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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH86

Sugar Program

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to administer the sugar loan and sugar marketing allotment program through 2012. The 2008 Farm Bill generally extends the existing sugar program with some changes, including new loan rates for raw cane sugar and beet sugar, new provisions to guarantee domestic suppliers an 85 percent market share, and revised procedures for granting new allocations for new entrants.

DATES: *Effective Date:* April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, USDA, FSA, Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516; *phone:* (202) 720–4146; *e-mail: barbara.fecso@wdc.usda.gov*; or *fax:* (202) 690–1480. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule implements all the changes to the sugar loan and sugar marketing allotment programs mandated by Title I of the 2008 Farm Bill (Pub. L. 110–246). The provisions of Title IX of the 2008 Farm Bill, concerning the Feedstock Flexibility Program for Bioenergy, will be implemented at a later date as a proposed rule. We are separating these regulatory provisions into two rules because the 2008 Farm Bill requires us to promulgate the regulations to implement the Title I changes and exempts the regulations from notice and comment rulemaking, while Title IX must be implemented subject to notice and comment rulemaking. Also, we need to implement the Title I changes now in order to provide sugar loans and marketing allotments for fiscal year (FY) 2009. In contrast, it is unlikely given current supply and demand conditions that we will be required to implement provisions of the Feedstock Flexibility Program in FY 2009. The Feedstock Flexibility Program is triggered by the prospect of sugar forfeitures, which are unlikely to occur in FY 2009. The U.S. Department of Agriculture's (USDA) December 2008 World Agricultural Supply and Demand Estimate (WASDE) report projected sugar ending stocks for FY 2009 of 60 percent of the level USDA normally considers necessary to provide for a balanced domestic sugar market, making forfeitures quite unlikely.

The sugar program is a collection of Federal programs designed to support the return from raising sugarcane and sugar beets above a threshold established by statute. The price of sugar, rather than the price of sugar beets and sugarcane, is supported, because the growers' return from the crop is proportional to the price of sugar and the crops are not storable, which makes them unsuitable loan collateral for CCC price support loans. The price level supported is determined by the sugar loan program. Regulations for this program are in subpart B in 7 CFR part 1435. Sugar beet and sugarcane processors can receive loans from CCC on their sugar production, which can be fully satisfied by giving CCC title to their loan collateral, also known as a ''forfeiture'' of collateral. Thus, sugar processors always have the opportunity to receive at least the loan proceeds from their crop, which becomes a floor on the market price of domestic sugar.

The sugar program has had a mandate, since the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, commonly known as the 2002 Farm Bill), to avoid the federal costs associated with sugar loan collateral forfeitures. The sugar program minimizes forfeiture expenditures by limiting domestic supply, resulting in higher domestic sugar prices than the floor created by the sugar loan program. Thus, the cost of the program falls upon domestic purchasers of sugar, not the federal government. USDA can control supply by limiting the quantity of sugar that domestic sugar beet and sugarcane processors can sell under the Sugar Marketing Allotment program, and by limiting the quantity of foreign sugar on the domestic market via sugar tariff-rate quotas (TRQ), subject to the minimum access levels established by international treaties.

While some price support aspects of the sugar program may not be needed in 2009 due to the predicted tight U.S. sugar market, other aspects of the Sugar Loan and Marketing Allotments for Sugar program will be implemented in FY 2009 and need this rule in order to operate. All of the changes in this rule are required by the 2008 Farm Bill, for which USDA has little or no discretion in when and how to implement. This rule makes changes to subparts A, B, C, D, and E of 7 CFR part 1435, ''Sugar Program.'' The Payment in Kind Program in subpart E will be moved to a new subpart F. A new subpart E on General Disposition of CCC Inventory and subpart G will be added in the subsequent Title IX rule and used to implement the Feedstock Flexibility Program.

Changes to General Provisions (Subpart A)

The extension of the domestic sugar program through the 2012 crop year is reflected in the revised section 1435.1, ''Applicability.'' Also added to this section is the administration of a program to dispose of surplus sugar to bioenergy fuels production.

Section 1435.2, ''Definitions,'' is updated and modified to reflect changes required by the 2008 Farm Bill. The definition of beet sugar is revised to implement the requirement in the 2008 Farm Bill that sales of sugar processed from in-process beet sugar, such as thick juice, whether imported or domestic, used for domestic human consumption is subject to the processor's sugar marketing allocation. This change also resulted in changes to the definitions of ''in-process beet sugar,'' ''in-process

cane sugar,'' ''overall allotment quantity,'' ''sugar,'' and ''sugar beet processor.'' A definition for ''human consumption'' is added, using the definition in the 2008 Farm Bill. A definition for ''proportionate share State'' is added for clarification. The definition of ''marketing'' is revised to reflect the 2008 Farm Bill requirement that a sale of sugar to the Feedstock Flexibility Program is a marketing subject to a processor's sugar marketing allocation. A definition of ''cane sugar refiner'' is modified to be consistent with Foreign Agricultural Service (FAS) regulations.

Section 1435.3, ''Maintenance and Inspection of Records,'' is modified to reflect that CCC has no authority to inspect processor records and has instituted a data audit process, in lieu of inspection, to verify processor records. This audit process is explained in section 1435.200, ''Information Reporting.''

Changes to Sugar Loan Program (Subpart B)

The regulations governing the Sugar Loan Program are modified to reflect the changes required by the 2008 Farm Bill.

Section 1435.101, ''Loan Rates,'' sets forth the increased loan rates under the 2008 Farm Bill. The national average loan rate for raw cane sugar produced from domestically-grown sugarcane is unchanged for the 2008 crop year, at 18 cents per pound, but increases as follows for the subsequent years:

- 18.25 cents per pound for the 2009 crop year;
- 18.50 cents per pound for the 2010 crop year;
- 18.75 cents per pound for the 2011 crop year; and
- 18.75 cents per pound for the 2012 crop year.

The national average loan rate for refined beet sugar produced from domestically-grown sugar beets remains unchanged for the 2008 crop year, but increases to 128.5 percent of the loan rate per pound of raw cane sugar for each of the crop years 2009 through 2012.

The eligibility requirements in section 1435.102, ''Eligibility Requirements,'' are modified to exclude sugar processed from imported in-process sugars from eligibility for the loan program. The 2008 Farm Bill now treats in-process beet sugar just like sugar beets; that is, as an input into the production of sugar. Since sugar produced from imported beets is not eligible for the loan program, neither is sugar produced from imported in-process beet sugar. Section 1435.103, ''Availability, Disbursement, and Maturity of Loans,'' is revised to reflect the change in loan rate for supplemental loans. Instead of getting the loan rate in effect at the time the supplemental loan is made, supplemental loans will receive the loan rate that was in effect at the time the original loan was made. Section 1435.105, ''Loan Settlement and Foreclosure,'' is updated to reflect that premiums or discounts may result from any differences in the sugar characteristics identified on the loan certification versus at the time of actual loadout of forfeited sugar. Storage payment rates paid by CCC on forfeited sugar loan collateral have also been added to section 1435.105. The minimum rate set by the 2008 Farm Bill is 15 cents per hundredweight for refined sugar and 10 cents per hundredweight for raw sugar, significantly above the rates administratively set by USDA of 10 cents per hundredweight for refined sugar and 8 cents per hundredweight for raw sugar.

Changes to Information Reporting and Recordkeeping Requirements (Subpart C)

Subpart C, ''Information Reporting and Recordkeeping Requirements,'' is revised to reflect the 2008 Farm Bill's requirement that USDA publish Mexican supply data and use estimates in its monthly WASDE report. The 2008 Farm Bill also requires the WASDE report to include publicly available data on Mexican high fructose corn syrup production, consumption, and trade data. This rule also replaces the requirement in the regulation that all processors, refiners and importers must submit an annual audit to CCC. The new regulation allows CCC to select some, but not necessarily all, for audit.

Changes to the Flexible Sugar Marketing Allotment Program (Subpart D)

The 2008 Farm Bill significantly modified the Flexible Sugar Marketing Allotment Program. All of the changes to subpart D in this rule described below are required to implement the 2008 Farm Bill. This section discusses the overall changes in the program and the implications of those changes first, then discusses the changes to specific sections of the regulations.

The 2002 Farm Bill required USDA to set the overall allotment quantity (OAQ) by a formula that permitted domestic producers to receive a market share equal to the amount of domestic demand, less an import share of 1.532 million tons. This allotment quantity had to be reduced, if necessary, to avoid the cost of potential forfeitures of sugar loan collateral. Allotments were to be suspended if the import share exceeded the 1.532 million tons allotted to it. Suspending allotments was expected to increase the likelihood of CCC expenditures as forfeitures under the price support loan program were constrained by the program—forfeitures are marketings credited against a processor's allocation of the marketing allotment. Without an allotment program, processors could forfeit their entire sugar supply, if they so chose.

The 2008 Farm Bill added another objective to the domestic allotment program, reinforcing USDA's function to use the sugar program to provide for a balanced domestic sugar market. USDA must now set the domestic allotment quantity, subject to specific constraints, to ensure that there is an adequate supply of raw and refined sugar for the domestic market. This new objective in the domestic program complements the existing authority in chapter 17 of the Harmonized Tariff Schedule maintained by the United States International Trade Commission permitting USDA to increase the sugar TRQs if supply is determined to be ''inadequate to meet domestic demand at reasonable prices.'' Thus, USDA must continue to use the sugar program authorities, to the extent possible, to keep supply limited enough to avoid forfeitures, but large enough to provide an adequate supply.

The Sugar Marketing Allotment program divides the domestic sugar market between sugar importers and domestic sugar beet and sugarcane processors. Importers are always expected to fill their share because the U.S. price of sugar is usually considerably above the world sugar price. If the domestic processors' supply is inadequate to fill their allotment, then CCC must fill the deficit with its inventory; if it has no inventory, then CCC must reassign the unfilled market share to importers. The maximum market share reserved for imports under the 2002 Farm Bill, 1.532 million tons, was also the allotment program suspension threshold and did not include imports needed to make up for deficit domestic production.

Under the 2002 Farm Bill, all types of imported sugar were eligible for reassignment of the deficit, including, but not limited to, TRQ raw sugar, TRQ refined sugar, Mexican imports, Central America Free Trade Agreement (CAFTA) imports, and other high-tier imports. At times, a reassignment meant new access to the U.S. sugar market, for example an increase in the TRQ. At other times, a reassignment meant acknowledging an existing import category that resulted in no new access,

such as Mexican sugar. USDA reassigned the surplus allotment to an import source consistent with the objective of balancing the domestic market, avoiding forfeitures and providing adequate supply at reasonable prices. If USDA determined that the market was not adequately supplied, then USDA would increase access through a TRQ increase. If USDA determined that the market would be adequately supplied with the imports already expected, then USDA would reassign the surplus allotment to those imports. The following is a table of the sources of reassigned surplus allotment during administration of the Sugar Marketing Allotment program under the 2002 Farm Bill.

REASSIGNMENT HISTORY

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
	(short tons, raw value)					
OAQ	8,663,000	8,250,000	8,680,000	9,350,000	8,750,000	8,950,000
Beet Sugar	4,534,340	4,483,875	4,717,580	4,776,380	4,755,625	4,864,325
Cane Sugar	3,954,660	3,766,125	3,670,208	2,981,620	3,540,375	3,626,533
Reassignments:						
Reassign Cane Shortfall to CCC	174,000	0	17,120	0	0	0
Reassigned to Total Imports	0	0	275,092	1,592,000	454,000	459,142
Raw World Trade Organization (WTO) TRQ	0	0	84,447	745,000	250,000	.....
Refined WTO TRQ	0	0	69,933	509,921	58,581	70,000
Mexico TRQ	0	0	0	276,000	86,419	0
Mexico Non TRQ	0	0	120,713	0	0	389,142
Non Program Imports	0	0	0	61,079	59,000	0

The 2008 Farm Bill changes the market sharing arrangements embodied in the Sugar Marketing Allotment program. The new objective that it must ensure adequate sugar supply means that when USDA sets the overall allotment quantity, it must be comfortable that the remaining share of domestic demand, up to 15 percent, will be satisfied. USDA cannot reassign surplus allotment to imports that would permit the non-allotment market share (15 percent) to be unfulfilled. Thus, for the new allotment program, USDA cannot reassign surplus allotment to imports that would count against the 15-percent import market share. The 2008 Farm Bill also specifically requires that surplus allotment be reassigned to raw cane sugar imports only. Thus, the raw sugar TRQ, or raw sugar portion of CAFTA or Mexican imports, are now eligible as a source for reassignment. This still permits USDA significant flexibility in balancing the domestic market as these categories are expected to range between 1 to 2 million tons per year. Any imported refined sugar must be credited against the 15-percent import market share because it is not eligible for reassignment if domestic producers cannot fill their allotment.

It should be noted that USDA's increases in access to the domestic market do not necessarily mean domestic supplies will increase and prices will fall. Sugar must be physically available to fill the access. Likewise, USDA's ability to restrict supply and raise prices is hampered by storage capacity. CCC sugar is stored in processor warehouses and storage capacity limits will cause the processors to reduce prices to avoid paying for expensive short term storage as the new crop is processed. CCC purchased sugar for considerably less than the forfeiture proceeds in 2000.

The USDA budget baseline projects substantial costs to the sugar program because USDA's ability to limit supply was curtailed by NAFTA, which deregulates sweetener trade across the U.S.-Mexican border. The U.S. advantage in high fructose corn syrup (HFCS) production was expected to result in an increased flow of U.S. HFCS into Mexico, creating a Mexican surplus in sugar that would result in increased Mexican sugar imports into the United States. The increased Mexican imports were expected to result in prices below the federal support level and forfeiture of sugar price support loan collateral. The 2008 Farm Bill addressed CCC's options to dispose of surplus sugar in the new Feedstock Flexibility Program, located in Title IX of the 2008 Farm Bill.

Section 1435.300, ''Applicability,'' now provides that marketings of sugar made from in-process beet sugar will be counted against a processor's sugar marketing allocation. Before this change, which is required by the 2008 Farm Bill, CCC considered in-process beet sugar as a sugar and counted marketings of in-process beet sugar against a processor's allocation. This rule considers in-process beet sugar a feedstock from which sugar can be made, just as sugar beets or sugarcane are considered feedstocks for producing sugar. This change required minor edits for consistency to many sections in this subpart, as well as changes to the definitions section.

Section 1435.302 is modified to reflect not only the 85 percent market share guarantee to domestic producers, but also CCC's policy of requiring a processor to use its marketing allotment to participate in USDA's sugar re-export, sugar containing products re-export, or polyhydric alcohol programs, and to sell sugar to CCC under the new Feedstock Flexibility Program.

Section 1435.303, ''Overall Allotment Quantity,'' is removed from the regulations because it is now obsolete, and subsequent sections are renumbered accordingly.

Section 1435.303, ''The Adjustment of the Overall Allotment Quantity,'' (formerly section 1435.304) has been modified to reflect the change in the 2008 Farm Bill which restricts CCC from reducing the OAQ below 85 percent of human consumption. The 2002 Farm Bill, as mentioned earlier, allowed CCC to reduce the domestic share in times of a demand decrease, without a lower limit.

Sections 1435.306, ''Allocation of Marketing Allotments to Processors,'' and 1435.307, ''Transfer of Allocation,'' have been reorganized for clarification and to reflect changes from the 2008 Farm Bill. The provisions in these sections were formerly in §§ 1435.307 and 1435.308.

The updated § 1435.306, ''Allocation of Marketing Allotments to Processors,'' includes new provisions that exempt sugar made in FY 2009 from in-process beet sugar purchased in FY 2008. The marketing of domestic in-process beet

sugar in FY 2008 was subject to a processor's FY 2008 allocation because, under the 2002 Farm Bill, in-process sugar was considered sugar subject to a processor's allotment. After September 30, 2008, the marketings of in-process beet sugar are no longer considered sugar subject to a processor's allotment due to a change made by the 2008 Farm Bill. Section 359b(c)(1) of the Agricultural Adjustment Act of 1938, as amended by the 2008 Farm Bill, includes the marketing of sugar processed from in-process beet sugar in the section describing the coverage of allotments. The new provision in § 1435.306 is required so that companies that purchased in-process sugar, sold under a FY 2008 allocation, are not caught in the transition to the new definition of sugar subject to allotment. Some of these companies may not have been beet processors with allotments. Without this new provision, these companies would be prevented from marketing the sugar processed from the in-process beet sugar. In the future, any company wishing to process in-process beet sugar into refined sugar must be a beet processor with an allocation of the beet sugar marketing allotment.

