Filed 3–25–09; 8:45 am]

BILLING CODE

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of periodic review of approved class waivers from the Nonmanufacturer Rule for products in effect as of March 17, 2009.

SUMMARY: The U.S. Small Business Administration (SBA) is conducting a periodic review of approved class waivers from the Nonmanufacturer Rule for products in effect as of March 17, 2009. The purpose of this notice is to determine if there are any small business manufacturers or processors for the products listed on the list of approved class waivers. The basis for a waiver is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified small businesses dealers to supply the products of any manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses or participants in SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted within April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or my e-mail at *Edith.Butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. SBA's regulations provided the same for procurements set aside for service-disabled veteran-owned small business concerns 13 CFR 125.15. This requirement is commonly referred to as the Nonmanufacturer Rule. *See* 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. 13 CFR 1202(c). The SBA defines ''class of products'' based on the Office of Management and Budget's North American Industry Classification System (NAICS), and product service codes.

The following are products listed on SBA's list of Approved Class Waivers in Effect as of March 17, 2009.

U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF GOVERNMENT CONTRACTING NONMANUFACTURER RULE; CLASS WAIVER IN EFFECT AS OF MARCH 17, 2009

Product Service Code	Date in **Federal Register**	NAICS	Product
210	3/21/2008	335999	All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures).
1395	7/2/2002	332995	AMMUNITION/OTHER ORDNANCES.
2310	7/15/1998	336111	AUTOMOBILE MOTOR VEHICLES, MOTOR TRUCKS.
2320	1/24/1992	333924	TRUCKS, FOUR WHEEL DRIVE UTILITY.
2330	12/5/2008	333924	Trailers and Heavy Truck Tractors.
2420	2/24/1992	333111	TRACTOR, WHEELED.
2620	5/18/1992	326211	TIRE, AIRCRAFT, PNEUMATIC.
2835	7/15/1998	333611	TURBINES.
3110	4/16/2001	332991	AEROSPACE BALL AND ROLLER BEARINGS, CONSISTING OF, BUT NOT LIMITED TO, ANNULAR BALL BEARINGS, CYLINDRICAL BALL BEARINGS, LINEAR BALL BEARINGS, LINEAR ROLLER BEARINGS, NEEDLE ROLLER BEARINGS, BALL OR ROLLER BEARING RACES, ROLLER BEARINGS, TAPERED ROLLER BEARINGS AND THRUST ROLLER BEARINGS.
3130	9/27/2002	332991	BEARINGS, MOUNTED.
3610	7/27/1994	333315	COPIER/DUPLICATING MACHINES.
3805	12/28/1989	333120	CONSTRUCTION, BACKHOE.
3805	5/15/1991	333120/333131	SHOVEL LOADERS SCRAPER LOADERS.
3805	12/28/1991	333120	CONSTRUCTION, ROAD GRADER.
3805	12/28/1989	333120	CONSTRUCTION, SCRAPERS.
3805	5/15/1991	333131	CONSTRUCTION, DRILL RIGS.
3810	10/2/1991	333120	CONSTRUCTION, CRANE OVER 15 TON.
3825	9/13/1990	333120	SWEEPERS, STREET.
4710	5/15/1991	331491	PIPE & TUBING HIGH NICKEL ALLOY.
5805	7/5/1991	334210	COMMUNICATION, DIGITAL EPBX EQUIP.
5805	2/12/1997	334210	ROUTERS AND SWITCHES.
5805	7/20/1998	334210	TELEGRAPH APPARATUS.
5805	7/20/1998	334220	CELLULAR HANDSETS AND TELEPHONES.
5805	7/201998	334220	RADIO TELEPHONE.
5820	7/8/2008	334220	TELEVISIONS.
5821	2/12/1997	334511	AIRBORNE INTEGRATED COMPONENTS.
5836	2/8/1993	334310	VIDEO CASSETTE RECORDER.
5836	1/28/1997	333315	8MM TRI-DECK AIRBORNE RECORDER.
5920	5/5/1997	335931	SURGE ARRESTERS.
5925	5/5/1997	335313	POWER CIRCUIT BREAKERS.
5950	5/5/1997	335311	CURRENT AND POTENTIAL TRANSFORMER AUTOTRANS-FORMER.
5805	7/20/1998	334416	TOWERS.
5999	11/2/2004	335999	MISCELLANEOUS ELECTRICAL EQUIPMENT AND COMPONENTS MANUFACTURING.
6015	6/13/2003	334417/335921	OVERHEAD FIBER OPTIC GROUNDWIRE & ANCILLARY HARDWARE COMPONENTS.
6135	2/24/1992	335911	STORAGE BATTERIES.
6145	12/5/2008	335931	Control Cable and Conductors.
6145	12/5/2008	335932	Line Hardware (insulator Strings).
6525	12/20/2007	334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
6525	12/26/2007	334517	Irradiation Apparatus Manufacturing.
6525	12/20/2007	334510	Electromedical/Electrotherapeutic Apparatus Manufacturing (Diagnostic equipment, MRI (magnetic resonance imaging), manufacturing; Magnetic resonance imaging (MRI) medical diagnostic equipment manufacturing; Medical ultrasound equipment manufacturing; MRI (magnetic resonance imaging) medical diagnostic equipment manufacturing; Patient monitoring equipment (e.g., intensive care coronary care unit) manufacturing; PET (positron emission equipment tomography) scanners manufacturing; and Positron emission tomography (PET) scanners manufacturing).
6525	12/26/2007	334517	Irradiation Apparatus Manufacturing (X-Ray Equipment/Supplies).
6525	01/29/2008	334517	Irradiation Apparatus Manufacturing (Computerized axial tomography (CT/CAT) scanners manufacturing; CT/CAT (computerized axial tomography) scanners manufacturing; Fluoroscopes manufacturing; Fluoroscopic X-ray apparatus and tubes manufacturing; Generators, X-ray, manufacturing; Irradiation equipment manufacturing; X-ray generators manufacturing; and X-ray irradiation equipment manufacturing).
6240	01/28/2008	335999	All Other Miscellaneous Electrical Equipment/Component Manufacturing (Fluorescent Lamps, Incandescent Lamps, etc.).
6250	01/28/2008	335999	All Other Miscellaneous Electrical Equipment/Component Manufacturing (Electric Lamp Starters/Lamp Holders, etc.).
6770	11/15/2005	325992	Photo-film, paper, plate & Chem. Manufacturing.
6810	04/27/2006	324110	REFINERY GASES MADE IN PETROLEUM REFINERIES.
6810	04/27/2006	332420	CRYOGENIC TANK, HEAVY GAUGE METAL, MANUFACTURING.
6810	04/27/2006	332420	LIQUID OXYGEN TANKS MANUFACTURING.
6810	04/27/2006	332420	LIQUEFIED PETROLEUM GAS (LPG) CYLINDERS MANUFACTURING.
6810	04/27/2006	332420	BULK STORAGE TANKS, HEAVY GAUGE METAL, MANUFACTURING.
6810	04/27/2006	332420	GAS STORAGE TANKS, HEAVY GAUGE METAL MANUFACTURING.

U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF GOVERNMENT CONTRACTING NONMANUFACTURER RULE; CLASS WAIVER IN EFFECT AS OF MARCH 17, 2009—Continued

Product Service Code	Date in **Federal Register**	NAICS	Product
6810	04/27/2006	332420	CYLINDERS, PRESSURE, HEAVY GAUGE METAL, MANUFACTURING.
6810	04/27/2006	325120	INDUSTRIAL GASES MANUFACTURING.
6810	5/15/1991	325181	CAUSTIC SODA.
6810	5/15/1991	325181	SODA ASH.
6810	2/24/1992	325181	SODIUM HYDROXIDE.
6810	2/24/1992	325188	ACID, BORIC.
6810	4/24/1992	325188	ACID, ENRICHED BORIC.
6810	5/15/1991	325188	ACID, HYDROCHLORIC.
6810	2/24/1992	325188	ACID, HYDROFLUORIC.
6810	2/24/1992	325188	CALCIUM NITRATE (UNCOATED).
6810	5/15/1991	325110	HEPTANE HPCL.
6810	2/24/1992	325188	N-DODECANE.
6810	5/15/1991	325199	ETHYL ACETATE.
6810	5/15/1991	325110	BENZENE.
6810	5/15/1991	325110	TOLUENE.
6810	5/15/1991	325191/325199	ACETATE NATURAL SYNTHETIC.
6810	5/15/1991	325311	AMMONIUM SULFATE.
6810	5/15/1991	325199	METHYL ISOBUTYL KETONE.
6810	5/15/1991	325191/325199	ACETONE.
6810	2/24/1992	325199	METHYLENE CHLORIDE.
6810	5/15/1991	325199	NN-DIMETHYL FORMAMIDE.
6810	5/15/1991	325199	PROPYLENE GLYCOL.
6810	5/15/1991	325199	METHANOL.
6810	5/15/1991	325311	NITRIC ACID.
6810	10/21/1996	325199	PURIFIED TEREPHATHALIC ACID GROUND.
6810	5/15/1991	325199	PTAU.
6810	5/15/1991	325199	TRICHLORETHANE.
6810	5/15/1991	325311	AMMONIUM SULFATE.
6810	2/24/1992	324110	HYDROCARBON DILUENT.
7021	8/28/1991	334111	MAINFRAME COMPUTERS AND PERIPHERALS*.
7025	8/8/1991	334119	COMPUTER LASER PRINTER.
7110	6/27/2006	337215	Furniture Frames and Parts, Metal Manufacturing.
7110	6/27/2006	337215	Furniture, Frames, Wood, Manufacturing.
7110	6/27/2006	337215	Furniture Parts, Finished Metal Manufacturing.
7110	6/27/2006	337215	Furniture Parts, Finished Plastics, Manufacturing.
7110	6/27/2006	337127	Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches) Manufacturing.
7195	6/27/206	339111	Furniture, hospital (e.g., hospital beds, operating room furniture), Manufacturing.
7195	6/27/2006	339111	Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables) Manufacturing.
7220	1/15/1991	314110	CARPET TILE.
7220	5/15/1991	314110	CARPET, WOVEN, 6–FT VINYL BACK BROADLOOM.
7220	1/15/1991	314110	CARPET, 6 FT VINYL BACK BROADLOOM.
7220	5/15/1991	326192	TILE AND ROLL, VINYL SURFACE.
7290	11/15/2005	333415	COMMERCIAL REFRIGERATOR EQUIPMENT.
7320	11/15/2005	335221	HOUSEHOLD REFRIGERATOR EQUIPMENT.
7290	10/21/2005	333312	COMMERCIAL LAUNDRY EQUIPMENT.
7320	10/21/2005	335522	HOUSEHOLD REFRIGERATOR EQUIPMENT.
7320	10/21/2005	335221	HOUSEHOLD COOKING EQUIPMENT.
7510	1/12/2006	335222, 339940, 325992, 322231, 339940	OFFICE SUPPLIES, PAPER & TONER.
7610	8/3/1990	323117	THESAURUSES & DICTIONARIES.
7730	7/27/1994	334310	DISC PLAYERS, COMPACT.
7730	7/27/1994	334310	TELEVISION RECEIVING SETS.
8040	02/09/2005	325520	ADHESIVES AND SEALANTS MANUFACTURING.
8905	10/2/1991	311711	TUNA, CANNED.
8915	9/23/1991	311421	APRICOTS, CANNED.
8915	10/2/1991	311421	CITRUS SECTIONS, CANNED.
8915	10/2/1991	311421	SPINACH, CANNED.
8915	9/23/1991	311421	TOMATO PASTE, CANNED.
8925	10/2/1991	311312	SUGAR, GRANULATED & BROWN.
9310	10/2/1991	322224	PAPER BAGS (SMALL HARDWARE TYPE).
9510	5/15/1991	331491	BARS & ROD, HIGH NICKEL ALLOY.
9515	5/15/1991	331491	PLATE, SHEET, STRIP & FOIL; STAINLESS STEEL & HIGH NICKEL ALLOY.
9515	9/25/1990	331315	PLATE, SHEET, STRIP, FOIL & WIRE; HIGH NICKEL ALLOY.
9520	5/15/1991	331111	STAINLESS STEEL SHAPES.
9525	5/15/1991	331491	WIRE, NONELECTRICAL HIGH NICKEL ALLOY.
9530	5/15/1991	331491	BARS & RODS, HIGH NICKEL ALLOY.
9530	8/23/1991	331491	ALUMINUM.
9530	8/23/1991	331312	NICKEL-COPPER NICKEL.