The updated § 1435.307, ''Transfer of allocation,'' provides that for proportionate share States, growers may now move allocation between facilities as they change their sugarcane deliveries. Under the previous regulation, growers needed permission from the processor they were leaving to move allocation commensurate with their cane deliveries. CCC is establishing the signup period for growers to request CCC to move allocation as the month of May for the following cane harvest season. During that signup month, CCC expects the grower to reach agreement with its original facility as to the amount of production history the grower is requesting and entitled to move. If the petitioning grower does not supply CCC during the month of May with its history for the crop years 1997 through 2003, certified by its original facility, CCC will refuse the grower's petition to transfer allocation. Since growers in proportionate share States do not need permission from the facility they are leaving to move allocation associated with their production, provisions for them are no longer included in the ''Transfer of Allocation'' section regarding facility closures.

In light of proceedings in a court case, *Amalgamated Sugar, LLC* v. *Vilsack, et al.*, the updated § 1435.307 (formerly § 1435.308) is being amended to permit CCC wider discretion to determine that a processor has permanently terminated operations. In a decision dated February 11, 2009, the U.S. Court of Appeals for the Ninth Circuit reversed a determination made by the Department transferring the sugar marketing allocation from one sugar processor to another sugar processor. The amendment permits CCC to make a determination that a sugar processor has permanently terminated operations, and transfer the allocation on the basis of a CCC determination, in addition to the other specified circumstances.

This section also reflects an addition in the 2008 Farm Bill that allows the buyer and seller of a facility, rather than CCC, to choose the allocation amount to be transferred upon sale of the facility. Finally, § 1435.307 is modified to add a provision that was effective in the 2002 Farm Bill, but not specified in the previous regulation, that a buyer of facilities may fill a production shortfall of its purchased facilities with beet sugar produced in other beet facilities it owns, if necessary.

Section 1435.308, ''New Entrants,'' now specifies that in subsequent years after being assigned its initial allocation, the new entrant cane processor will be assigned an allocation that provides a fair, efficient, and equitable distribution of allocations from the allotment of the State within which the new entrant is located. In the case of cane processors in proportionate share States, the new entrant's allocation in subsequent years will include any allocation acquired through the voluntary allocation transfer provisions of § 1435.307, ''Transfer of Allocation.'' This ''New Entrants'' section also implements a change from the 2008 Farm Bill that requires CCC to assign to a new entrant constructing a new or reopening an existing facility that has no allocation an allocation that enables it to achieve a facility utilization rate similar to other sugar beet processors. The 2002 Farm Bill specified a formula to determine the new allocation that is removed in this rule. This section also now provides that a new entrant acquiring a facility with production history and the company holding its allocation must agree on the allocation to be transferred; otherwise CCC will deny the new entrant an allocation.

Section 1435.309, ''Reassignment of Deficits,'' is changed in this rule to restrict reassignment of production shortfall, after it has been determined that CCC cannot fill the allocation, to imports of raw cane sugar only.

Section 1435.313, ''Permanent Transfer of Acreage Base Histories Under Proportionate Shares,'' now incorporates a new process to restore sugarcane base acreage lost to nonagricultural uses before May 13, 2002 in proportionate share States. USDA will notify affected landowners within 90 days of USDA becoming aware of the conversion that the landowner has 90 days to transfer the base. It is not USDA's responsibility to keep a vigilant watch for sugarcane base acreage converting to a nonagricultural use. If the landowner does not exercise his transfer rights, the grower of record will have 90 days after being notified by USDA to transfer the base. If the landowner or grower does not transfer the base, then the FSA county committee will take requests for the base and randomly assign to sugarcane farms in the county that are eligible and capable of accepting the acreage base. Any base remaining will go to the State FSA committee for dispersal.

Section 1435.318, ''Penalties and Assessments,'' is also changed by this rule to include a provision for liquidated damages that was previously specified in section 1435.307.

Redesignation of Subpart E, ''Processor Sugar Payment-in-Kind (PIK) Program''

The subpart on PIK is not changing with this rule. We will implement minor changes to PIK with the subsequent rule implementing Title IX to include provisions of the Feedstock Flexibility Program. This rule merely moves the PIK subpart from E to F, and reserves part E for a new subpart on ''General Disposition of CCC Inventory'' that will be added with the Title IX rule. It makes sense to have the General disposition subpart appear in the CFR before the PIK subpart, because PIK is a specific kind of disposition program. This rule also reserves subpart G for the Feedstock Flexibility program sections that will be added with the Title IX rule.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this final rule. A cost-

benefit assessment of this rule is summarized below and is available from the contact information above.

Summary of Economic Impacts

This rule implements two major changes in the sugar program resulting from the 2008 Farm Bill: Higher loan rates and a guaranteed market share. These are expected to have zero impact on federal costs for FY 2009 and FY 2010. This is because baseline assumptions project FY 2011 to be the first year of surplus sugar in the marketplace. However, over the course of FY 2009 through FY 2018, federal net expenditures are expected to be $1.055 billion more than if the 2002 Farm Bill provisions were still in place. This result is mostly driven by the increase in loan rates that increases the NAFTA floor price. While higher sugar prices in Mexico cause its manufacturers and consumers to substitute high fructose corn syrup for sugar, they also increase the grower incentive to plant more acreage to sugarcane. As a result, Mexican sugar exports to the U.S. are likely to increase over time, on average by 33 percent between 2009 and 2018. At the same time, U.S. production is likely to increase in response to high support levels. The loan rate increase is expected to increase sugar costs to consumers and sugar users by $1.4 billion from 2009 to 2018. This cost is the increase in the loan rate multiplied by sugar use; the demand for sugar is assumed to be perfectly inelastic.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

FSA has determined that these changes would not constitute a major Federal action that would significantly affect the quality of the human environment. Therefore, in accordance with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA, specifically 7 CFR part 799.10(b)(2)(vii), no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 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. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

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 Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of title 5, United States Code, which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon publication in the **Federal Register**.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC 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.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements, Sugar.

■ For the reasons discussed above, this rule amends 7 CFR part 1435 as follows:

PART 1435—SUGAR PROGRAM

■ 1. Revise the authority for part 1435 to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj and 7272; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

■ 2. Amend § 1435.1 as follows:
■ a. Amend the introductory text by removing the years ''2002–2007'' and adding in their place the years ''2008 through 2012,'' and
■ b. Revise paragraph (d) to read as set forth below.

§ 1435.1 Applicability.

* * * * *

(d) Administer an inventory disposition program to sell CCC inventory to bioenergy producers and exchange CCC inventory for processor reductions in production or certificates of quota entry.

■ 3. Amend § 1435.2 as follows:
■ a. Add new definitions, in alphabetical order, for ''CCC,'' ''facility,'' ''human consumption,'' ''in-process beet sugar,'' ''in-process cane sugar,'' and ''proportionate share State,'' to read as set forth below,
■ b. Remove the definition for ''in-process sugar,'' and
■ c. Revise the definitions of ''beet sugar,'' ''cane sugar refiner,'' ''market or marketing,'' ''overall allotment quantity,'' ''sugar,'' and ''sugar beet processor'' to read as set forth below.

§ 1435.2 Definitions.

* * * * *

Beet sugar means sugar that is processed directly or indirectly from sugar beets, sugar beet molasses, or in-process beet sugar, whether produced domestically or imported.

* * * * *

Cane sugar refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

* * * * *

CCC means the Commodity Credit Corporation.

* * * * *

Facility means a factory, mill, or plant.

* * * * *

Human consumption means sugar for use in human food, beverages, or similar products.

* * * * *

In-process beet sugar means the intermediate sugar-containing product, as CCC determines, produced from processing sugar beets. Like sugar beets, it is considered an input into the production of sugar regardless of whether it is produced domestically or imported.

In-process cane sugar means the intermediate sugar-containing product, as CCC determines, produced from the processing of sugarcane. It is not raw sugar, nor is it suitable for direct human consumption.

Market or marketing means the transfer of title associated with the sale or other disposition of sugar for human consumption in United States commerce. A marketing also includes a sale of sugar under the Feedstock Flexibility Program, the forfeiture of sugar loan collateral under the Sugar Loan Program, exportation of sugar from the United States Customs Territory eligible to receive credits under reexport programs for refined sugar or sugar-containing products administered by the Foreign Agricultural Service, or the sale of sugar eligible to receive credit for the production of polyhydric alcohol under the Polyhydric Alcohol program (see part 1530 of this title) administered by the Foreign Agricultural Service, and for any integrated processor and refiner, the movement of raw cane sugar into the refining process.

* * * * *

Overall allotment quantity means, on a national basis, the total quantity of domestically produced sugar, raw value, processed from sugarcane, sugar beets or in-process beet sugar (whether the sugar beets or in-process beet sugar are produced domestically or imported), and the raw value equivalent of sugar in sugar products, that is permitted to be marketed by processors, during a crop year or other period in which marketing allotments are in effect.

* * * * *

Proportionate share State means a State with an established allotment and more than 250 sugarcane producers in the State, other than Puerto Rico.

* * * * *

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane, sugar beets, sugarcane molasses, sugar beet molasses or in-process beet sugar whether domestically produced or imported and consisting of, or containing, sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup, liquid sugar, and in-process cane sugar.

Sugar beet processor means a person who commercially produces sugar, directly or indirectly, from sugar beets, sugar beet molasses, or in-process beet sugar.

* * * * *

§ 1435.3 [Amended]

■ 4. Amend § 1435.3 as follows:
■ a. In the heading, remove the words ''and inspection,''
■ b. Remove paragraph (a),
■ c. Redesignate paragraph (b) as paragraph (a),
■ d. In newly redesignated paragraph (a) introductory text, remove the words ''the records shall'' and add the words ''records required by CCC to operate the sugar program must'' in their place, and
■ d. Reserve paragraph (b).

Subpart B—Sugar Loan Program

■ 5. Revise the heading of Subpart B to read as set forth above.
■ 6. Amend § 1435.101 by revising paragraphs (a) and (b) to read as follows:

§ 1435.101 Loan rates.

(a) The national average loan rate for raw cane sugar produced from domestically grown sugarcane is: 18 cents per pound for the 2008 crop year; 18.25 cents per pound for the 2009 crop year; 18.50 cents per pound for the 2010 crop year; 18.75 cents per pound for the 2011 crop year; and 18.75 cents per pound for the 2012 crop year.

(b) The national average loan rate for refined beet sugar from domestically grown sugar beets is: 22.90 cents per pound for the 2008 crop year; and a rate equal to 128.5 percent of the loan rate per pound of raw cane sugar for each of the crop years 2009 through 2012.

* * * * *

§ 1435.102 [Amended]

■ 7. Amend § 1435.102 in paragraph (c)(3) by adding the words ''in-process sugars,'' immediately after the word ''beets,''.
■ 8. Amend § 1435.103 by revising paragraph (f) to read as follows:

§ 1435.103 Availability, disbursement, and maturity of loans.

* * * * *

(f) Processors receiving loans in July, August, or September may repledge the sugar as collateral for a supplemental loan. Such supplemental loan must:

(1) Be requested by the processor during the following October;

(2) Be made at the loan rate in effect at the time the first loan was made; and

(3) Mature in 9 months less the number of months that the first loan was in effect.

§ 1435.104 [Amended]

■ 9. Amend § 1435.104 as follows:
■ a. Remove paragraph (c)(2) and
■ b. Redesignate paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3), respectively.
■ 10. Amend § 1435.105 as follows:
■ a. Revise paragraph (b) to read as set forth below,
■ b. In paragraph (c)(2), add the word ''before'' immediately before the words ''the processor,''
■ c. In paragraph (f), add the word ''next business'' before the word ''day,'' and
■ d. Add paragraph (j) to read as set forth below.

§ 1435.105 Loan settlement and foreclosure.

* * * * *

(b) Forfeiture of sugar loan collateral will be accepted as payment in full of the principal and interest due under a nonrecourse loan, subject to applicable premiums and discounts based on the difference between specifications reported on the sugar loan certification report and actual loadout characteristics.

* * * * *

(j) The CCC rates for the storage of forfeited sugar to approved warehouses for each crop year of 2008 through 2011 will be at least:

(1) For refined sugar, 15 cents per hundredweight of refined sugar per month; and

(2) For raw cane sugar, 10 cents per hundredweight of raw cane sugar per month.

(3) For 2012 and subsequent crop years, rates for the storage of forfeited sugar will revert to those used before June 18, 2008.

(4) For sugar located in space not approved by CCC for storage, the payment rate will be zero until such time as the processor delivers such sugar to a CCC-approved warehouse.

Subpart C—Information Reporting and Recordkeeping Requirements

■ 11. Amend § 1435.200 as follows:
■ a. In paragraph (a), second sentence, remove the words ''made by'' and add, in their place, the word ''due,''
■ b. Revise paragraph (e) to read as set forth below,

■ c. Redesignate paragraphs (f), (g), and (h) as (h), (i), and (j), respectively,
■ d. Add paragraphs (f) and (g) to read as set forth below, and
■ e. Revise newly redesignated paragraph (i) to read as set forth below.

§ 1435.200 Information reporting.

* * * * *

(e) Importers of sugars, syrups, or molasses to be used for domestic human consumption or to be used for the extraction of sugar for domestic human consumption must report such information as CCC requires, including the quantities of the products imported and the sugar content or equivalent of the products.

(f) The Secretary will collect information on the production, consumption, stocks and trade of sugar in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

(g) The Secretary will collect publicly available information on the production, consumption, and trade of high fructose corn syrup in Mexico and publish the data in each edition of the World Agricultural Supply and Demand Estimates report.

* * * * *

(i) By November 20 of each year, sugar beet processors, sugarcane processors, sugarcane refiners, and importers of sugars, syrups, and molasses, as selected by CCC, will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its information submitted to CCC during the previous October 1 through September 30 period.

* * * * *

§ 1435.201 [Amended]

■ 12. Amend § 1435.201 in paragraph (a) by removing the reference ''§ 1435.200'' and adding, in its place, the references ''§ 1435.200(a) through (e).''

Subpart D—Flexible Marketing Allotments for Sugar

■ 13. Amend § 1435.300 as follows:
■ a. Revise paragraphs (a)(1) and (b) to read as set forth below and
■ b. In paragraph (a)(2), remove the words ''domestically produced.''

§ 1435.300 Applicability.

(a) * * *

(1) Processor marketings of sugar domestically processed from sugar beets or in-process beet sugar, whether such sugar beets or in-process beet sugar were produced domestically or imported,

* * * * *

(b) This subpart does not apply to marketing imported raw or refined sugar.

* * * * *

■ 14. Amend § 1435.301 as follows:
■ a. Revise paragraphs (a)(1) and (a)(4) to read as set forth below and
■ b. Amend paragraph (a)(3) by removing the words ''available for consumption from'' and adding in their place the words ''used for human consumption in the United States from.''

§ 1435.301 Annual estimates and quarterly re-estimates.

(a) * * *

(1) Quantity of sugar that will be subject to human consumption in the United States during the crop year;

* * *

(4) Quantity of sugar that will be available from domestically processed sugarcane, sugar beets, and in-process beet sugar; and

* * * * *

■ 15. Revise § 1435.302 and its heading to read as follows:

§ 1435.302 Establishment of allotments.

(a) By the beginning of the crop year, CCC will establish the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and allocations for processors marketing sugar domestically processed from sugarcane, sugar beets, or in-process beet sugar, whether the sugar beets or in-process beet sugar is domestically produced or imported at a level:

(1) That is sufficient to maintain raw and refined sugar prices above minimum prices to avoid forfeiture of loans to the CCC, but

(2) Not less that 85 percent of estimated quantity of sugar for domestic human consumption for the crop year.

(b) Determinations under this section to establish marketing allotments will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

■ 16. Remove § 1435.303 and redesignate §§ 1435.304 through 1435.308 as §§ 1435.303 though 1435.307, respectively.
■ 17. Amend newly redesignated § 1435.303 by revising paragraphs (a) and (b) to read as follows:

§ 1435.303 Adjustment of the Overall Allotment Quantity.

(a) The overall allotment quantity may be adjusted, as CCC determines appropriate, but never to a quantity less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year:

(1) To avoid forfeiture of sugar loan collateral to CCC,

(2) Ensure adequate supplies of raw and refined sugar in the domestic market, and,

(3) To reflect changes in estimated sugar consumption, stocks, production, or imports based on re-estimates under § 1435.301.

(b) Determinations to adjust the overall allotment quantity will be published in the **Federal Register** and accompanied by a statement of the reasons for the determination.

* * * * *

§ 1435.305 [Amended]

■ 18. Amend newly redesignated § 1435.305, in paragraph (b), by removing the reference ''§ 1435.308(f)'' and adding, in its place, the reference ''§ 1435.308.''
■ 19. Amend newly redesignated § 1435.306 as follows:
■ a. In paragraph (a) introductory text, add the words '', other than a new entrant's,'' before the words ''of the beet allotment,''
■ b. Revise paragraphs (b), (e) introductory text, (e)(1), and (e)(2) to read as set forth below,
■ c. Revise paragraph (g) to read as set forth below, and
■ d. Add paragraph (h) to read as set forth below.

§ 1435.306 Allocation of marketing allotments to processors.

* * * * *

(b) Each sugarcane processor's, other than a new entrant's, allocation from a State cane sugar allotment will be calculated as the cane processor's share times the State cane sector allotment.

(1) Each cane processor's share will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

* * * * *

(e) Paragraph (d) of this section will not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products as long as such exports are not eligible to receive credits under reexport programs administered by the Foreign Agricultural Service for refined sugar or sugar-containing products;

(2) Any sugar marketings for nonhuman consumption, except for the sale of sugar for the production of ethanol or other bioenergy under the

Feedstock Flexibility program or the sale of sugar for the production of polyhydric alcohol under the Polyhydric Alcohol program administered by the Foreign Agricultural Service; and

* * * * *

(g) Paragraph (d) of this section also will not apply to the marketing of beet sugar processed from purchased in-process beet sugar if the processor purchased the in-process beet sugar before October 1, 2008.

(h) A sugar beet processor allocated a share of the beet sugar allotment may use only beet sugar to fill such allocation. A sugarcane processor allocated a share of the cane sugar allotment may only use cane sugar to fill such allocation.

■ 20. Revise newly redesignated § 1435.307 to read as follows:

§ 1435.307 Transfer of allocation.

(a) If a sugarcane processing facility is sold or transferred to another owner or is closed as part of a corporate consolidation CCC will transfer the allotment allocation to the purchaser or successor.

(b) In proportionate share States, allocations, based on the number of acres of sugarcane base being transferred and the pro rata amount reflecting the grower's contribution to allocation of the processor for the sugarcane base being transferred, will be transferred between facilities if the transfers are based on:

(1) Written consent of the crop-share owners, or their representatives,

(2) Written certification from the processor that will accept the additional sugarcane deliveries that its processing capacity will not be exceeded,

(3) CCC will only consider requests for transfer of allocation submitted during the month of May. The request must include the grower's sugar production history for crop years 1997 through 2003. The facility with the grower's history will be required to certify the history when requested by the grower, and

(4) Allocation transfers will be effective for the next fiscal year after the request is submitted to CCC, that is beginning October 1.

(c) If a sugar beet processing facility or a sugarcane processing facility located in a non-proportionate share State is closed, and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC approves transfer of the allocations, it will distribute the closed facility's allocation based on the contribution of the growers' production history to the closed facility's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processor that will accept the additional deliveries,

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers, and

(4) Determinations by the CCC will be made within 60 days after the filing of the petition.

(d) Subject to a transfer of allocation, if any, described in paragraph (c) of this section being completed, CCC will consider a processor to be permanently terminated and eliminate the processor's remaining allocation and distribute it to all other processors on a pro-rata basis when the processor:

(1) Has been dissolved,

(2) Has been liquidated in a bankruptcy proceeding,

(3) Has not processed sugarcane or sugar beets for 2 consecutive crop years,

(4) Has notified CCC that the processor has permanently terminated operations, or

(5) Has been determined by CCC to have permanently terminated operations.

(e) If a processor of beet sugar purchases all the assets of another processor, then CCC will immediately transfer allocation commensurate with the purchased facilities' production history, unless the allocation has already been transferred under paragraph (d) of this section.

(f) If a processor of beet sugar purchases some, but not all, of the assets of another processor, then CCC will assign a pro rata portion of the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount.

(1) The assignment of the allocation will apply to the crop year in which the sale occurs and for each subsequent year.

(2) The buyer of the facilities as specified in paragraph (e) of this section may fill the assigned allocation with production from other facilities it owns if the purchased facilities lack the production to fill the assigned allocation.

■ 21. Add § 1435.308 to read as follows:

§ 1435.308 New entrants.

(a) The Secretary may assign a new entrant sugarcane processor an allocation that provides a fair, efficient, and equitable distribution of allocations:

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year,

(2) CCC will consider any adverse effects of the allocation upon existing processors and producers,

(3) CCC will conduct a hearing on a new entrant application if an interested processor or grower requests a hearing,

(4) A new entrant's allocation is limited to no more than 50,000 short tons, raw value, for the first crop year, and

(5) A new entrant will be provided, as determined by CCC:

(i) A share of its State's cane allotment if the processor is located in Hawaii, Florida, Louisiana, or Texas or

(ii) A share of the overall mainland cane allotment if the processor is located in any mainland State not listed in paragraph (a)(5)(i) of this section.

(b) For proportionate share States, CCC will establish proportionate shares for the sugarcane required to fill the allocation.

(c) If a new entrant beet processor constructs a new facility or reopens a facility that currently has no allocation, but last produced beet sugar from sugar beets and sugar beet molasses prior to the 1998 crop year, CCC will:

(1) Assign an allocation to the new entrant to enable it to achieve a facility utilization rate comparable to other similarly-situated sugar beet processors and

(2) Reduce all other beet processor allocations by a like amount on a pro rata basis.

(d) If a new entrant acquires an existing facility with production history that processed sugar beets for the 1998 or subsequent crop year, CCC will:

(1) Assign the allocation to the buyer to reflect the historical contribution of the sold facilities, unless the buyer and seller have agreed upon a different allocation amount, or

(2) If the new entrant and the processor holding the allocation of the existing facility cannot agree on an allocation amount, the new entrant will be denied a beet sugar allocation.

§ 1435.309 [Amended]

■ 22. Amend § 1435.309, paragraphs (c)(4) and (e)(3), by adding the words ''of raw cane sugar'' at the end of each paragraph.

■ 23. Amend § 1435.310 as follows:

■ a. In paragraph (b)(1)(i)(A), add the word ''or'' at the end,

■ b. In paragraph (b)(1)(i)(B), remove the word ''or'',

■ c. Remove paragraph (b)(1)(i)(C) and
■ d. Remove paragraph (b)(2) and redesignate paragraph (b)(3) as paragraph (b)(2).

§ 1435.312 [Amended]

■ 24. Amend § 1435.312, paragraph (a), first sentence, by adding the words ''(meaning only those varieties dedicated to the production of sugarcane to produce sugar for human consumption)'' immediately after the word ''seed.''
■ 25. Amend § 1435.313 as follows:
■ a. Redesignate paragraphs (b) and (c) as paragraphs (a)(1) and (a)(2), respectively, and
■ b. Add paragraph (b) to read as set forth below:

§ 1435.313 Permanent transfer of acreage base histories under proportionate shares.

* * * * *

(b) Sugarcane acreage base that has been converted to nonagricultural use on or before May 13, 2002, may be transferred to other land suitable for the production of sugarcane under the following terms:

(1) CCC must notify 1 or more affected landowners within 90 days of becoming aware of the conversion, of their rights to transfer the base to 1 or more farms owned by the landowner;

(2) The landowner has 90 days from the date the landowner was notified to transfer the base;

(3) If the landowner does not exercise this transfer right, the grower of record will have 90 days after being notified by CCC to transfer the base to 1 or more farms owned by the grower;

(4) If the transfers as specified under paragraphs (b)(2) or (3) of this section are not accomplished during the specified periods, FSA county committee will place the base into a pool for possible reassignment to other farms;

(5) After providing notice to farm owners, operators and growers of record in the county, the committee will accept requests from farm owners, operators, and growers in the county;

(6) The county committee will assign the base to other sugarcane farms in the county that are eligible and capable of accepting the acreage base, based on a random drawing among requests received under paragraph (b)(5) of this section;

(7) Any unassigned base will be made available to the State FSA committee and be allocated to remaining FSA county committees in the State representing counties with farms eligible for assignment of the base, based on a random drawing; and

(8) After the acreage base has been reassigned, the acreage base will remain on the farm and subject to the transfer provisions of paragraph (a) of this section.

■ 26. Amend § 1435.318 as follows:
■ a. Revise paragraph (a) to read as set forth below,
■ b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f), respectively, and
■ c. Add paragraph (b) to read as set forth below.

§ 1435.318 Penalties and assessments.

(a) Any sugar beet or sugarcane processor who knowingly markets sugar or sugar products in excess of the processor's allocation will be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time the violation was committed, of that quantity of sugar involved in the violation.

(b) CCC may assess liquidated damages, as specified in a surplus allocation survey and agreement, with respect to a surplus allocation still existing after the end of a crop year if the processor had a surplus allocation because the processor provided incomplete or erroneous information to CCC.

Subpart E—[Redesignated and Reserved]

■ 27. Redesignate subpart E, consisting of §§ 1435.400 through 1435.405, as subpart F and reserve subpart E.

Subpart F—Processor Sugar Payment-In-Kind (PIK) Program

§§ 1435.400 through 1435.405 [Amended]

■ 28. In newly redesignated subpart F, redesignate §§ 1435.400 through 1435.405 as §§ 1435.500 through 1435.505, respectively.

Subpart G—[Added and Reserved]

■ 29. Reserve subpart G.

Signed at Washington, DC, on March 31, 2009.

Dennis J. Taitano,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–7633 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 208

[CIS No. 2440–08; DHS Docket No. USCIS 2008–0022]

RIN 1615–AB59

Forwarding of Affirmative Asylum Applications to the Department of State

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to alter the process by which it forwards Form I–589, Application for Asylum and Withholding of Removal, for asylum applications filed affirmatively with U.S. Citizenship and Immigration Services (USCIS) to the Department of State (DOS). The affirmative asylum process allows individuals, who are physically present in the United States, regardless of their manner of arrival and regardless of their current immigration status, to apply for asylum. The current regulation requires USCIS (formerly Immigration and Naturalization Service (INS)) to forward to DOS a copy of each completed asylum application it receives. This rule provides that USCIS will no longer forward all affirmative asylum applications to DOS. Instead, USCIS will send affirmative asylum applications to DOS only when USCIS believes DOS may have country conditions information relevant to the case. This change will increase the efficiency of DOS' review of asylum applications. Additionally, in accordance with the Homeland Security Act, this rule revises references to legacy INS in 8 CFR 208.11.

DATES: *Effective date:* This final rule is effective April 6, 2009.

Comment date: Written comments must be submitted on or before June 5, 2009 in order to be assured of consideration.

ADDRESSES: The public may submit comments, identified by DHS Docket No. USCIS–2008–0022, by any of the following methods:

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

• *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111

Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2008–0022 on the correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.

• *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Jedidah M. Hussey, Deputy Chief, Asylum Division, Refugee, Asylum, and International Operations Directorate, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW., Third Floor, Washington, DC 20529; Telephone (202) 272–1614.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this final rule. USCIS also invites comments that relate to the economic, environmental, or federalism effects that might result from this final rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

• *Instructions:* All submissions received should include the agency name and DHS Docket No. USCIS–2008–0022 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529.

II. Background

DHS regulations, at 8 CFR 208.11(a), currently state, ''[T]he Service shall forward to the Department of State a copy of each completed application it receives. At its option, the Department of State may provide detailed country conditions information relevant to eligibility for asylum or withholding of removal.'' Under the affirmative asylum application process, USCIS receives asylum applications filed by applicants who are not in removal proceedings at its service centers. Upon receipt of an asylum application, service center personnel review the asylum application to confirm that the application is properly filed and complete, after which the service center forwards the application to one of the Asylum Division's eight field asylum offices for adjudication by an asylum officer. Simultaneously, the service center forwards a copy of the asylum application to DOS's Bureau of Democracy, Human Rights and Labor (DRL). However, when an asylum applicant is permitted to file an asylum application directly with an Asylum Office, the Asylum Office is responsible for forwarding a copy of the application to DRL.

In fiscal year 2007, USCIS received 25,680 affirmative asylum applications and forwarded a copy of each to DOS. DOS and USCIS have determined that the current forwarding process is not an efficient method for the agencies to identify and review cases for which DOS review would yield the most value. To address this problem, this rule permits USCIS, in its discretion, to send affirmative asylum applications to DOS in those cases where USCIS believes DOS would be likely to have information relevant to the applicant's eligibility for asylum and withholding of removal. Generally, this would be information that is not otherwise available or confirmation of publicly available information, where such validation would be helpful to the adjudication.

Additionally, USCIS and DOS have already implemented an arrangement in which USCIS's Asylum Division headquarters (HQASM) forwards certain applications to DRL for review and comment. USCIS requires all Asylum Offices to send specific categories of cases to HQASM for further review after the Asylum Office completes its initial interview and preliminary assessment of eligibility. HQASM reviews these cases for quality assurance purposes to ensure that eligibility standards are properly applied. In conducting the quality assurance review, an asylum officer at HQASM seeks DRL comments if the asylum officer believes that DRL could provide information specific to the applicant or the applicant's situation. This process has proven to be a productive system by which USCIS obtains country conditions information on specific cases. USCIS and DOS intend to maintain this system, which has been in place for several years.

DRL applies its country conditions expertise to asylum matters in a variety of ways, which as a whole are referred to as DRL's asylum function. Consistent with the regulation currently at 8 CFR 208.11(c), and as will be retained in the amended regulation, DRL responds to requests for comments on cases specifically brought to its attention by USCIS's Asylum Division and by the Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) immigration judges. DRL also produces updated issue papers or ''country profiles'' for use in asylum adjudications, and it responds to certain DHS, U.S. Immigration and Customs Enforcement's requests for document verification in asylum cases before EOIR. Additionally, DRL is required to provide to Congress annually Country Reports on Human Rights Practices and International Religious Freedom Reports which provide country conditions information that will continue to be useful to the adjudication of asylum applications. This rule will not alter these DRL functions. This rule also does not affect how USCIS reviews and considers these DRL published reports in asylum adjudications. USCIS will continue to review the aforementioned reports, which provide country conditions information useful to the adjudication of asylum applications.

Finally, this rule is limited to 8 CFR 208.11. This rule only addresses submissions of affirmative asylum applications from USCIS to DOS. It does not make any amendments to 8 CFR 1208.11, which governs the defensive application procedure for asylum applications filed by individuals in removal proceedings before EOIR.

II. Regulatory Requirements

A. Administrative Procedures Act

This rule addresses requirements that are procedural in nature and does not alter the substantive rights of applicants or petitioners for immigration benefits. Accordingly, this rule is exempt from the notice and comment requirements under the Administrative Procedures Act (APA) at 5 U.S.C. 553(b)(A). This rule does not change the eligibility rules governing any immigration benefit and it will not confer rights or obligations upon any party. Accordingly, USCIS is implementing these amendments effective immediately upon publication in the **Federal Register**. Nonetheless, DHS believes that public comments may be valuable and is providing the public the opportunity to make comments on this change as a matter of discretion. Comments are welcome about the relationship between the USCIS and

DOS, DHS and DOS, and the role of foreign policy considerations in asylum adjudications.

B. Regulatory Flexibility Act

Because USCIS is not required by the APA to publish a notice of proposed rulemaking to make the changes promulgated in this rule, the Regulatory Flexibility Act (RFA) is not applicable.

C. Unfunded Mandates Reform Act of 1995

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

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

This rule has been designated as not significant under Executive Order 12866, section 3(f), Regulatory Planning and Review. Thus it has not been reviewed by the Office of Management and Budget.

F. Executive Order 13132: Federalism

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

The information collection requirement (Form I–589) contained in this rule has been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers. This rule does not contain a new or revised information collection.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

■ 2. Section 208.11 is revised to read as follows:

§ 208.11 Comments from the Department of State.

(a) U.S. Citizenship and Immigration Services (USCIS) may request, at its discretion, specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as USCIS deems appropriate.

(b) With respect to any asylum application, the Department of State may provide, at its discretion, to USCIS:

(1) Detailed country conditions information relevant to eligibility for asylum or withholding of removal;

(2) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(3) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in the applicant's country of nationality or habitual residence and the frequency of such persecution or torture; or

(4) Such other information as it deems relevant.

(c) Any comments received pursuant to paragraph (b) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

Janet Napolitano,

Secretary.

[FR Doc. E9–7051 Filed 4–3–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0123 Directorate Identifier 2009–CE–005–AD; Amendment 39–15868; AD 2009–07–09]

RIN 2120–AA64

Airworthiness Directives; DORNIER Luftfahrt GmbH Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been evidenced in-service that aileron trim actuator and rod spring lever attachment bracket—between frame 18 and 19 LH—on some aircraft may present loose rivets. If left uncorrected, this condition could lead to the separation of the attachment bracket which could result in loss of aileron trim and loss of artificial force feedback, and consequent reduced controllability of the airplane.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 11, 2009.

On May 11, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4130; *fax:* (816) 329–4090.