U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF GOVERNMENT CONTRACTING NONMANUFACTURER RULE; CLASS WAIVER IN EFFECT AS OF MARCH 17, 2009—Continued

Product Service Code	Date in **Federal Register**	NAICS	Product
9535	6/8/2004	331315	ALUMINUM, SHEET, PLATE AND FOIL MANUFACTURING.
9650	9/25/1990	331411	COPPER & NICKEL CATHODES.
9650	9/25/1990	331411	COPPER CATHODES.
9650	9/25/1990	331419	NICKEL BRICKETTES.
9999	8/11/2004	333415	ICE MAKING MACHINERY MANUFACTURING.

*This waiver covers only peripheral equipment when purchasing a mainfame computer (PSC 7021).

The public is invited to provide comments to SBA on the periodic review of approved class waivers in effect as of March 17, 2009 under the above mentioned class of NAICS codes within 30 days after date of publication in the **Federal Register**.

Dated: March 20, 2009.

Karen C. Hontz,

Director for Government Contracting.

[FR Doc. E9–6741 Filed 3–25–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6560]

Bureau of Educational and Cultural Affairs (ECA)

Request for Grant Proposals: Youth Leadership Programs: South Asia and Southeast Asia.

Announcement Type: New Grants.

Funding Opportunity Number: ECA/PE/C/PY–09–39.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: May 14, 2009.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for two Youth Leadership Programs, one for 21 exchange participants from three countries in South Asia (Nepal, Sri Lanka, and the Maldives) and one for 50–60 participants from countries in Southeast Asia that are members of the Association of South East Asian Nations (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct 25-day U.S.-based exchanges program for high school students and teachers from one of these regions. The activities will focus on civic education, leadership, diversity, and community activism, which will prepare participants to conduct projects at home that serve a community need.

I. Funding Opportunity Description:

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Bureau of Educational and Cultural Affairs (ECA) is supporting two new Youth Leadership Programs, one with three countries in South Asia (Nepal, Sri Lanka, and the Maldives) and one with up to ten countries in Southeast Asia, member states of the Association of South East Asian Nations (ASEAN). Each program will feature exchanges to the United States that are 25-days-long for teenagers (ages 15–17) and adult educators. The grant recipients will design and implement the U.S. exchange activities. U.S. Embassies in the participating countries will recruit, screen, and select the participants; arrange international travel to the United States; and work with alumni.

These programs are designed to promote high-quality leadership, civic responsibility, and civic activism among our countries' future leaders. They will offer a practical examination of the principles of democracy and civil society as practiced in the United States and provide participants with training that allows them to develop their leadership skills. The applicant should present a program plan that allows the participants to thoroughly explore civic education in the United States in a creative, memorable, and practical way. Activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home. The English-speaking participants will live with American families for the majority of the exchange period. Multiple opportunities for participants to interact with American youth and educators must be included.

The goals of the program are:

(1) To promote mutual understanding between the people of the United States and the people of the partner countries;

(2) To develop a sense of civic responsibility and commitment to community development among youth;

(3) To develop leadership skills among secondary school students appropriate to their needs; and

(4) To foster relationships among youth from different ethnic, religious, and national groups.

A successful program will be one that nurtures a cadre of students and teachers to be actively engaged in addressing issues of concern in their schools and communities upon their return home and that equips them with the knowledge, skills, and confidence to become citizen activists.

The Bureau anticipates providing two grants to support two discrete Youth Leadership Programs, one for each region. Note that the grant funds available through this solicitation are not intended to cover the international airfare for the exchange participants. Organizations may submit only one proposal, for either the South Asia program or the Southeast Asia program. The two programs will be judged independently and proposals will be compared only to proposals for the same region. ECA intends to award only one grant for each program.

Project A: South Asia Youth Leadership Program

One grant. Funding for this grant is approximately $95,000.

The program will be offered for 21 participants—six students and one

educator from each of the three participating countries: Nepal, Sri Lanka, and the Maldives.

Applicants should propose 25-day exchange program in the United States that will take place between late November 2009 and late March 2010. Applicants should propose the period of the exchange based on this timeframe, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipients.

In addition to the themes of civic education, community service, and leadership, applicants are invited to include sub-themes on care for the environment, media literacy, and/or drug abuse prevention, particularly as a mechanism for seeing what their peers in the United States are doing in these areas and as a tool for exploring the primary themes of the program.

Project B: Southeast Asia Youth Leadership Program

One grant. Funding for this grant is approximately $275,000.

All ten member states of the Association of Southeast Asian Nations (ASEAN) are eligible though not all may send participants: Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam.

The program will be offered for a total of approximately 50 to 60 participants. Participant numbers may be increased slightly; therefore, applicants should indicate the extent of their flexibility in accommodating additional participants, both programmatically and financially. The ratio of students to educators will be approximately 5:1 or 6:1.

Applicants should propose to implement *two* 25-day U.S. exchanges, one in late November/December 2009 and one in April 2010. Each exchange delegation will have between 20–35 participants, together totaling the anticipated 50–60 participants. The size of the two delegations might or might not be equal.

In addition to the themes of civic education, community service, and leadership, applicants should include the sub-themes of environmentalism and entrepreneurship, particularly as a way to illustrate the primary themes.

For Both Programs:

Applicant organizations should outline their capacity for doing projects of this nature, focusing on three areas of competency of the staff directly associated with the program: (1) Provision of leadership and civic education programming, (2) age-appropriate programming for youth, and (3) demonstrated understanding of and experience in programs with the specified geographic region. Applicants need not have a partner in the participating countries, as the staff of the Public Affairs Section (PAS) of the U.S. Embassies will recruit and select the participants and provide a pre-departure orientation.

Guidelines:

The grants will begin on or about August 15, 2009, pending the availability of funds. The grant period will be 12 to 18 months in duration, as appropriate for the applicant's program design. Applicants should propose the period of the exchange(s) based on the timeframes noted above, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipients. The exchange period should be no less than 25 days, including international travel time.

The participants will be students between the ages of 15 and 17 who have demonstrated leadership potential in their schools and/or communities. The educators will be high school teachers, or possibly community leaders who work with youth, who have demonstrated an interest in promoting youth leadership. Participants will be proficient in the English language.

In pursuit of the goals outlined above, the grant recipients will provide the following:

- Information about the U.S. program and pre-departure materials to help the U.S. Embassies, participants, and their families in preparation for the exchange.
- A welcome orientation.
- Activities in one or two communities in the United States that provide a substantive program on civic education, community activism, and leadership through both academic and extracurricular components. A portion of the program, from two to six days, should be in Washington, DC (required for South Asia program; strongly encouraged for Southeast Asia program). Activities should take place in schools and in community settings. Community service must be included. It is crucial that programming involve American students whenever possible.
- Opportunities for the educators to work with their American peers to help them foster youth leadership, civic education, and community service programs at home.
- Homestay arrangements with properly screened and briefed American families for the majority of the exchange period.
- Logistical arrangements, disbursement of stipends, local travel, travel between U.S. sites, lodging and meals when not in the homestay.
- A closing session to summarize the project activities and prepare participants for their return home.
- Guidance on follow-on activities, in coordination with the U.S. Embassies, in order to advise the participants who have returned home on how to apply what they have learned during the exchange to address a community need.

The proposal narrative must provide detailed information on the program activities outlined above, and applicants should explain and justify their programmatic choices. Proposals must demonstrate how the stated objectives will be met. Programs must comply with J–1 visa regulations for the International Visitor and Government Visitor categories.

It is essential that all applicants refer to the three documents in the complete Solicitation Package—this Request for Grant Proposals (RFGP), the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Grant Agreements.
Fiscal Year Funds: 2009.
Approximate Total Funding:
South Asia Youth Leadership Program: $95,000.
Southeast Asia Youth Leadership Program: $275,000.
Approximate Number of Awards: Two.
Anticipated Award Date: Pending availability of funds, August 15, 2009.
Anticipated Project Completion Date: 12 to 18 months after the onset of the award, to be determined by the applicant according to its program design.
Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Please note that cost sharing is one of the criteria by which proposals will be judged.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

III.3.a. Bureau grant guidelines require that applicant organizations and sub-award organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding two grants, each exceeding $60,000, to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges at the time of application are not eligible to apply under this competition.

III.3.b. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact the Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 453–8171, Fax (202) 453–8169; E-mail: *PiersonCompeauHM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–09–39 when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Program Officer Carolyn Lantz and refer to the Funding Opportunity Number ECA/PE/C/PY–09–39 on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence To All Regulations Governing The J Visa:

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines:

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation:

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov.* This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must

be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the POGI and PSI for complete budget guidelines and formatting instructions.