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 February 13, 2009 (74 FR 7200). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been evidenced in-service that aileron trim actuator and rod spring lever attachment bracket—between frame 18 and 19 LH—on some aircraft may present loose rivets. If left uncorrected, this condition could lead to the separation of the attachment bracket which could result in loss of aileron trim and loss of artificial force feedback, and consequent reduced controllability of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 17 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 $5 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,885 or $405 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 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 Management Facility 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 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:

2009–07–09 DORNIER Luftfahrt GmbH: Amendment 39–15868; Docket No. FAA–2009–0123; Directorate Identifier 2009–CE–005–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 11, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

> It has been evidenced in-service that aileron trim actuator and rod spring lever attachment bracket—between frame 18 and 19 LH—on some aircraft may present loose rivets. If left uncorrected, this condition could lead to the separation of the attachment bracket which could result in loss of aileron trim and loss of artificial force feedback, and consequent reduced controllability of the airplane.

For the reasons described above, this Airworthiness Directive requires first an inspection of the trim lever attachment bracket and as a second step the replacement of the 4 existing rivets by Hi-Lock rivets.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 10 hours time-in-service (TIS) after May 11, 2009 (the effective date of this AD), do the inspection for ''unequal aileron steering wheel force'' in

accordance with paragraphs 2.A.(1) through 2.A.(3) of the ACCOMPLISHMENT INSTRUCTIONS of RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–275, Revision No.: 0, dated October 8, 2008. If any defect is found, before further flight, modify the attachment bracket riveting in accordance with paragraph 2.B. of the ACCOMPLISHMENT INSTRUCTIONS of RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–275, Revision No.: 0, dated October 8, 2008.

(2) Within 300 hours TIS after May 11, 2009 (the effective date of this AD), unless accomplished as required per paragraph (f)(1) of this AD, modify the attachment bracket riveting in accordance with paragraph 2.B. of the ACCOMPLISHMENT INSTRUCTIONS of RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–275, Revision No.: 0, dated October 8, 2008.

FAA AD Differences

Note: 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, Standards 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: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. 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 (44 U.S.C. 3501 *et seq.*), 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 AD No.: 2008–0217, dated December 10, 2008; and RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–275, Revision No.: 0, dated October 8, 2008, for related information.

Material Incorporated by Reference

(i) You must use RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–275, Revision No.: 0, dated October 8, 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 RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; E-mail: *custsupport.dorner228@ruag.com*; Internet: *http://www.ruag.com/*.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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 Kansas City, Missouri, on March 24, 2009.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7071 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0125 Directorate Identifier 2009–CE–002–AD; Amendment 39–15873; AD 2009–07–14]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 40 and DA 40F 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A number of wings manufactured by Diamond Aircraft Industries Inc. in Canada have been found to exhibit voids in the adhesive joint between the main spar caps and the upper wing skins. The available information indicates that wings with voids continue to meet the certification design limits, provided the voids are within established criteria. However, to detect any wings that may have voids exceeding these criteria, Diamond has issued Mandatory Service Bulletin MSB–40–060 and MSB–F4–016 (single document) that describes instructions for inspection of the aircraft that had these wings installed during manufacture. Aircraft that have voids within the inspection criteria may continue to operate without restriction, pending the outcome of ongoing investigations. Aircraft that have voids exceeding the inspection criteria must be repaired.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective May 11, 2009.

On May 11, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090.

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 February 13, 2009 (74 FR 7196). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A number of wings manufactured by Diamond Aircraft Industries Inc. in Canada have been found to exhibit voids in the adhesive joint between the main spar caps and the upper wing skins. The available information indicates that wings with voids continue to meet the certification design limits, provided the voids are within established criteria. However, to detect any wings that may have voids exceeding these criteria, Diamond has issued Mandatory Service Bulletin MSB–40–060 and MSB–F4–016 (single document) that describes instructions for inspection of the aircraft that had these wings installed during manufacture. Aircraft that have voids within

the inspection criteria may continue to operate without restriction, pending the outcome of ongoing investigations. Aircraft that have voids exceeding the inspection criteria must be repaired.

For the reasons described above, this EASA AD requires the inspection of the affected aircraft to measure the voids in the adhesive joint between the main spar caps and the upper wing skin, the reporting of all findings to Diamond Aircraft industries and the repair of any voids exceeding the criteria as specified in the MSB.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 649 products of U.S. registry. We also estimate that it will take about 2 work-hours 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 $103,840 or $160 per product.

We have no way of determining the cost of any necessary repairs or parts that may be required as a result of any proposed inspection.

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 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 Management Facility 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 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:

2009–07–14 Diamond Aircraft Industries GmbH: Amendment 39–15873; Docket No. FAA–2009–0125; Directorate Identifier 2009–CE–002–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 11, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category: DA 40 airplanes, serial numbers 40.377, 40.420, 40.422, 40.644 through 40.693, 40.695 through 40.842, 40.844, 40.846 through 40.887, 40.889 through 40.912, 40.915 through 40.917, 40.919 through 40.929, 40.931, 40.932, 40.934 through 40.940, 40.944 through 40.949, 40.951 through 40.953, 40.955 through 40.957, 40.961, 40.964, and 40.971; and DA 40F airplanes, serial numbers 40.FC007 through 40.FC029.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

A number of wings manufactured by Diamond Aircraft Industries Inc. in Canada have been found to exhibit voids in the adhesive joint between the main spar caps and the upper wing skins. The available information indicates that wings with voids continue to meet the certification design limits, provided the voids are within established criteria. However, to detect any wings that may have voids exceeding these criteria, Diamond has issued Mandatory Service Bulletin MSB–40–060 and MSB–F4–016 (single document) that describes instructions for inspection of the aircraft that had these wings installed during manufacture. Aircraft that have voids within the inspection criteria may continue to operate without restriction, pending the outcome of ongoing investigations. Aircraft that have voids exceeding the inspection criteria must be repaired.

For the reasons described above, this EASA AD requires the inspection of the affected aircraft to measure the voids in the adhesive joint between the main spar caps and the upper wing skin, the reporting of all findings to Diamond Aircraft industries and the repair of any voids exceeding the criteria as specified in the MSB.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 100 hours time-in-service (TIS) after May 11, 2009 (the effective date of this AD) or within the next 3 months after May 11, 2009 (the effective date of this AD), whichever occurs first, inspect the adhesive joint between the wing main spar caps and the upper wing skin for adhesive voids following Diamond Aircraft Industries GmbH Work Instructions WI–MSB–40–060 and WI–MSB–F4–016 (single document), dated October 20, 2008; as referenced in Diamond Aircraft Industries GmbH Mandatory Service Bulletins No. MSB–40–060 and No. MSB–F4–016 (single document), dated October 20, 2008.

(2) Within the next 30 days after the inspection required in paragraph (f)(1) of this AD or within 30 days after May 11, 2009 (the effective date of this AD), whichever occurs later, report the results to Diamond Aircraft Industries following Diamond Aircraft Industries GmbH Work Instructions WI–MSB–40–060 and WI–MSB–F4–016 (single document), dated October 20, 2008; as referenced in Diamond Aircraft Industries GmbH Mandatory Service Bulletins No. MSB–40–060 and No. MSB–F4–016 (single document), dated October 20, 2008.

(3) If, as a result of the inspection required by paragraph (f)(1) of this AD, an adhesive void is found that exceeds the criteria specified in the service information, before further flight, contact Diamond Aircraft Industries at Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt; telephone: +43 2622 26700; fax: +43 2622 26780; E-mail: *office@diamond-air.at*, for FAA-approved repair instructions and accomplish the repair accordingly.

FAA AD Differences

Note: 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, Standards 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. 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 (44 U.S.C. 3501 *et seq.*), 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) AD No.: 2008–0224, dated December 16, 2008; and Diamond Aircraft Industries GmbH Mandatory Service Bulletins No. MSB–40–060 and No. MSB–F4–016 (single document), dated October 20, 2008, for related information.

Material Incorporated by Reference

(i) You must use Diamond Aircraft Industries GmbH Work Instructions WI–MSB–40–060 and WI–MSB–F4–016 (single document), dated October 20, 2008; and Diamond Aircraft Industries GmbH Mandatory Service Bulletins No. MSB–40–060 and No. MSB–F4–016 (single document), dated October 20, 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 Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt; telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at*; Internet: *http://www.diamond-air.at/*.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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 Kansas City, Missouri, on March 27, 2009.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7412 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

[Docket No. 070720390–9588–04]

RIN 0648–AV28

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish; Management Measures for the Northern Mariana Islands

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

ACTION: Final rule; effectiveness of collection–of–information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection–of–information requirements contained in regulations implementing Amendment 10 to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region. The intent of this final rule is to inform the public that the associated permitting, reporting, and vessel monitoring system (VMS) requirements for vessels in the Commonwealth of the Northern Mariana Islands (CNMI) have been approved by OMB.

DATES: The amendments to §§ 665.14, 665.16, 665.19, and 665.61, published at 73 FR 75615 (December 12, 2008) have been approved by OMB and are effective on May 6, 2009.

ADDRESSES: Written comments regarding the burden–hour estimates or other aspects of the collection–of–information requirements contained in this final rule may be submitted to William L. Robinson, Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, and to David Rostker, OMB, by e–mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, Sustainable Fisheries Division, NMFS PIR, 808–944–2272.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is also accessible at *www.gpoaccess.gov/fr/*.

A final rule for Amendment 10 was published in the **Federal Register** on December 12, 2008 (73 FR 75615). The requirements of that final rule, other than the collection–of–information requirements, were effective on January 12, 2009. Because OMB approval of the collection–of–information requirements

had not been received by the date the final rule was published, the effective date of the associated permitting, reporting, and VMS requirements in that rule was delayed. OMB approved the collection–of–information requirements on March 9, 2009.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains new collection–of–information requirements subject to the PRA under OMB Control Numbers 0648–0584 (CNMI bottomfish fishing permits, vessel identification, and VMS requirements) and 0648–0214 (CNMI bottomfish fishing logs and sales reports). The public reporting burden for these requirements is estimated to be 0.5 hr per permit applicant, with renewals requiring an additional 0.5 hr annually, 20 min for completing a fishing logbook each day, and approximately 35 min per vessel per fishing trip for completing Federal sales reports. For the purpose of this rule only, vessels larger than 40 ft (12.2 m) in length are required to submit Federal sales reports. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to William L. Robinson (see **ADDRESSES**), or by e–mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: April 1, 2009.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service

■ For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, amend the table in paragraph (b), under the entry ''50 CFR'' by removing the entry for ''665.25'', adding an entry for ''665.19'' in numerical order, and revising the entries for ''665.16'' and ''665.61'' to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * * * *	
50 CFR	
* * * * * * *	
665.16	–0360 and –0584
* * * * * * *	
665.19	–0441 and –0584
* * * * * * *	
665.61	–0490 and –0584
* * * * * * *	

[FR Doc. E9–7707 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

Docket No. RM05–5–000; OA08–50–002]

Standards for Business Practices and Communication Protocols for Public Utilities; Duke Energy Carolinas, LLC

Issued March 30, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on Requests for Waiver.

SUMMARY: The Federal Energy Regulatory Commission grants in part, and denies in part, requests for waiver of certain North American Electric Standards Board (NAESB) business practice standards incorporated into Part 38 of the Commission's regulations.

DATES: *Effective Date:* This rule will become effective April 6, 2009.

FOR FURTHER INFORMATION CONTACT: W. Mason Emnett, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6540.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

1. On January 6, 2009, the Edison Electric Institute (EEI) submitted in Docket No. RM05–5–000 a request on behalf of electric transmission providers that the Commission issue a blanket waiver of certain North American Electric Standards Board (NAESB) business practice standards incorporated into the Commission's regulations. EEI states that the NAESB business practices require the posting of information that is inconsistent with the Commission's posting requirements under Part 358 of its regulations, as amended in Order No. 717.[1] The Commission grants in part, and denies in part, the requested waiver, as discussed below.

2. On January 16, 2009, Duke Energy Carolinas, LLC (Duke) renewed EEI's request for waiver in Docket No. OA08–50–002 as part of a compliance filing proposing to incorporate the latest version of NAESB's business practice standards into Duke's Open Access Transmission Tariff (OATT).[2] Duke proposed incorporating a reference to the pending request for waiver into certain provisions of its OATT. The Commission directs Duke to submit a further compliance filing, described below, to reflect the Commission's decision to grant in part, and deny in part, the requested waiver.

I. Background

3. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development of standards that promote a seamless marketplace for wholesale and retail natural gas and electricity. In a series of orders, the Commission has incorporated certain of

[1] *Standards of Conduct for Transmission Providers*, Order No. 717, 73 FR 63796 (Oct. 27, 2008), FERC Stats. & Regs. ¶ 31, 280 (2008), *reh'g pending.*

[2] The Commission recently accepted Duke's compliance filing, but deferred action on its request for waiver of NAESB's business practice standards. *See Duke Energy Carolinas, LLC*, 126 FERC ¶ 61, 226 (2009).

NAESB's standards into its regulations.[3] The NAESB standards include standards for business practices as well as standards and protocols for electronic communication on the Open Access Same-time Information System (OASIS).

4. Of particular relevance here, requirement WEQ–002–4.5.2 of NAESB's Business Practices for OASIS Standards and Communications Protocol (OASIS S&C Protocol), version 1.4, directs transmission providers to establish a Standards of Conduct link on their OASIS home pages that contains information that the Commission in Order No. 2004 required transmission providers to post on their OASIS sites.[4] Requirement WEQ–001–1.6(g)(4) of the Business Practices for Open Access Same-Time Information System (OASIS Business Practices), version 1.4, provides for the posting of logs, also required in Order No. 2004, detailing the circumstances and manner in which a transmission provider exercises discretion under its OATT. Requirement WEQ–002–4.3.10.5 of the OASIS S&C Protocol, version 1.4, establishes the template to be used when posting such acts of discretion.

5. In Order No. 676–C, the Commission incorporated by reference into Part 38 of its regulations version 1.4 of the OASIS S&C Protocol, including WEQ–002.4.5.2 and WEQ–002–4.3.10.5.[5] However, the Commission declined to incorporate into its regulations the entirety of version 1.4 of the OASIS Business Practices.[6] Among other things, the Commission declined to incorporate WEQ–001–1.6, having explained in the Notice of Proposed Rulemaking initiating the proceeding that this business practice merely duplicates language already set forth in the Commission's regulations and, therefore, is not appropriate for incorporation.[7]

6. On September 2, 2008, NAESB reported to the Commission that its Wholesale Electric Quadrant (WEQ) Executive Committee had approved new versions of its standards, including the OASIS Business Practices and the OASIS S&C Protocol. In the new versions of these standards, the directive to establish a Standards of Conduct link on the OASIS is moved from requirement WEQ–002–4.5.2 to requirement WEQ–001–1–13.1.2. The language of the new requirement WEQ–001–1–13.1.2 is substantially identical to the prior version of WEQ–002–4.5.2, which has been amended to cross-reference the replacement language of WEQ–001–1–13.1.2. The requirements of WEQ–001–1.6(g)(4) and WEQ–002–4.3.10.5 are unchanged. The revised versions of the OASIS Business Practices and OASIS S&C Protocol are the subject of a Notice of Proposed Rulemaking issued recently in Docket No. RM05–5–013.[8] Until such time as the Commission acts in that proceeding, version 1.4 of those standards remains in effect.

7. On October 16, 2008, the Commission issued Order No. 717, reforming the Standards of Conduct applicable to transmission providers and adopting corresponding revisions to Part 358 of the Commission's regulations. Among other things, the Commission eliminated various posting requirements previously imposed under Order No. 2004, including the requirement to post certain information identified in version 1.4 of requirements WEQ–001–1.6(g)(4), WEQ–002.4.3.10.5, and WEQ–002–4.5.2.

II. Requests for Waiver

A. Docket No. RM05–5–000

8. On behalf of all electric transmission providers, EEI requests in Docket No. RM05–5–000 that the Commission waive the requirements of WEQ–001–1.6(g)(4), version 1.4, and WEQ–002–4.5.2 and WEQ–002.4.3.10.5, version 1.4. EEI contends that these business practice standards are no longer consistent with the posting requirements under the Standards of Conduct as reformed in Order No. 717. Specifically, EEI states that WEQ–002–4.5.2, version 1.4, provides that transmission providers should post information on their OASIS sites regarding emergency circumstances deviations, marketing and energy affiliates, shared facilities, organizational charts and job descriptions, common employees, potential merger partners, transfers, information disclosures, voluntary consent to share non-affiliated customer information, discretionary actions under the OATT, discounts, chief compliance officers, and written implementation procedures. Although EEI acknowledges that the use of ''should'' in the business practice standard is arguably not mandatory, EEI states that WEQ–001–1.6(g)(4), version 1.4, requires the posting of discretionary actions under the OATT and that WEQ–002–4.3.10.5, version 1.4, dictates the exact template the transmission provider must use when posting a log of acts of discretion.