IV.3.f. Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, May 14, 2009.

Reference Number: ECA/PE/C/PY–09–39.

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) electronically through *http://www.grants.gov.*

Please Note: ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications:

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and five (5) copies with Tabs A–E and appendices (no Tab F) should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–09–39, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov.* The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassies for their review.

IV.3f.2—Submitting Electronic Applications:

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support,

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully

adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be well developed, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to provide guidance for participants' community activities upon their return home.

2. *Program planning:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for any past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. *Program evaluation:* The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives.

6. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

1. Interim reports, as required in the Bureau grant agreement.

2. A final program and financial report no more than 90 days after the expiration of the award.

3. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

4. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 203–7505. Fax (202) 203–7529. E-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and the reference number ECA/PE/C/PY–09–39.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 19, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–6788 Filed 3–25–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 31, 2008, vol. 73, no. 212, pages 65005. The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP).

DATES: Please submit comments by April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: ACSEP Evaluation Customer Feedback Report.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0605.

Form(s): Form 8100–7.

Affected Public: An estimated 200 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP).

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 16, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–6182 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 31, 2008, vol. 73, no. 212, pages 65005–65006. The requested information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, to identify persons possibly unsuitable for pilot certification.

DATES: Please submit comments by April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0543.

Form(s) There are no FAA forms associated with this collection.

Affected Public: An estimated 1113 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 185.5 hours annually.

Abstract: The requested information is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, to identify' persons possibly unsuitable for pilot certification.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality,

utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 16, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–6185 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 4, 2008, vol. 73, no. 214, page 65714. The FAA uses the information gathered from Grand Canyon National Park air tour operators to monitor their compliance with the Federal regulations.

DATES: Please submit comments by April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0653.

Form(s) There are no FAA forms associated with this collection.

Affected Public: An estimated 13 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 44 minutes per response.

Estimated Annual Burden Hours: An estimated 38 hours annually.

Abstract: The FAA uses the information gathered from Grand Canyon National Park air tour operators to monitor their compliance with the Federal regulations.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 17, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–6195 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Finding of No Significant Impact and Record of Decision for the Final Environmental Assessment (EA), Section 4(f) Evaluation, and Notice of Alaska National Interests Lands Conservation Act (ANILCA) Section 810 Evaluation for the Proposed Airport Improvement Project for the Barter Island Airport, Kaktovik, AK

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Availability of the Finding of No Significant Impact/ Record of Decision.

SUMMARY: The FAA is announcing the availability of the Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the Final EA, Section 4(f) Evaluation, and Notice of ANILCA Section 810 Evaluation for Barter Island Airport Improvement Project, Kaktovik, AK. The FONSI/ROD provides final agency determinations and approvals for the proposed development.

FOR FURTHER INFORMATION CONTACT: Leslie Grey, Environmental Protection Specialist, AAL–614, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue #14, Anchorage, AK 99513–7504. Ms. Grey may be contacted during business hours at (907) 271–5453 (phone) and (907) 271–2851 (facsimile).

SUPPLEMENTARY INFORMATION: The FONSI/ROD is for the approval of actions for the construction of an airport, including a runway, runway safety area, an apron, airport access road, a relocated landfill and sewage lagoon, an access road to the relocated landfill and sewage lagoon, and closure of the existing landfill and sewage lagoon. The FONSI/ROD provides the final agency determinations and approvals for Federal actions by the FAA related to the selection of the alternative to meet the purpose and need for the action. The FONSI/ROD also includes required mitigation measures and conditions of approval. The FONSI/ROD indicates that the selected actions are consistent with existing environmental policies and objectives set forth in the National Environmental Policy Act (NEPA) of 1969, as amended, as well as other Federal and State statutes, and that the actions will not significantly affect the quality of the environment. The FAA's decision is based upon information contained in the Final EA, issued in January 2009, and on all other applicable documents available to the agency and considered by it, which constitutes the administrative record. The FAA's determinations are discussed in the FONSI/ROD, which was approved on March 16, 2009.

FONSI/ROD Availability and Review

Copies of the FONSI/ROD may be viewed during regular business hours at the following locations:

1. North Slope Borough Capital Improvement Project Office, 3000 C St., Suite 104, Anchorage, AK 99503. Laura Strand, Project Administrator, (907) 646–8274.

2. City of Kaktovik, Mayor's Office, P.O. Box 27, 2051 Barter Avenue, Kaktovik, Alaska 99747. Elizabeth Rexford, (907) 640–6313. *Open:* 8:30 a.m.–5 p.m. M–F.

3. North Slope Borough Village Liaison, P.O. Box 102, 4070 Hula Hula Avenue, Kaktovik, Alaska 99747. Nora Jane Burns, (907) 640–6128.

4. North Slope Borough Public Works, 1689 Okpik Street, Barrow, Alaska 99723. Sophia Amling, (907) 852–0271. *Open:* 8:30 a.m.–5 p.m. M–F.

The FONSI/ROD may also be viewed at the following Web site: *http://www.faa.gov/airports_airtraffic/airports/environmental/records_decision/*.

Issued in Anchorage, Alaska, on March 16, 2009.

Byron K. Huffman,

Manager, Federal Aviation Administration, Airports Division, Alaskan Region.

[FR Doc. E9–6747 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R, E&D) Advisory Committee.

Agency: Federal Aviation Administration.

Action: Notice of meeting.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 29, 2009–9 a.m. to 5 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW—Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy.

Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov.* Attendees will have to present picture ID at the security desk and escorted to the Round Room. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on March 18, 2009.

Barry Scott,

Director, Research & Technology Development.

[FR Doc. E9–6478 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–12]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR 23.562. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 15, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0036 using any of the following methods:

- *Government-Wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Stegeman, Small Airplane Directorate, Federal Aviation Administration, 901 Locust, Kansas City MO 64106, fax 816–329–4090, telephone 816–329–4140, or Ralen Gao, Office of Rulemaking, ARM–209, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, fax 202–267–5075, telephone 202–267–5075. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 20, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0036.

Petitioner: Mr. Dale J. Morrow.

Section of 14 CFR Affected: 14 CFR 23.562.

Description of Relief Sought: Mr. Dale J. Morrow seeks an exemption to Title 14 Code of Federal Regulations, 23.562, ''Emergency Landing Dynamic Conditions'' for a seat that can be occupied by a passenger on a Pilatus PC–12 aircraft. The modified seat installation will accommodate a passenger with certain medical conditions who cannot comfortably be seated in a standard FAA approved aircraft passenger seat. The proposed exemption would mitigate the impact threats for the occupant in the modified seat with the use of alternative technologies.

[FR Doc. E9–6729 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[U.S. DOT Docket No. FHWA–2009–0036]

Notice: Letter of Public Notification on the Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (ARRA); Information Collection Activity

AGENCY: Federal Highway Administration, DOT.

FHWA is submitting this notification to the Office of Management and Budget (OMB) for emergency processing to meet Paperwork Reduction Act (PRA) requirements.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA), provides the State Departments of Transportation and Federal Lands Agencies with $27.5 billion for highway infrastructure investment. With these funds also comes an increased level of data reporting with the stated goal of improving transparency and accountability at all levels of government. According to President Obama, ''Every American will be able to hold Washington accountable for these decisions by going online to see how and where their tax dollars are being spent.'' The Federal Highway Administration (FHWA) in concert with the Office of the Secretary of Transportation (OST) and the other modes within the U.S. Department of Transportation (DOT) will be taking the appropriate steps to ensure that this accountability and transparency is in place for all infrastructure investments.

The reporting requirements of the ARRA are covered in Sections 1201 and 1512. Section 1201(c)(1) stipulates that ''notwithstanding any other provision of law each grant recipient shall submit to the covered agency (FHWA) from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency (FHWA) and transmitted to Congress. Covered agencies (FHWA) may develop such reports on behalf of grant recipients (states) to ensure the accuracy and consistency of such reports.''

Section 1512 of the ''Jobs Accountability Act'' requires ''any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual,'' including States, to provide regular ''Recipient Reports.''

FOR FURTHER INFORMATION CONTACT: David Winter, 202–366–0175, Director, Office of Highway Policy Information, HPPI–1, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Authority: The paperwork reduction Act of 1995; 44 U.S.C., Chapter 35, as amended; and 49 CFR 1.48.

Issued on March 19, 2009.

James R. Kabel,

Chief, Management Programs and Analysis Division, HAIM–10.

[FR Doc. E9–6748 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2009–0054]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–XX–XX] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. 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 heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Timothy M. Pickrell, NHTSA, 1200 New Jersey Avenue, SE., W55–204, NVS–421,Washington, DC. 20590. Mr. Pickrell's telephone number is (202) 366–2903.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: The National Survey on the Use of Booster Seats.

OMB Control Number: 2127–0644.

Affected Public: Motorists in passenger vehicles at gas stations, fast

food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

Form Number: NHTSA Form 1010.

Abstract: The National Survey of the Use of Booster Seats is being conducted to respond to the Section 14(i) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. The act directs the Department of Transportation to reduce the deaths and injuries among children in the 4 to 8 year old age group that are caused by failure to use a booster seat by 25%. Conducting the National Survey of the Use of Booster Seats provides the Department with invaluable information on who is and is not using booster seats, helping the Department better direct its outreach programs to ensure that children are protected to the greatest degree possible when they ride in motor vehicles. The OMB approval for this survey is scheduled to expire on July 31, 2009. NHTSA seeks an extension to this approval in order to obtain this important survey data, saving more children and helping to comply with the TREAD Act requirement.

Estimated Annual Burden: 320 hours.

Estimated Number of Respondents: Approximately 4,800 adult motorists in passenger vehicles at gas stations, fast food restaurants, and other types of sites frequented by children during the time in which the survey is conducted.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: March 13, 2009.

Marilena Amoni,

Associate Administrator, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

[FR Doc. E9–6766 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2009–0060]

Pipeline Safety: Workshop on New Pipeline Construction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of workshop.

SUMMARY: Recent new pipeline construction inspections by PHMSA have identified issues regarding procedures and inspection of pipeline coating, welding, and general pipeline construction practices. Many of the issues required immediate response from operators to avoid impacting long term pipeline integrity before the pipeline was put into service. PHMSA is leading a workshop cosponsored by the National Association of Pipeline Safety Representatives (NAPSR), the Federal Energy Regulatory Commission (FERC), and the Canadian National Energy Board (NEB), on new pipeline construction in established rights-of-way to allow stakeholders of the pipeline safety community to learn about and discuss these construction issues and current practices used to resolve issues and ensure pipeline safety.