9. EEI states that, in Order No. 717, the Commission made significant changes to the Standards of Conduct. EEI notes that the Commission, among other things, eliminated the requirement to post an organizational chart, eliminated the requirement to post emergency circumstances deviations, altered the requirement to post information regarding affiliates, eliminated the requirement to post common employees, and eliminated the discount posting requirement. As a result, EEI states that the NAESB business practices standards impose or suggest requirements that are no longer reflected in the Commission's Standards of Conduct. EEI states that one or more of its members will be seeking to change the relevant NAESB standards to reflect Order No. 717, but in the interim EEI requests that the Commission issue a blanket waiver to confirm that transmission providers are not obligated to abide by NAESB standards that impose or suggest posting requirements under the Standards of Conduct that have been eliminated by Order No. 717.

B. OA08–50–002

10. Duke renews EEI's request for waiver as part of a compliance filing in Docket No. OA08–50–002 proposing to incorporate the latest version of NAESB's business practice standards. Duke states that it supports EEI's request for waiver and, to that end, Duke proposes to exclude WEQ 001–1.6(g)(4), WEQ–002–4.5.2, and WEQ–002–4.3.10.5 from the incorporation of the NAESB OASIS Business Practices and OASIS S&C Protocol into its OATT. The

[3] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676, 71 FR 26199 (May 4, 2006), FERC Stats. & Regs. ¶ 31,216 (2006), *reh'g denied,* Order No. 676–A, 116 FERC ¶ 61,255 (2006), Order No. 676–B, 72 FR 21095 (Apr. 30, 2007), FERC Stats. & Regs. ¶ 31,246 (2007), Order No. 676–C, 73FR 43848 (July 29, 2008, FERC Stats. & Regs. ¶ 31,274 (2008), Order No. 676–D, 124 FERC ¶ 61,317 (2008); *Standards for Business Practices for Interstate Natural Gas Pipelines,* Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats. & Regs. ¶ 31,251 (2007), *order on clarification and reh'g,* Order No. 698–A, 121 FERC ¶ 61,264 (2007).

[4] *Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134 (Nov. 25, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, 69 FR 23562 (Apr. 20, 2004), FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g,* Order No. 2004–B, 69 FR 48371 (Aug. 10, 2004), FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g,* Order No. 2004–C, 70 FR 284 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. Nat'l Fuel Gas Supply Corporation v. FERC,* 468 F.3d 831 (D.C. Cir. 2006).

[5] Order No. 676–C, FERC Stats. & Regs. ¶ 31,274 at P 9; *see* 18 CFR 38.2 (2008).

[6] *Id.* P 7, n.10; *see* 18 CFR38.2(a)(1).

[7] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 70 FR 28222 (May 17, 2005), FERC Stats. & Regs. ¶ 32,582, at P 33–34 (2005).

[8] *Standards for Business Practices and Communications Protocols for Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,640 (2009).

Commission recently accepted Duke's filing as it related to other compliance obligations, but deferred action on the request for waiver of the NAESB business practice standards.

III. Commission Determination

11. The Commission grants in part, and denies in part, the requested waiver. EEI and Duke request waiver of three NAESB business practice standards: WEQ–001–1.6(g)(4) of the OASIS Business Practices, version 1.4; and, WEQ–002–4.5.2 and WEQ–002.4.3.10.5 of the OASIS S&C Protocol, version 1.4. The Commission grants waiver of the posting requirements of WEQ–002–4.5.2, version 1.4, to the extent they extend beyond the requirements of Part 358 of the Commission's regulations, as amended by Order No. 717. The Commission denies as unnecessary the request for waiver of WEQ–001–1.6(g)(4) and WEQ–002.4.3.10.5, version 1.4.

12. As noted by EEI, certain of the posting requirements of WEQ–002–4.5.2 are no longer consistent with the posting requirements of part 358 of the Commission's regulations, as amended by Order No. 717. For example, WEQ–002–4.5.2 requires transmission providers to post information regarding emergencies that result in a deviation from the Standards of Conduct, referring to corresponding requirements in the Commission's regulations adopted in Order No. 2004. In Order No. 717, the Commission eliminated the requirement to post information regarding emergency deviations, revising its regulations accordingly.[9] The version of WEQ–002–4.5.2 currently incorporated into Part 38 of the Commission's regulations therefore does not reflect changes adopted in Part 358 of the Commission's regulations. To conform the requirements incorporated into Part 38 with the requirements of Part 358, the Commission grants waiver for all electric transmission providers of those requirements of section 38.2(b)(2) of the Commission's regulations relating to the posting of information under WEQ–002–4.5.2, version 1.4, that extend beyond the posting requirements of Part 358 of the Commission's regulations, as amended by Order No. 717.[10]

13. EEI and Duke also seek waiver of versions 1.4 of WEQ–001–1.6(g)(4) and WEQ–002.4.3.10.5. As noted above, the Commission has not incorporated WEQ–001–1.6 into Part 38 of its regulations and, therefore, there is no conflict in the Commission's regulations with respect to that posting requirement.[11] With regard to WEQ–002–4.3.10.5, although that standard has been incorporated into the Commission's regulations,[12] it merely establishes the template to be used when posting information under WEQ–001–1.6(g)(4). That template can continue to be used by transmission providers wishing to make such postings, even if not otherwise required under the Commission's regulations. Waiver of WEQ–001–1.6(g)(4) and WEQ–002.4.3.10.5 is unnecessary and, accordingly, the Commission denies the requests for waiver of those business practice standards.

14. Consistent with the Commission's determination on the requests for waiver, the Commission directs Duke to submit within 30 days a further compliance filing in Docket No. OA08–50–002 to eliminate from its OATT language stating that waiver of the requirements of WEQ–001–1.6(g)(4) and WEQ–002–4.3.10.5 has been requested.

The Commission orders:

(A) The Commission hereby waives for all electric transmission providers those requirements of 18 CFR 38.2(b)(2) relating to the posting of information under WEQ–002–4.5.2, version 1.4, that extend beyond the posting requirements of Part 358 of the Commission's regulations, as amended by Order No. 717.

(B) The Commission directs Duke to submit within 30 days a further compliance filing in Docket No. OA08–50–002 to eliminate from its OATT language stating that a waiver of the requirements of WEQ–001–1.6(g)(4) and WEQ–002–4.3.10.5 has been requested.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7577 Filed 4–3–09; 8:45 am]

BILLING CODE 6717–01–P

[9] *See* 18 CFR 358.7(h) (as revised by Order No. 717 at P 214).

[10] The Commission's determination here is consistent with its proposal in the Notice of Proposed Rulemaking addressing recent revisions to the NAESB business practice standards to not require public utilities to comply with the requirements of WEQ–001–13.1.2, version 1.5, that are inconsistent with Order No. 717. *See Standards for Business Practices and Communications Protocols for Public Utilities*, FERC Stats. & Regs. ¶ 32,640, at P 16 (2009).

[11] *See* 18 CFR 38.2(b)(1). As noted above, the Commission declined to incorporate into its regulations the requirements of WEQ–001–1.6, version 1.4, because those requirements merely duplicate language already set forth in the Commission's regulations.

[12] *See* 18 CFR 38.2(b)(2).

POSTAL SERVICE

39 CFR Part 111

New Pricing Eligibility, Intelligent Mail, and Move Update Standards for Domestic Mailing Services and Shipping Services—Revised Final

AGENCY: Postal Service™.

ACTION: Final rule, revised.

SUMMARY: The Postal Service filed a notice of domestic Mailing Services (and selected Shipping Services) price adjustments with related changes to mailing standards, effective in May 2009, with the Postal Regulatory Commission on February 10, 2009. This notice provides revisions to that final rule.

DATES: Effective May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278.

SUPPLEMENTARY INFORMATION: The Postal Service's final rule published in the **Federal Register** on February 23, 2009 (Volume 74, Number 34, pages 8009–8033) included revised eligibility standards directly related to prices established by the USPS® Governors. This revised final rule contains corrections to those standards. There have been three pricing changes: to Confirm pricing and eligibility; to Move Update compliance; and to prices for nonmachinable Standard Mail letters over 3.3 ounces. Additionally, we note several corrections to the mailing standards from the February 23, 2009 final rule.

We summarize corrections below and then provide updates to the related mailing standards in *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®).

Changes for Standard Mail

Parcels and Not Flat-Machinable Pieces (NFMs)

The Postal Service revised sections 440 and 705 of the DMM to change mail preparation requirements and the pricing structure for Standard Mail® machinable and irregular parcels, and NFMs prepared in sacks and pallets.

In the final rule, we added a new origin-BMC (intra-BMC turnaround) sortation level for all Standard Mail parcels and NFMs with no minimum number of pieces required. Intra-BMC turnaround pieces are those pieces that destinate in the same BMC that serves the office where the pieces are accepted and verified. In summary, mailers with origin-entered mailings must separate intra-BMC turnaround pieces from mixed BMC pieces. In the DMM section

of the previously published final rule, we misnamed the origin BMC sack as ''origin mixed BMC;'' this notice clarifies that the correct name is ''origin BMC.'' ASF sortation has been added to BMC price eligibility and SCF price eligibility includes sacks or pallets dropshipped to BMCs as well as SCFs. Appropriate changes are made throughout DMM 440. We also provide new content identifier numbers for the new sortation levels in DMM 708.

Prices for Heavy Nonmachinable Letters

Heavy nonmachinable Standard Mail letters (those weighing over 3.3 ounces) currently pay NFM prices, but are sorted as letters to 5-digit, 3-digit, ADC, and mixed ADC levels. The change to sortation for NFMs in May leaves no 3-digit, ADC or mixed ADC prices. Therefore, heavy nonmachinable letters will pay nonautomation flats prices.

Changes for Confirm Service

The Confirm® structure will be different from that which was published in the previous Final Rule. PRC Order No. 191, issued on March 16, 2009, has led to a revised structure for Confirm that does not distinguish between mail owners and mail agents, but keeps the newly added ''Bronze'' tier. We offered two separate price points for the Gold and Platinum subscription levels to distinguish between a mail owner and a mailing agent, and offered the Bronze and Silver subscription levels only to mail owners. This notice removes the separate pricing and eligibility for mail owners and mailing agents, and removing the higher mailing agent prices for Gold and Platinum subscription levels.

The Confirm-based Preshipment Notification, *i.e*, Electronic Mailing Data (EMD) files and Entry Scans, including the process for accepting EMD files and distributing Entry Scans, continues until November 29, 2009.

Move Update Implementation Updates

We had announced the establishment of a charge for Standard Mail mailings not meeting Move Update standards effective on May 11, 2009. We are postponing the implementation of this charge. Beginning in January, 2010, we establish a charge for Standard Mail mailings not meeting Move Update standards of $0.07 per piece, in addition to the applicable Standard Mail postage.

Intelligent Mail Updates

In the Intelligent Mail® full-service option section, DMM 705.22, we added clarification that all full-service Periodicals and Bound Printed Matter mailings must be accompanied by electronic submission of postage statements and mailing documentation. The alternative submission method of Postal Wizard for some mailings of less than 10,000 pieces is not appropriate for Periodicals or Bound Printed Matter mailings since those mailings always require supporting mailing documentation.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters and Cards

* * * * *

240 Standard Mail

243 Prices and Eligibility

1.0 Prices and Fees for Standard Mail

* * * * *

1.4 Regular Standard Mail—Nonautomation Prices

[*Delete 1.4 price chart in its entirety and substitute ''For prices, see Price List Notice 123,'' which will include a change to footnote 1 as follows:*]

For prices, see *Price List*—Notice 123.

1. For nonmachinable letters over 3.3 ounces, see Standard Mail nonautomation flats prices.

* * * * *

1.6 Nonprofit Standard Mail—Nonautomation Prices

[*Delete 1.6 price chart in its entirety and substitute ''For prices, see Price List—Notice 123,'' which will include a change to footnote 1 as follows:*]

For prices, see *Price List*—Notice 123.

1. For nonmachinable letters over 3.3 ounces, see Standard Mail nonautomation flats prices.

* * * * *

3.0 Basic Standards for Standard Mail Letters

3.9 Move Update Standard

3.9.1 Basic Standards

[*Revise 3.9.1 by inserting a new third sentence into the introductory text as follows:*]

* * * Except for mail bearing an alternative address format, addresses used on pieces claiming Standard Mail prices must meet the Move Update standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

[*Revise item 3.9.1 d by inserting a new postage adjustment as follows*:]

d. Effective January 4, 2010, when a mailing is determined by the USPS to not be in compliance with the Move Update standard, each piece in the mailing will be subject to a postage adjustment charge of $0.07 per piece.

* * * * *

300 Commercial Mail Flats

* * * * *

340 Standard Mail

343 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.9 Move Update Standard

3.9.1 Basic Standards

[*Revise 3.9.1 by inserting a new third sentence into the introductory text as follows:*]

* * * Except for mail bearing an alternative address format, addresses used on pieces claiming Standard Mail prices must meet the Move Update standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

[*Revise item 3.9.1 d by inserting a new postage adjustment as follows*:]

d. Effective January 4, 2010, when a mailing is determined by the USPS to not be in compliance with the Move Update standard, each piece in the mailing will be subject to a postage adjustment charge of $0.07 per piece.

* * * * *

400 Commercial Mail Parcels

* * * * *

440 Standard Mail

443 Prices and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Parcels

* * * * *

3.9 Move Update Standard

3.9.1 Basic Standards

[*Revise 3.9.1 by inserting a new third sentence into the introductory text as follows*:]

* * * Except for mail bearing an alternative address format, addresses used on pieces claiming Standard Mail prices must meet the Move Update standard. Addresses subject to the Move Update standard must meet these requirements:

* * * * *

[*Revise item 3.9.1 d by inserting a new postage adjustment as follows*:]

d. Effective January 4, 2010, when a mailing is determined by the USPS to not be in compliance with the Move Update standard, each piece in the mailing will be subject to a postage adjustment charge of $0.07 per piece

* * * * *

5.0 Additional Eligibility Standards for Presorted Standard Mail Pieces

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5.3 Prices for Machinable Parcels

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5.3.2 BMC Price

[*Revise introductory sentence of 5.3.2 as follows:*]

The BMC price applies to qualifying machinable parcels as follows under either of the following conditions:

[*Revise item 5.3.2 a to add dropshipment to an ASF and revise item 5.3.2 b to allow an ASF pallet as follows*:]

a. When dropshipped to an ASF or BMC and presented:

1. In an ASF or BMC sack containing at least 10 pounds of parcels, or

2. On an ASF or BMC pallet, according to standards in 705.8.10, or

3. In a BMC/ASF container prepared under 705.20.0.

b. When presented at the origin acceptance office on an ASF or a BMC pallet containing at least 200 pounds of pieces.

[*Delete item 5.3.2c in its entirety.*]

* * * * **

5.4 Prices for Irregular Parcels and Not Flat-Machinable (NFM) Pieces

5.4.1 5–Digit Price

[*Revise introductory paragraph of 5.4.1 as follows*:]

The 5-digit price applies to irregular parcels and NFMs that are dropshipped to a DBMC (or ASF when claiming DBMC prices), DSCF, or DDU and presented:

* * * * *

[*Add new item 5.4.1 e as follows*:]

e. For NFMs only, in 5-digit/scheme bundles of five or more pieces on pallets or in pallet boxes under 705.8.0.

* * * * *

5.4.2 SCF Price

[*Revise 5.4.2 to add DBMC eligibility as follows*:]

The SCF price applies to irregular parcels or NFMs that are dropshipped and presented to a DSCF or DBMC:

a. In an SCF sack containing at least 10 pounds of parcels.

b. On an SCF pallet, according to 705.8.10.

c. In SCF containers prepared under 705.20.0.

5.4.3 BMC Price

The BMC price applies to qualifying irregular parcels or NFMs as follows under either of the following conditions:

[*Revise item 5.4.3 a to add dropshipment to an ASF and revise item 5.4.3 b to allow an ASF pallet as follows:*]

a. When dropshipped to an ASF or BMC and presented:

1. In an ASF or BMC sack containing at least 10 pounds of parcels, or

2. On an ASF or BMC pallet, according to standards in 705.8.10, or

3. In a BMC/ASF container prepared under 705.20.0.

b. When presented at the origin acceptance office on an

ASF or a BMC pallet containing at least 200 pounds of pieces.

* * * * *

445 Mail Preparation

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5.0 Preparing Presorted Parcels

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5.3 Preparing Machinable Parcels

* * * * *

5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

* * * * *

[*Revise item 5.3.2 d to read ''Origin BMC'' as follows:*]

d. Origin BMC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''STD MACH BMC.''