DATES: The workshop will be held on April 23, 2009. Name badge pick-up and on-site registration will be available starting at 7:30 a.m. with the workshop taking place from 8 a.m. until approximately 5 p.m.. Refer to the meeting Web site for updated agenda and times at *https://primis.phmsa.dot.gov/meetings/Mtg58.mtg*. Please note that all workshop presentations will be available on the meeting Web site within 30 days following the workshop.

ADDRESSES: The workshop will be held at the Omni Fort Worth Hotel, 1300 Houston Street, Fort Worth, TX 76102. Hotel reservations under the ''U.S. DOT Pipeline Construction'' room block for the nights of April 22–23, 2009, can be made at 1–817–535–6664. A daily rate of $149.00 is available. The meeting room will be posted at the hotel on the day of the workshop.

FOR FURTHER INFORMATION CONTACT: Elizabeth Komiskey at (202) 288–1818, or by e-mail at *elizabeth.komiskey@dot.gov*.

SUPPLEMENTARY INFORMATION:

Registration: Members of the public may attend this free workshop. To help assure that adequate space is provided, all attendees are encouraged to register for the workshop at *https://primis.phmsa.dot.gov/meetings/Mtg58.mtg*. Hotel reservations must be made by contacting the hotel directly.

Comments: Members of the public may also submit written comments, either before or after the workshop. Comments should reference Docket ID PHMSA–2009–0060. Comments may be submitted in the following ways:

- E-Gov Web Site: *http://www.regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail:* Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the Docket ID at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*. **Note:** Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the **SUPPLEMENTARY INFORMATION** for additional information.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Elizabeth Komiskey at (202) 288–1818, or by e-mail at *elizabeth.komiskey@dot.gov* by April 15, 2009.

Issue Description: The pipeline industry is experiencing unparalleled growth driven by the need to satisfy the Nation's energy demand and bring new sources of supply to the market. In the conduct of its oversight of these increased activities, PHMSA inspections of new pipeline projects have

discovered a number of issues that could have a clear impact on the integrity of the pipeline.

During the 2008 pipeline construction season, PHMSA inspectors discovered issues requiring immediate operator remediation prior to the pipeline being placed in service or requiring pressure reduction to assure pipeline integrity. Issues discovered during PHMSA inspections included poor quality control and procedures for welding, coating, and materials; as well as inadequate operator inspection and general construction practices. PHMSA developed this workshop in collaboration with our State partners, FERC and NEB to inform the public, alert the industry, review lessons learned from inspections, and to improve new pipeline construction practices prior to the 2009 construction season.

Due to time constraints, this workshop will focus solely on natural gas transmission and hazardous liquid pipelines being constructed on established rights-of-way and will not include discussion on property rights, permitting or siting issues.

Preliminary Workshop Agenda

The workshop will include:
(1) Quality Control and Inspection,
(2) Welding,
(3) Coating,
(4) Materials, and
(5) Best practices for pipeline construction.

Refer to the meeting Web site for a more detailed agenda: *https://primis.phmsa.dot.gov/meetings/Mtg58.mtg.*

Issued in Washington, DC, on March 19, 2009.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E9–6690 Filed 3–25–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 20, 2009.

The Department of 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 27, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2119.

Type of Review: Extension.

Title: Notice 2008–79, Tax-exempt Housing Bonds and 2008 Housing Legislation.

Description: This information is being requested from issuers of tax-exempt bonds who issue bonds subject to the new volume cap or utilize proceeds of mortgage revenue bonds to refinance certain qualified subprime mortgage loans, as provided in the Housing Assistance Tax Act of 2008, enacted July 30, 2008 (''2008 Housing Act''). We are asking issuers to report bonds issued pursuant to the new volume cap on existing form 8038 that is already required to be filed in connection with bond issues, and issuers of mortgage revenue bonds to attach a schedule to the 8038 providing a reasonable estimate of the total expected principal amount that will be utilized to refinance qualified subprime mortgage loans. We are asking issuers to file a second copy of an existing IRS Form 8328 in order to make the election to carry forward additional volume cap provided under the 2008 Housing Act that remains unused at the end of calendar year 2008.

Respondents: State Local, and Tribal Governments.

Estimated Total Burden Hours: 300 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. E9–6692 Filed 3–25–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2009 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Change to NOAA inviting applications for the CY 2009 Allocation Round of the NMTC Program: Increase in allocation authority; increase in maximum anticipated allocation award amount; waiver of Qualified Equity Investment (QEI) issuance requirements for allocation awards made in CY 2008; notification of reporting requirements for allocatees receiving allocations pursuant to the American Recovery and Reinvestment Act of 2009.

Dates: Electronic applications must be received by 5 p.m. ET on April 8, 2009. Applications sent by mail, facsimile or other form will not be accepted.

Executive Summary: This NOAA update is issued in connection with the calendar year 2009 tax credit allocation round of the NMTC Program, authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554), as amended (the Act). On January 22, 2009, the Community Development Financial Institutions Fund (the Fund) announced in the NOAA for the NMTC Program (74 FR 4077) the amount of NMTC allocation authority available, the QEI issuance requirements for prior-round allocatees, and the reporting requirements for allocatees. Pursuant to the recent passage of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the Fund hereby announces an increase in the total available NMTC allocation authority to $5.0 billion for the CY 2009 round. Furthermore, with respect to eligibility for an allocation under the CY 2009 round, the Fund hereby waives the QEI issuance requirements for allocation awards made in CY 2008 and increases the anticipated maximum allocation award for CY 2009 to $125 million each. Finally, the Fund is hereby providing guidance on reporting requirements for allocatees whose allocations are authorized pursuant to the Recovery Act.