* * * * *

5.4 Preparing Irregular Parcels

* * * * *

5.4.4 Sacking and Labeling

Preparation sequence, sack size, and labeling:

* * * * *

[*Revise item 5.4.4 b to add DBMC eligibility as follows:*]

b. SCF, allowed only for mail deposited at a DSCF or a DBMC to claim SCF price; 10-pound minimum; labeling:

1. For Line 1, L002, Column C.

2. For Line 2, ''STD IRREG SCF.''

[*Revise item 5.4.4 e to designate as ''Origin BMC'' as follows:*]

e. Origin BMC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''STD IRREG BMC.''

* * * * *

6.0 Preparing Not Flat-Machinable Pieces

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6.3 Sacking and Labeling

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6.3.2 NFM Pieces Weighing Less Than 6 Ounces

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh less than 6 ounces:

* * * * *

[*Revise item 6.3.2 b to add DBMC eligibility as follows:*]

b. SCF, allowed only for mail deposited at a DSCF or a DBMC to claim SCF price; 10-pound minimum; labeling:

1. For Line 1, L002, Column C.

2. For Line 2, ''STD NFM SCF.''

[*Revise item 6.3.2 e to rephrase as ''Origin BMC'' as follows:*]

e. Origin BMC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: STD NFM BMC.''

* * * * *

6.3.3 NFM Pieces Weighing 6 Ounces or More

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh 6 ounces or more:

* * * * *

[*Revise item 6.3.3 e to rephrase as ''Origin BMC'' as follows:*]

d. Origin BMC (required); no minimum; labeling:

1. Line 1: L601, Column B.

2. Line 2: ''STD NFM MACH BMC.''

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

13.0 Confirm Service

13.1 Confirm Fees

13.1.1 Fee

Fee, in addition to postage and other fees:

[*Revise table of 13.1.1. to read as follows:*]

Subscription level	Subscription fee and term	Additional ID code registration fee and term	Additional scans fee and number
Bronze	$1,000 12 months	$900 each 3 months, $2,500 annual	$250, block of 10,000 scans.
Silver	$2,000 3 months	$900 each 3 months	$500 block of 2 million scans.
Gold	$7,500 12 months	$900 each 3 months, $2,500 annual	$800 block of 6 million scans.
Platinum	$25,000 12 months	$900 each 3 months, $2,500 annual	NA.

* * * * *

13.2 Basic Information

13.2.1 Description

[*Revise the second sentence of 13.2.1 to read as follows:*]

* * *Scanned data can include the postal facility where such pieces are processed, the postal operation used to process the pieces, the date and time when the pieces are processed, and the numeric equivalent of a barcode(s) that help to identify the specific pieces.

* * *

* * * * *

13.2.7 Subscription Levels

[*Revise 13.2.7 to read as follows:*]

A customer may subscribe to one or more of the following levels at the same time, at different times, or at overlapping times:

a. Bronze Subscription. The Bronze subscription level has a term of 12 consecutive months, includes registration of one identification code assigned by the USPS, and provides up to 200,000 scans. A customer subscribing to this level may also:

1. Register additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

2. License additional scans in blocks of 10,000 scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

3. Change the subscription level to a Gold or Platinum subscription level at any time before the expiration of the Bronze subscription by paying the difference of the respective subscription fees. This change in service level does not extend the term of the underlying initial subscription.

b. Silver Subscription. The Silver subscription level has a term of 3 consecutive months, includes registration of one identification code assigned by the USPS, and provides up to 15 million scans. A customer subscribing to this level may also:

1. Register additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

2. License additional scans in blocks of 2 million scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

c. Gold Subscription. The Gold subscription level has a term of 12 consecutive months, includes registration of one identification code assigned by the USPS, and provides up to 50 million scans. A customer subscribing to this level may also:

1. Register additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

2. License additional scans in blocks of 6 million scans at any time before the underlying subscription expires. Unused scans expire at the end of the subscription term.

3. Raise the subscription level to a Platinum subscription level at any time before the expiration of the Gold subscription by paying the difference of the respective subscription fees. This change in service level does not extend the term of the underlying initial subscription.

d. Platinum Subscription. The Platinum subscription level has a term of 12 consecutive months, includes registration of three identification numbers assigned by the USPS, and provides an unlimited number of scans. A customer subscribing to this level may also license additional identification codes for a term of 3 consecutive months or until the expiration of the underlying subscription, whichever occurs first.

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700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

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22.0 Full-Service Automation Option

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22.3 Preparation

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22.3.4 Electronic Documentation

[*Revise the last sentence in 22.3.4 to clarify that electronic documentation is required for all Periodicals and Bound Printed Matter mailings as follows:*]

Mailers must electronically submit postage statements and mailing documentation (when required) to the *PostalOne!* system. Unless otherwise authorized, documentation must describe how each mailpiece is linked to a uniquely identified tray or sack, if applicable, and how each mailpiece and tray or sack is linked to a uniquely identified container (if applicable). The documentation must also meet the requirements in *A Guide to Intelligent Mail for Letters and Flats* (available at *ribbs.usps.gov*). Mailers must transmit postage statements and mailing documentation to the *PostalOne!* system using Mail.dat, Mail.XML, or Postal Wizard (*see* 22.4.3), except that mailers of full-service Periodicals letters and flats and Bound Printed Matter flats cannot use Postal Wizard and must electronically submit postage statements and mailing documentation in all instances.

* * * * *

22.4.3 Special Standards—Small Volume Mailings

[*Revise the third sentence in 22.4.3 to clarify electronic documentation is required for all Periodicals and Bound Printed Matter mailings as follows:*]

For mailings of fewer than 10,000 pieces, and postage is affixed to each

piece at the correct price or each piece is of identical weight and the mailpieces are separated by price, the serial number field of each Intelligent Mail barcode can be populated with a mailing serial number that is unique to the mailing but common to all pieces in the mailing. This unique mailing serial number must not be reused for a period of 45 days from the date of mailing. These mailings are not required to submit electronic documentation for full-service, only an electronic postage statement; except mailers of full-service Periodicals letters and flats and Bound Printed Matter flats must submit electronic documentation and an electronic postage statement. Unique mailing serial numbers must be populated in the Postal Wizard entry screen field or in the Mail.XML messages. Mailers must populate the serial number field of all Intelligent Mail tray labels and Intelligent Mail container barcodes with the unique mailing serial number.

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.3 Price Level Column Headings

* * * * *

b. Presorted First-Class Mail, barcoded and nonbarcoded Periodicals flats, nonbarcoded Periodicals letters, and machinable and nonmachinable Standard Mail:

[*Revise the table in item b to add a new fourth row with the following information:*]

Price	Abbreviation
* * * *	
SCF (for Standard Mail parcels and NFMs).	SCF

* * * * *

6.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Placards

* * * * *

6.2 Specifications for Barcoded Tray and Sack Labels

6.2.4 3-Digit Content Identifier Numbers

* * * * *

Exhibit 6.2.4 3-Digit Content Identifier Numbers

* * * * *

Standard Mail

* * * * *

STD Not Flat-Machinable Pieces Less Than 6 Ounces—Nonautomation

[*Revise the table as follows:*]

5-digit scheme sacks	500	STD NFM 5D SCH
5-digit sacks	500	STD NFM 5D
SCF sacks	507	STD NFM SCF
ASF sacks	509	STD NFM ASF
BMC sacks	505	STD NFM BMC
mixed BMC sacks	506	STD NFM WKG

STD Not Flat-Machinable Pieces 6 Ounces Or More—Nonautomation

[*Revise the table as follows:*]

5-digit scheme sacks	500	STD NFM MACH 5D SCH
5-digit sacks	500	STD NFM MACH 5D
ASF sacks	503	STD NFM MACH ASF
BMC sacks	514	STD NFM MACH BMC
mixed BMC sacks	518	STD NFM MACH WKG

* * * * *

STD Irregular Parcels—Presorted

[*Revise the table as follows:*]

5-digit scheme sacks	590	STD IRREG 5D SCH
5-digit sacks	590	STD IRREG 5D
SCF sacks	596	STD IRREG SCF
ASF sacks	571	STD IRREG ASF
BMC sacks	570	STD IRREG BMC
mixed BMC sacks	594	STD IRREG WKG

* * * * *

Index and Appendices

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Labeling Lists

* * * * *

L000 General Use

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[*Revise the heading and text of L009 to delete ''Standard Mail irregular parcels'' to read as follows:*]

L009 Mixed ADCs—Periodicals, Package Services Flats and Irregular Parcels and Standard Mail Flats

Mailers must use L009 to label mixed ADC bundles and sacks of Periodicals, Standard Mail, Bound Printed Matter, Media Mail, and Library Mail flats. Mailers also must use L009 to label mixed ADC bundles and sacks containing Periodicals irregular parcels and Bound Printer Matter irregular parcels.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–7569 Filed 4–3–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to reflect changes to the prices and standards for the products now referred to as Mailing Services.

DATES: *Effective Date:* May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Bill Chatfield, 202–268–7278.

SUPPLEMENTARY INFORMATION: On January 29, 2009 the Postal Service published a proposed rule in the **Federal Register** (Volume 74, Number 18, pages 5130–5137) that included several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology. A supplemental proposed rule was published in the **Federal Register** on February 6, 2009 (Volume 74, Number 24, pages 6250–6257) amending and clarifying certain standards. This final rule contains revisions that will be effective on May 11, 2009. We additionally describe those standards that were proposed for May 11, 2009 for which we will delay implementation until September 8, 2009.

For May 2010, we proposed: elimination of the Standard Mail® Not Flat-Machinable category, restriction on inserts in flats, and a new flexibility or foldability standard for flats. These items will be included in a new, separate proposal at a later date.

In the sections below, we identify each revision, and summarize and respond to comments regarding May 11, 2009 implementation.

Overview of Changes for Letters and Flats for May 2009

Letters

We align standards for commercial machinable and automation letters so all machinable letters have the same physical characteristics required of automation letters, with the exception of

a qualifying barcode. We make slight revisions to the list of nonmachinable characteristics. We received comments in support of this alignment. Several commenters requested clarification of some of the elements that would render letters nonmachinable. Questions were raised about the effect of window envelopes or attachments on the addition of nonpaper surfaces to the list of nonmachinable characteristics. Several commenters questioned if this new nonmachinable characteristic would render laminated paper cards nonmachinable. The intent of this change is the alignment of machinable and automation letter standards. Current standards require automation letters to be ''made of paper.'' Mailers who have been able to establish that their laminated paper cards are made of paper and not plastic, have been able to mail those items at automation prices and will continue to be able to do so. Letters with nonpaper surfaces, other than envelope windows or attachments that are allowed in a class of mail, are not machinable. Several commenters asked for clarification of when letters with enclosed keys, coins or similar objects are nonmachinable. If coins or similar objects are either loose or make the letter nonuniform in thickness, the piece is nonmachinable. This revision aligns with current standards in DMM 201.3.10 and with Customer Support Ruling PS–328, available online at *pe.usps.com*. Commercial letters that are not machinable are eligible to be mailed as nonmachinable letters.

We proposed a new minimum 0.009 inch thickness standard for automation and machinable letters. We received a few comments in favor of this proposal and a few opposed. We continue to require automation and machinable letters larger than postcard size to be at least 0.009 inch thick, and we continue the current minimum thickness of 0.007 inch for letters and cards up to postcard size (4¼ inches high by 6 inches long).

We received several comments about the difficulty in determining excessive static charge or meeting coefficient of friction standards. As announced in a DMM Advisory notice on February 3, 2009, we postpone implementation of new static charge and coefficient of friction standards for automation and machinable letters, while new methods are explored to measure the standards. Some mailers indicated that they have methods to reduce effective static charge. We recommend that mailers try to measure and reduce the static charge created by their mailpieces to no more than two kilovolts and meet the paper-to-paper coefficient of friction recommendations between 0.24 and 0.36. As we stated in a DMM Advisory notice on January 28, 2009, we also postpone new standards for window envelopes.

Mailers have the option to prepare First-Class Mail® and Standard Mail automation letters and Standard Mail machinable letters to all applicable sort levels, with prices matching the level of sortation chosen. We received several comments objecting to this change and one in favor of the change. Claims were made that if a mailer chose to only prepare mixed AADC trays, that we would effectively be granting a discount for nonpresorted letters. There are other requirements for this mail, such as Move Update compliance, CASS™-certification for barcoded letters, and ZIP® Code accuracy—all of which help us process and deliver mixed AADC mail more efficiently than single-piece mail. Some commenters stated that processing plants urged mailers to bring in ''residual'' mail as early as possible; they were also concerned that the USPS® might impose earlier critical entry times for this mail. The USPS has the operational capacity to enable timely processing without changing critical entry times.

Flats

We will retain the current preparation options for automation First-Class Mail flats of either bundle-based or tray-based sortation with applicable prices. We received many comments opposed to the proposal to eliminate bundle-based sortation, ranging from recent investments in bundling equipment to potentially less access to lower prices. We are postponing implementation of this change, and will reconsider it for later implementation.

Rigid flat-size mailpieces that are not able to meet the flexibility standards in DMM 301.1.3 may be eligible for automation prices if they are determined to have flats machine-compatibility through a Pricing and Classification Service Center (PCSC)-administered testing process. Eligibility for such pieces will be valid until May 2010. Mailers coordinate testing requests via district managers of business mail entry. Those pieces that do not meet the published flexibility standards for flats, but are authorized to mail at flats prices by PCSC approval, must be marked ''Automation Flat.''

Postponed Until September 8, 2009—Flats Changes

The following changes for flats will have a September 8, 2009 implementation date to provide additional time for mailers to make the adjustments to their operations.

Polywrap standards, currently applicable only to automation flats, will apply to all flat-size mailpieces using polywrap, except for flats mailed at saturation and high-density Periodicals or Standard Mail prices. We received a few comments asking for exemption of saturation and high-density flats, which we have accommodated in our revisions. We received some comments requesting more time to comply with this change and some comments in favor of the change. In response to requests for more time, the delayed implementation will allow mailers who have not been using approved polywrap to make the transition. Detailed specifications for polywrap approved for use on flats, as well as a list of approved products, is available at *ribbs.usps.gov*. The use of automation-compatible polywrap on all flat-size mailpieces improves mail processing efficiency and applies standardization and consistency for mailers of polywrapped flats.

The polywrap selvage (overhang) on a polywrapped flat will be included when a flat is measured for maximum dimensions, because selvage that extends beyond the maximum height or length interferes with efficient processing. Several commenters thought this restriction would render their larger flats ineligible for flats prices. When our flats-sorting equipment attempts to process pieces that are larger than the maximum length or height of a mailpiece, the pieces are often culled out. As an accommodation, we will increase the maximum length of a polywrapped flat to 15.75 inches (inclusive of selvage) from the current 15 inches to accommodate some additional selvage for larger publications. As a reminder, we continue to allow no more than 1½ inches of selvage in the length and no more than ½ inch in the height. We will not include selvage when measuring for minimum dimensions because the selvage is not substantial enough for it to be considered part of a uniformly thick flat. We received no comments related to selvage and minimum dimensions.

We extend the deflection standards currently applicable to automation flats, to all flat-size mailpieces, except those mailed at saturation and high-density Periodicals or Standard Mail prices. The deflection standards also change to allow one inch less of vertical deflection (droop) than is currently allowed. We also eliminate the current exception for oblong flats (those with a bound edge on the shorter side) so all flats are tested with the length placed perpendicular to the edge of a flat surface. A few

commenters asked that the exception to deflection standards apply to high-density as well as saturation flats. We agree to make that accommodation. Several commenters disagreed with the more restrictive deflection standards on all flats. Some commenters also objected to the change in the testing procedure for oblong flats, stating that those flats would not pass the new test administered by placing the bound edge parallel to the edge of the flat surface. As a reminder, the USPS reduced the deflection standards in 2007, permitting up to a 4-inch drop for pieces at least 10 inches long. The new standards will allow a 3-inch drop for pieces at least 10 inches long, compared to a maximum of 2⅜ inch drop before May 2007. Our difficulties in processing oblong flats, and those that come close to the current maximum deflection, made it clear that the previous reduction was too extensive. Some oblong flats may be able to meet the new standards by adding a tab to the open edges opposite the bound edge or by other methods. Our delayed implementation offers mailers the opportunity to make changes to slightly stiffen their ''floppy'' flats to meet the new standards. The new standards, by allowing more deflection for flats over 10 inches long than for shorter pieces, provide flexibility to the mailing community while ensuring efficient processing of the mail.

Parcels

For consolidation purposes, we remove definitions of irregular parcels from the mail preparation standards in DMM 465, 475, and 485, and provide references to the current definition of irregular parcels in DMM 401, *Physical Standards*. This does not change the current definition of irregular parcels.

Overview of Proposed Changes for 2010

Summary

All changes originally proposed for 2010 will be reissued in a subsequent proposed rule. As information, we briefly discuss those changes below.