Increase in Allocation Authority: The January 22, 2009 NOAA announced that there would be a total of $3.5 billion of NMTC allocation authority available in the CY 2009 round. The Recovery Act increases the NMTC allocation authority for the CY 2009 round from $3.5 billion to $5.0 billion.

Increase of Award Amount: The January 22, 2009 NOAA also announced that the Fund expects that it will provide allocation awards of not more than $100 million per applicant. Due to the additional allocation authority authorized through the Recovery Act, this notice announces that the Fund now expects that it may provide allocation awards of not more than $125 million per applicant.

Waiver of QEI Issuance Requirements for CY 2008 Allocatees: The January 22, 2009 NOAA provided information regarding QEI issuance requirements for prior-year allocatees, including CY 2008 round allocatees. This notice announces that, for the CY 2009 round of the NMTC Program, a prior allocatee in the sixth round of the NMTC Program (CY 2008) is not required to issue a minimum amount of QEIs relating to its CY 2008 NMTC Allocation in order to be eligible for an allocation under the seventh round (CY 2009).

Reporting Requirements for CY 2009 Allocatees Receiving Recovery Act Allocations: The January 22, 2009 NOAA indicated that each applicant that is selected to receive a NMTC allocation (including the applicant's Subsidiary transferees) must sign a Notice of Allocation and enter into an Allocation Agreement with the Fund. The Notice of Allocation and Allocation Agreement will set forth certain required terms and conditions of the NMTC allocation which will include, among other things, reporting requirements for all applicants receiving NMTC allocations. This notice announces that, due to the nature of the Recovery Act, it is expected that allocatees receiving NMTC allocations under the Recovery Act will be required, at a minimum, to: (i) Invest QEI proceeds in low-income communities in an expedited manner; (ii) track the use of these QEI proceeds on all investments; and (iii) provide data to the Federal government on a quarterly basis that indicates how QEI proceeds were spent and the impacts (e.g., job creation) that were realized in the low-income communities. Specific reporting requirements are still under development and will be outlined in each allocatee's Allocation Agreement. In the meantime, the Fund encourages all allocatees to review the Office of Management and Budget's (OMB's) memorandum (M–09–10; *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09–10.pdf*) regarding potential reporting requirements for organizations that receive awards under the Recovery Act, as well as any subsequent guidance posted on OMB's or the Fund's Web site.

All other information and requirements set forth in the January 22, 2009 NOAA shall remain effective, as published.

For Further Information Contact: The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through April 6, 2009. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on April 6, 2009 until after the allocation application deadline of April 8, 2009. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the Fund's NMTC Program Manager by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the Fund's Awards Manager by e-mail at *grantsmanagement@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

E. *Legal counsel support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov.*

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1; Pub. L. No. 111–5.

Dated: March 20, 2009.

Donna Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E9–6789 Filed 3–25–09; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Recordkeeping Requirements for Securities Transactions—12 CFR part 12.'' The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: You should submit comments by April 27, 2009.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0142, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to: OCC Desk Officer, 1557–0142, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR part 12.

OMB Number: 1557–0142.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The only revisions to the submission are the revised estimates, which have been updated.

The information collection requirements in 12 CFR part 12 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding each transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows:

- Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.
- Section 12.4 requires a national bank to give or send to the customer a written notification of the transaction or a copy of the registered broker/dealer confirmation relating to the transaction.
- Sections 12.5(a), (b), (c), and (e) describe notification procedures a national bank may use as an alternative to complying with § 12.4, to notify customers of transactions in which the bank does not exercise investment discretion, trust transactions, agency transactions and certain securities transactions for periodic plans.
- Sections 12.7(a)(1) through (a)(3) require a national bank to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts; and provide for the crossing of buy and sell orders on a fair and equitable basis.
- Section 12.7(a)(4) requires certain bank officers and employees involved in the securities trading process to report to the bank within ten business days after the end of the calendar quarter all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.
- Section 12.8 requires a national bank seeking a waiver of one or more of the requirements of §§ 12.2 through 12.7 to file a written request for waiver with the OCC.

Type of Review: Regular.

Affected Public: Individuals; businesses or other for-profit.

Estimated Number of Respondents: 497.

Estimated Total Annual Responses: 2,501.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,711 hours.

The OCC issued a 60-day notice for comment on January 13, 2009. 74 FR 1762. No comments were received. Comments continued to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 20, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–6767 Filed 3–25–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on April 23–24, 2009, in Room 530, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. On April 23, the session will begin at 8:30 a.m. and end at 5 p.m. On April 24, the session will begin at 8 a.m. and end at 12 p.m. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's aging research activities, update on the VA's geriatric workforce (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) Geriatric Primary Care, VHA strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and the long term care needs of recently returning Veterans, program advances in Community Living Centers and palliative care, and policy guidance and performance oversight of the VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee not less than ten days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney, Program Analyst, at (202) 461–6769.

Dated: March 23, 2009.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–6802 Filed 3–25–09; 8:45 am]

BILLING CODE 8320–01–P

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