Flats

We proposed to merge standards for nonautomation and automation flats in May 2010; requiring all machinable flats, whether or not they are barcoded, to have the same physical characteristics. The terminology would change the categories to: machinable; barcoded machinable; and irregular flats. Irregular flats would encompass two types of flat-size mailpieces. One is a flat-size piece that is machinable, but with parcel-like characteristics that affect deliverability, such as pieces with rigid contents because the pieces cannot be folded. Another type of irregular flat is foldable with favorable delivery characteristics, but is not machinable, such as flimsy pieces that are difficult to process on automation equipment.

Current flexibility standards in DMM 301.1.3 describe minimum flexibility as demonstrated by ''tabletop'' flexibility tests. Effective May 2009, rigid flat-size mailpieces not able to meet the flexibility standards in 301.1.3 may be eligible for automation prices if they demonstrate flat machine-compatibility through a PCSC-administered testing process. Delivery of rigid pieces is often more costly than delivery of foldable flats. Rigid pieces that do not fit in smaller mail receptacles often result in Postal employees having to leave non-delivery notices. This is similar to delivery constraints for parcels.

For May 2010, we proposed a single flexibility standard that would require all machinable flat-size mailpieces with rigid contents to be foldable, parallel to the length, to a height no greater than 5 inches. Flat-size pieces failing to meet this level of flexibility may be categorized as irregular flats. Quite a few commenters objected to the 5-inch restriction, suggesting that allowing a 6-inch height would accommodate the contents that they mail in substantial quantities, while others requested that we allow pieces to be folded in either direction.

We will provide revised DMM language for new flexibility standards and any new categorization of flats for 2010 in a subsequent **Federal Register** proposal.

We are postponing our proposal to restrict inserts in flats. We received many comments requesting reconsideration due to the prevalence of inserts that advertisers rely on as part of their mailing strategy. We recognize that mailers rely on loose inserts for advertising purposes and understand that we share common ground in taking steps to be sure that inserts reach the addressees and do not fall out of mailpieces. Therefore, we will work with mailers to identify publications and catalogs with loose inserts that fall out of the mailpiece and inhibit our processing and delivery functions. In most cases, a simple ''shake'' test may provide a useful demonstration of whether inserts are likely to fall out. Pinching a flat with inserts by the upper corner of the bound edge and shaking it will tend to dislodge those inserts not blown well into the body of the flat. Inserts that are inserted or blown well into the body of a flat tend to stay in place.

Not Flat-Machinable (NFMs)

In 2007, we created an NFM category for Standard Mail items that could not meet revised automation flats standards. We proposed to discontinue the NFM category in May 2010. Since 2007, many mailers have converted pieces that might have been subject to NFM or parcel prices, into pieces eligible for flats prices. We will include any change in the NFM categorization in a subsequent proposal along with other proposals to be effective in May 2010.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

100 Retail Mail Letters, Cards, Flats, and Parcels

101 Physical Standards

101.1 Physical Standards for Letters

* * * * *

1.2 Nonmachinable Criteria

A letter-size piece is nonmachinable (*see* 6.4) if it has one or more of the following characteristics (*see* 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

* * * * *

[Revise item b to add that any nonpaper exterior surface is nonmachinable as follows:]

b. Is polybagged, polywrapped, enclosed in any plastic material, or has an exterior surface made of a material that is not paper. Windows in envelopes made of paper do not make mailpieces nonmachinable. Attachments allowable under applicable eligibility standards do not make mailpieces nonmachinable.

* * * * *

[Revise item d to clarify that letters are nonmachinable when certain items

are loose or when they cause the thickness to be uneven, as follows:]

d. Contains items such as pens, pencils, keys, or coins that cause the thickness of the mailpiece to be uneven; or loose keys or coins or similar objects not affixed to the contents within the mailpiece. Loose items may cause a letter to be nonmailable when mailed in paper envelopes; *see* 601.2.3, *Odd-Shaped Items in Paper Envelopes*.

* * * * *

[Revise item h by referring to sealing standards in 201.3.14.1 for all self-mailers as follows:]

h. Is a self-mailer that is not prepared according to 201.3.14.1.

[Revise item i by referring to sealing standards in 201.3.14.2 for all booklets as follows:]

i. Is a booklet that is not prepared according to 201.3.14.2.

* * * * *

200 Commercial Mail Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

1.1.1 Dimensional Standards for Letters

[Revise introductory sentence as follows:]

Machinable letter-size mail is:

* * * * *

[Add new item d as follows:]

d. Within an aspect ratio (length divided by height) of 1.3 to 2.5, inclusive. *See* 601.1.4.

* * * * *

1.1.3 All Machinable Letters

[Revise the first sentence of 1.1.3 as follows:]

All pieces of First-Class Mail and Standard Mail machinable letters must meet the standards for automation-compatible letters in 201.3.0. * * *

* * * * *

2.0 Physical Standards for Nonmachinable Letters

2.1 Criteria for Nonmachinable Letters

[Revise 2.1 by noting that letters with exterior surfaces not made of paper or that do not meet automation-compatibility standards are nonmachinable; that all letters over 3.3 ounces must have a barcode and claim an automation letter price to avoid a surcharge; and by removing the individual listed items as follows:]

A letter-size piece is nonmachinable if it has an exterior surface that is not made of paper or if it does not meet the standards in 201.3.0. Windows in envelopes made of paper do not make mailpieces nonmachinable. Attachments do not render mailpieces nonmachinable if allowed by eligibility standards according to the class of mail and if not prohibited in 201.3.0. In addition, a letter-size piece is nonmachinable if it weighs more than 3.3 ounces (up to 3.5 ounces) unless it has a barcode and is eligible for and claims automation letter prices or Standard Mail Carrier Route letter prices.

* * * * *

[Revise title of 3.0 as follows:]

3.0 Physical Standards for Machinable and Automation Letters and Cards

* * * * *

[Revise title of 3.2 as follows:]

3.2 Dimensions and Shape Standards for Machinable and Automation Letters

* * * * *

230 First-Class Mail

* * * * *

235 Mail Preparation

* * * * *

[Revise heading of 6.0 as follows:]

6.0 Preparing Automation Letters

* * * * *

6.6 Tray Preparation

* * * Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]

b. 3-digit/scheme: optional, but required for 3-digit price (150-piece minimum except no minimum for origin or entry 3-digit/scheme); overflow allowed; for Line 1, use L002, Column B.

c. AADC: optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code when overflow pieces from 3-digit trays are placed in AADC trays. For Line 1, use L801, Column B.

d. Mixed AADC: required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use ''MXD'' followed by city, state, and 3-digit ZIP Code prefix in Column C (use ''MXD'' instead of ''OMX'' in the destination line and ignore Column B).

* * * * *

240 Standard Mail

* * * * *

245 Mail Preparation

* * * * *

5.0 Preparing Nonautomation Letters

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5.3 Machinable Preparation

* * * * *

[Revise introductory paragraph of 5.3.2 as follows:]

5.3.2 Traying and Labeling

Instead of preparing overflow AADC trays with fewer than 150 pieces, mailers may include these pieces in mixed AADC trays when a tray of 150 or more pieces can be made. Mailers must note these trays on standardized documentation (*see* 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Preparation sequence, tray size, and labeling:

* * * * *

[*Revise first sentence of 5.3.2 b to allow optional preparation as follows:*]

b. AADC (optional, but required for AADC price); 150-piece minimum (overflow allowed); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays; labeling: * * *

* * * * *

[*Revise heading of 7.0 as follows:*]

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

* * * Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[*Revise items b through d to allow optional preparation and modify grouping requirement as follows:*]

b. 3-digit/scheme; optional, but required for 3-digit price (150-piece minimum, except no minimum for optional origin/entry 3-digit/scheme(s)); overflow allowed; for Line 1, use L002, Column B.

c. AADC: optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code prefix when overflow pieces from 3-digit/scheme trays are placed in AADC trays. For Line 1, use L801, Column B.

d. Mixed AADC: required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 labeling: use L011, Column B. Use L010, Column B if entered at an

ASF or BMC or for mail placed on an ASF, BMC, or SCF pallet under the option in 705.8.10.3.

* * * * *

300 Commercial Mail Flats

301 Physical Standards

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3.0 Physical Standards for Automation Flats

* * * * *

[*Renumber 3.3 through 3.7 as new 3.4 through 3.8, and add new 3.3 as follows:*]

3.3 Flats—Machine Compatibility

Flat-size mailpieces meeting the standards in 1.0 and 3.0, but unable to meet the minimum flexibility standards described in 1.3, are not eligible for automation prices unless the mailpieces demonstrate flats-machine compatibility. Rigid flat-size mailpieces in paper, polywrap or similar packaging that allows for the pieces to be grasped and inducted into USPS flat-sorting equipment may qualify for automation prices when meeting the following standards:

a. Mailpieces must be enclosed in envelopes or similar packaging capable of withstanding normal processing on USPS flat-sorting equipment.

b. Mailpieces must be approved for automation flats pricing by the USPS. Mailers seeking approval for mailpieces under this standard must contact their local manager, business mail entry for instructions on submitting sample mailpieces to the Pricing and Classification Service Center (PCSC) (*see* 608.8.0 for address) for analysis and possible testing. Mailpieces having a previous approval from the PCSC for automation flats prices, granted after May 2007, are not required to be resubmitted for a new approval. These and all other approvals granted under 3.3 expire in May 2010.

c. Mailpieces approved for automation flats pricing under this standard must print the endorsement ''Automation Flat'' directly under or to the left of the postage imprint.

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302 Elements on the Face of a Mailpiece

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4.0 Barcode Placement

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4.6 Barcode in Address Block

When the barcode is included as part of the address block:

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[*Revise 4.6d by adding a new last sentence as follows:*]

d. * * * Window envelopes also must meet the specifications in 601.6.3.

* * * * *

400 Commercial Parcels

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460 Bound Printed Matter

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465 Mail Preparation

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5.0 Preparing Presorted Parcels

5.1 Basic Standards

5.1.1 General Preparation Requirements

All mailings of Presorted Bound Printed Matter (BPM) are subject to these general standards:

* * * * *

[*Revise item b as follows:*]

b. All pieces in a mailing must be within the same processing category. *See* 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

470 Media Mail

* * * * *

475 Mail Preparation

* * * * *

5.0 Preparing Media Mail Parcels

[*Revise introductory paragraph of 5.1 as follows:*]

5.1 Basic Standards

All mailings of Presorted Media Mail are subject these general requirements:

* * * * *

[*Revise item b as follows:*]

b. All parcels in a mailing must be within the same processing category. *See* 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

480 Library Mail

* * * * *

485 Mail Preparation

* * * * *

5.0 Preparing Library Mail Parcels

[*Revise introductory paragraph of 5.1 as follows:*]

5.1 Basic Standards

All mailings of Presorted Library Mail are subject to these general standards:

* * * * *

[*Revise item b as follows:*]

b. All pieces in a mailing must be within the same processing category. *See* 401.1.0 for definitions of machinable and irregular parcels.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–7570 Filed 4–3–09; 8:45 am]

BILLING CODE 7710–12–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–21 and CP2009–26; Order No. 197]

New Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Postal Service's Priority Mail Contract 5 negotiated service agreement to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective April 6, 2009 and is applicable beginning March 30, 2009.

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

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 12406 (March 24, 2009).

I. Background

The Postal Service seeks to add a new product identified as Priority Mail Contract 5 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On March 13, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 5 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 5 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–21.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–26.

[1] Request of the United States Postal Service to Add Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 13, 2009 (Request).

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Priority Mail Contract 5; [2] (2) a redacted version of the contract which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals; [3] (3) requested changes in the Mail Classification Schedule product list; [4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32; [5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 193, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

II. Comments

Comments were filed by the Public Representative.[8] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Priority Mail Contract 5 agreement comports with the requirements of title 39. *Id.* at 4. He further states that the agreement appears to be beneficial to the general public. *Id.* at 1.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He indicates that several contractual provisions are mutually beneficial to the parties and general public. *Id.*

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 5 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 5 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

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

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

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

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 5 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 5 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 5 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 5 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 5 indicates that it comports with the provisions applicable to rates for competitive products.

The electronic files submitted in support of the Request did not include all supporting data. Future requests must provide all electronic files showing calculations in support of the financial models associated with the request. A failure to provide such information may delay resolution of requests in the future.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] PRC Order No. 193, Notice and Order Concerning Priority Mail Contract 5 Negotiated Service Agreement, March 17, 2009 (Order No. 193).

[8] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 25, 2009 (Public Representative Comments).

inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 5 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is Ordered:

1. Priority Mail Contract 5 (MC2009–21 and CP2009–26) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

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

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

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

PART 3020—PRODUCT LISTS

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

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

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

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

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
  - [Reserved for Product Description]
- Bulk Letters/Postcards
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Parcels
  - [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
- High Density and Saturation Letters
  - [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
  - [Reserved for Product Description]
- Carrier Route
  - [Reserved for Product Description]
- Letters
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
  - [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
- Within County Periodicals
  - [Reserved for Product Description]
- Outside County Periodicals
  - [Reserved for Product Description]

Package Services
[Reserved for Class Description]
- Single-Piece Parcel Post
  - [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
  - [Reserved for Product Description]
- Bound Printed Matter Flats
  - [Reserved for Product Description]
- Bound Printed Matter Parcels
  - [Reserved for Product Description]
- Media Mail/Library Mail
  - [Reserved for Product Description]

Special Services
[Reserved for Class Description]
- Ancillary Services
  - [Reserved for Product Description]
- Address Correction Service
  - [Reserved for Product Description]
- Applications and Mailing Permits
  - [Reserved for Product Description]
- Business Reply Mail
  - [Reserved for Product Description]
- Bulk Parcel Return Service
  - [Reserved for Product Description]
- Certified Mail
  - [Reserved for Product Description]
- Certificate of Mailing
  - [Reserved for Product Description]
- Collect on Delivery
  - [Reserved for Product Description]
- Delivery Confirmation
  - [Reserved for Product Description]
- Insurance
  - [Reserved for Product Description]
- Merchandise Return Service
  - [Reserved for Product Description]
- Parcel Airlift (PAL)
  - [Reserved for Product Description]
- Registered Mail
  - [Reserved for Product Description]
- Return Receipt
  - [Reserved for Product Description]
- Return Receipt for Merchandise
  - [Reserved for Product Description]
- Restricted Delivery
  - [Reserved for Product Description]
- Shipper-Paid Forwarding
  - [Reserved for Product Description]
- Signature Confirmation
  - [Reserved for Product Description]
- Special Handling
  - [Reserved for Product Description]
- Stamped Envelopes
  - [Reserved for Product Description]
- Stamped Cards
  - [Reserved for Product Description]
- Premium Stamped Stationery
  - [Reserved for Product Description]
- Premium Stamped Cards
  - [Reserved for Product Description]
- International Ancillary Services
  - [Reserved for Product Description]
- International Certificate of Mailing
  - [Reserved for Product Description]
- International Registered Mail
  - [Reserved for Product Description]
- International Return Receipt
  - [Reserved for Product Description]
- International Restricted Delivery
  - [Reserved for Product Description]
- Address List Services
  - [Reserved for Product Description]
- Caller Service
  - [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
  - [Reserved for Product Description]
- Confirm
  - [Reserved for Product Description]
- International Reply Coupon Service
  - [Reserved for Product Description]
- International Business Reply Mail Service

[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
Competitive Product List
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Outbound International
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound International
Inbound Direct Entry Contracts With Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]
Part C—Glossary of Terms and Conditions
[Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9–7680 Filed 4–3–09; 8:45 am]
BILLING CODE 7710–FW–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[Docket No. FRA–2004–17529; Notice No. 7]

RIN 2130–AB94

Adjustments to the Minimum and Maximum Civil Monetary Penalties for Violations of Federal Railroad Safety Laws or Federal Railroad Administration Safety Regulations; Correction

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Correcting amendment.

SUMMARY: On December 30, 2008, FRA published a final rule, pursuant to two statutes, which increased the minimum, ordinary maximum, and aggravated maximum civil monetary penalty it may apply when assessing a civil penalty for a violation of a railroad safety statute or regulation under its authority. (73 FR 79698). In preparing that final rule for publication, an error was made: FRA instructed that the numerical amount ''$16,000'' be removed from footnote 1 of appendix A to 49 CFR part 232 of the final rule and the numerical amount ''$25,000'' be added in its place. The instruction should have directed the removal of the numerical amount ''$11,000'' and the addition of ''$25,000'' in its place.

DATES: The correction to the final rule is effective on April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6001), *stephen.n.gordon@dot.gov*.

SUPPLEMENTARY INFORMATION: An error was included in the final rule published on December 30, 2008. (73 FR 79698). FRA failed to account for an October 16, 2008 amendment to footnote 1 in appendix A to part 232. The October 16, 2008 amendment inadvertently changed the total ordinary maximum civil penalty amount normally assessed per day for two or more violations within a

single unit of equipment from ''$16,000'' to ''$11,000''. (73 FR 61512).

As background, on September 6, 2007, FRA adjusted the ordinary maximum civil monetary penalty pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990. (72 FR 51194). As part of this inflation adjustment to the ordinary maximum civil monetary penalty, FRA amended footnote 1 to appendix A in part 232 by increasing the ordinary maximum civil monetary penalty to ''$16,000''. As a result, footnote 1 read, in pertinent part, ''[g]enerally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $16,000 per day.'' (72 FR 51197).

The October 16, 2008 amendment was part of a broader change in part 232 that was not focused on changing the inflation adjustment to the ordinary maximum civil monetary penalty for violations within that part. The October 16, 2008 amendment instituted FRA's new regulations for electronically controlled pneumatic (ECP) brake systems. In the process of promulgating the new ECP brake systems rules, FRA unintentionally removed the correct numerical amount ''$16,000'' and re-inserted the superseded numerical amount ''$11,000'' in its place. (73 FR 61556–57).

FRA's December 30, 2008 adjustment of the ordinary maximum civil monetary penalty directed that the numerical amount ''$16,000'', which was no longer included in the text of footnote 1, be removed and replaced by the numerical amount ''$25,000''. The final rule published on December 30, 2008 should have instructed that the numerical amount ''$11,000'' be removed and the numerical amount ''$25,000'' be added in its place. FRA is correcting this minor error so that the final rule clearly conforms to FRA's intent.

List of Subjects in 49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

■ In accordance with the foregoing, 49 CFR part 232, chapter II, subtitle B of title 49, Code of Federal Regulations is corrected by making the following correcting amendment:

PART 232—[AMENDED]

■ 1. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Appendix A to Part 232—[AMENDED]

■ 2. Footnote 1 to appendix A of part 232 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$25,000''.

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

Jo Strang,

Acting Deputy Administrator, Federal Railroad Administration.

[FR Doc. E9–7566 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 373

[Docket No. FMCSA–1997–2290]

RIN 2126–AA25

General Jurisdiction Over Freight Forwarder Service

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

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends its regulations to require all surface freight forwarders to issue a receipt or bill of lading on each shipment for which they arrange transportation of freight by commercial motor vehicle in interstate commerce. This regulatory change implements amendments enacted in the ICC Termination Act of 1995 (ICCTA). While the current rule concerning receipts or bills of lading applies only to household goods freight forwarders, the new rule applies to both household goods and non-household goods freight forwarders.

DATES: Effective May 6, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, *Telephone*: (202) 366–5370, *E-mail address: FMCSAregs@dot.gov*.

Availability of Rulemaking Documents

For access to docket FMCSA–1997–2290 to read background documents and comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of DOT's 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). This statement is also available at *http://www.regulations.gov*.

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

This final rule is based on the authority of the ICCTA (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995). The ICCTA gave the Secretary of Transportation (Secretary) general jurisdiction over all freight forwarder service involving transportation in interstate commerce under 49 U.S.C. 13531. Under 49 U.S.C. 13301(a), the Secretary is authorized to issue regulations to carry out the provisions of the ICCTA applicable to motor carriers, brokers, and freight forwarders.

Under 49 U.S.C. 14706(a), motor carriers and freight forwarders providing transportation or service subject to the Secretary's jurisdiction must issue a receipt or bill of lading for property received for transportation. These entities are liable for loss of, or damage to, the property described in the receipt or bill of lading.

The statutory requirement to provide a receipt or bill of lading was implemented in order for claimant parties (shippers) to make a *prima facie* case against motor carriers and freight forwarders under the Carmack amendment.[1] A receipt or bill of lading provides evidence that goods were delivered to the carrier or freight forwarder. If goods are damaged, the receipt or bill of lading can specify the monetary value of the cargo, i.e., the loss resulting from damage.

Part 370 of title 49, Code of Federal Regulations (CFR) (formerly 49 CFR part 1005), sets forth the principles and practices for the investigation and voluntary disposition of claims for loss, damage, injury, or delay to cargo handled by motor carriers and freight forwarders. It implements the Carmack amendment, as does 49 CFR part 373 pertaining to the issuance of receipts and bills of lading by motor carriers and freight forwarders.

[1] The Carmack amendment to the Interstate Commerce Act was passed in 1906 as part of the Hepburn Act, ch. 5391, 34 Stat. 584. It established uniform liability procedures for goods transported in interstate commerce. Its terms are now found at 49 U.S.C. 14706.

This final rule harmonizes 49 CFR 373.201, entitled ''*Bills of lading for freight forwarders*,'' with the statutory requirements of the ICCTA. It revises 49 CFR 373.201 to include the general commodities segment of the freight forwarding industry within its scope. This revision is consistent with the receipt or bill of lading requirements imposed on all freight forwarders by 49 U.S.C. 14706(a).

A more recent legislative provision affecting the freight forwarding industry, section 4142 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), authorized the Secretary to continue registering general commodities freight forwarders if ''[t]he Secretary finds [(1)] that such registration is needed for the protection of shippers and [(2)] that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations.'' The Agency found that registration of general commodities freight forwarders is needed for the protection of shippers (see 71 FR 50115, Aug. 24, 2006). This finding reaffirmed the ICCTA mandate requiring FMCSA to register all freight forwarders. Thus, the FMCSA continues to register all general commodities freight forwarders subject to its jurisdiction and to require procedures necessary for the protection of shippers.

In addition, section 4303(c) of SAFETEA–LU directed FMCSA to eliminate the distinction between motor common or contract carriers in registration. Thus, FMCSA makes a technical correction to the existing rule to eliminate the word ''common'' from within its scope.

II. Background

In January 1997, the Federal Highway Administration (FHWA), the predecessor agency to FMCSA within the DOT, issued a notice of proposed rulemaking (NPRM) (62 FR 4096, Jan. 28, 1997) to amend 49 CFR 373.201, under the then existing heading ''Bills of Lading for Freight Forwarders.'' The NPRM proposed to require that all freight forwarders, not just household goods freight forwarders, issue a receipt or bill of lading for the transportation of each shipment they arrange for transportation in interstate commerce.

As proposed in the NPRM, this final rule amends 49 CFR 373.201, first by retitling it ''*Receipts and bills of lading for freight forwarders*,'' and then by including within its scope all segments of the freight forwarding industry. This regulation implements the statutory requirement for issuing a receipt or bill of lading imposed on all freight forwarders by 49 U.S.C. 14706(a).

The term freight forwarder is defined at 49 U.S.C. 13102(8) as follows:

> * * * a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—
>
> (A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;
>
> (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and
>
> (C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.
>
> The term does not include a person using transportation of an air carrier subject to part A of subtitle VII [of title 49, U.S.C.].

History

This rulemaking has a long history, which was explained in detail in the NPRM. The Surface Freight Forwarder Deregulation Act of 1986 (Pub. L. 99–521, 100 Stat 2993, Oct. 22, 1986) (the Deregulation Act), substantially deregulated the general commodities segment of the freight forwarding industry, but it retained the regulation of freight forwarders that service the transportation of household goods.

To implement pertinent provisions of the Deregulation Act, the former ICC made minor revisions in the CFR to exclude general commodities freight forwarders from the scope of most ICC rules applicable to freight forwarders. *See* Ex Parte No. MC–184, *Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986*, 3 I.C.C. 2d 162 (1986). In its 1986 rulemaking, the ICC did not revise the regulations for the issuance of bills of lading (former 49 CFR part 1081, now redesignated as 49 CFR part 373, subpart B) [2] to exclude general commodities freight forwarders from their scope because the ICC determined ''[t]he Carmack amendment requires all carriers and freight forwarders to issue bills of lading for property they receive (49 U.S.C. 11707(a)(1)) and is central to its liability provisions.'' *See* 3 I.C.C. 2d 162 at 166 (1986).

In 1990, the ICC issued a final rule (*Practice and Procedure—Misc. Amendments—Revisions*, 6 I.C.C. 2d 587 (1990)), which amended former 49 CFR 1081.1 to require only household goods freight forwarders to issue bills of lading. The ICC did not explain why it was making this change, in light of its recognition in the 1986 rulemaking proceeding that general commodities freight forwarders were still subject to Carmack amendment requirements. Whatever the reason for the regulatory change, the underlying statutory requirement that all freight forwarders issue receipts or bills of lading for property they receive or deliver for transportation in interstate commerce remains unchanged.

Then, in 1995, ICCTA, at 49 U.S.C. 13531, re-established the Secretary's jurisdiction over all segments of the freight forwarding industry. This jurisdiction included the requirement that general commodities freight forwarders must register to operate in interstate commerce.

III. Discussion of Comments to the NPRM

In response to the January 28, 1997, NPRM, FMCSA received 11 comments from freight forwarding entities, trucking companies, shippers and the Advocates for Highway and Auto Safety (Advocates).[3] The following commenters agree with the original proposal to amend part 373. The Health and Personal Care Distribution Conference, Inc., and National Small Shipments Traffic Conference, Inc., note that the change to 49 CFR 373.201 is necessary to ''remove an inconsistency in the regulation.'' Freight Forwarders Council, Transportation Intermediaries, and Advocates also offer qualified support for the rule change.

In contrast, Monheim, MRS, Unisource, and Tucker oppose the proposed amendment to part 373.

Comments About ICCTA Provisions Unrelated to Freight Forwarders

In the preamble to the NPRM, the Agency provided information about a number of new requirements of the ICCTA to help make the public aware of the statutory changes. Those discussions were informational only and were not intended to be the basis for this regulatory action. However, a

[2] Title 49 CFR part 1081 was redesignated as 49 CFR part 373, subpart B, on October 21, 1996 (61 FR 54706).

[3] The Agency received comments from Freight Forwarders Council of America, Inc. (Freight Forwarders Council); Health and Personal Care Distribution Conference, Inc.; MRS Freight Forwarding Services, Inc. (MRS); William J. Monheim, STB Practitioner (Monheim); National Small Shipments Traffic Conference, Inc.; Transportation Intermediaries Association (Transportation Intermediaries); William J. Tucker, CTB, president of Tucker Company (Tucker); Unisource Transportation Services, Inc. (Unisource); and the Advocates. The Health and Personal Care Distribution Conference, Inc. and National Small Shipments Traffic Conference, Inc. submitted joint comments through counsel. MRS and Unisource submitted nearly identical sets of comments.

substantial percentage of the comments to the docket focused on those informational discussions.

FMCSA acknowledges the concerns of the commenters, but their comments about the informational discussions do not have any bearing on the substance of the original proposal. Thus, the remainder of the discussion in the preamble to FMCSA's final rule will focus on the data, information, and comments related to the Agency's proposal concerning freight forwarder receipts and bills of lading.

Response to Comments

The objections are grouped into five categories: A) jurisdictional boundaries of the Agency over freight forwarders; B) flexible nature of freight forwarding operations and the extent to which this should be reflected in § 373.201; C) purpose, scope, and contents of the receipt or bill of lading; D) role of the bill of lading with respect to the liability provisions of the Carmack amendment (49 U.S.C. 14706); and E) other issues of interest. Comments are discussed under these categories below.

A. Jurisdictional Boundaries

Necessity for a Rule. MRS and Unisource set forth a number of arguments against bringing general commodities freight forwarders under the Secretary's jurisdiction. MRS and Unisource contend that because the freight forwarding industry neither abuses market power nor conducts its operations in ways contrary to the public interest, it should not be burdened with additional regulations and should be exempted under 49 U.S.C. 13541. Further, they state that the proposed change to § 373.201 is unnecessary because 49 CFR 1035.1 already requires all common carriers to issue bills of lading. They add that the requirement to issue bills of lading also is promulgated at 49 CFR 373.101, 373.103, and 373.105.

FMSCA Response. This rulemaking proceeding is not the proper forum for seeking an exemption under section 13541. A specific request for an exemption would have to be filed with the Agency in order to obtain such relief. In any event, under 49 U.S.C. 13541, FMCSA (pursuant to authority delegated by the Secretary) already concluded in August 2006 that continued registration of general freight forwarders is needed to protect shippers (71 FR 50115, Aug. 24, 2006).

The FMCSA disagrees with MRS and Unisource's contention that the proposed change to § 373.201 is unnecessary. Part 1035 applies to rail and water carriers only, i.e., it does not include motor carriers. While §§ 373.101, 373.103, and 373.105 apply to motor carriers, they do not apply to freight forwarders.

Consolidating Station in Terminal Area. MRS and Unisource state that, if a freight forwarder maintains a consolidating station in a terminal area, then 49 U.S.C. 13503(a)(1)(B)(iii) exempts the forwarder from the Agency's jurisdiction when conducting business at its consolidating station.

FMCSA Response. FMCSA agrees with MRS and Unisource that local transfer, collection, or delivery service provided by a freight forwarder in a terminal area continues to be exempt from the Secretary's jurisdiction under 49 U.S.C. 13503(a)(1)(B). However, this does not exempt the freight forwarder from providing a receipt or bill of lading for property it receives or delivers for regulated transportation, since this requirement applies to those services performed outside the terminal area. A receipt or bill of lading issued inside a terminal area has full validity for regulated transportation outside the terminal area and in commerce. The requirement to issue a receipt or bill of lading depends on whether the transportation of those goods is regulated, not on where the receipt or bill of lading is issued. A freight forwarder performing assembly or consolidating services, or any variation on such services, is required under 49 U.S.C. 14706(a) to issue a receipt or bill of lading or provide its consent to the carrier to do so.

Applicability of § 373.201. MRS and Unisource question whether § 373.201 would be applicable in certain cases, and they give examples. They state that there are instances when the motor carrier, and not the freight forwarder, consolidates the freight being transported. They assert that the applicability of § 373.201 depends on the circumstances involved.

FMCSA Response. FMCSA agrees there are instances when the motor carrier, and not the freight forwarder, consolidates the freight being transported. A motor carrier providing consolidating services on behalf of the freight forwarder may obtain the freight forwarder's consent to issue the receipt or bill of lading. If, with the consent of the freight forwarder, the motor carrier issues the required receipt or bill of lading on behalf of the freight forwarder or delivers property for a freight forwarder on the freight forwarder's bill of lading, the freight forwarder has complied with § 373.201.

B. The Flexible Nature of Freight Forwarding Operations, and the Extent To Which This Should Be Reflected in § 373.201

Applicability of the Definition of Freight Forwarder. Tucker criticizes the NPRM preamble for using the statutory definition for the term freight forwarder.

FMCSA Response. FMCSA does not have the discretion to alter the statutory definition for the term freight forwarder. Although we recognize it may not convey fully the diverse services provided by agents who choose to represent themselves as freight forwarders today, FMCSA is required to use the statutory definition for freight forwarders.

Flexibility. Freight Forwarders Council, MRS, Unisource, Monheim, Tucker, and Transportation Intermediaries each asserts that freight forwarding operations have become increasingly flexible and diversified in response to changing market conditions. Several of these commenters also object to portions of the NPRM preamble language that they believe ignore these operational realities.

FMCSA Response. This final rule does not contradict the principle of economic deregulation that was reaffirmed in the ICCTA, nor does this action undermine the fundamental diversity and nature of freight forwarder operations. Regardless of whether a freight forwarder actually performs a particular service or provides for that service to be performed by someone else, it must assume legal responsibility for the transportation from the place of receipt to the place of destination. Consequently, a freight forwarder is still required to issue a receipt or bill of lading pursuant to 49 U.S.C. 14706.

C. The Purpose, Scope, Form, and Contents of the Receipt or Bill of Lading

Format and Contents of the Bill of Lading. Five commenters offered suggestions on the content of bills of lading. Freight Forwarders Council suggested that FMCSA use a model bill of lading, while Advocates recommended stamping the bill of lading with reliable dates and with departure and arrival/delivery times. Transportation Intermediaries wanted to develop uniformly accepted transportation documentation.

FMCSA Response. There is a significant difference between the receipt and bill of lading requirements in § 373.101, which specify information that must be contained on the motor carrier's receipt or bill of lading, and those of § 373.201 that apply to freight forwarders. Section 373.201 only

requires that a freight forwarder issue a receipt or bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Section 373.201 does not specify what information must be contained on the receipt or bill of lading or prescribe the format of these documents. The Agency does not approve or recommend any particular model receipt or bill of lading for freight forwarders to use in their operations, and the form and content of these documents is beyond the scope of this final rule.

Practicality of Requiring a Receipt or Bill of Lading. MRS and Unisource believe that imposing a requirement for general commodities freight forwarders to issue a second receipt or bill of lading, in addition to one issued by the motor carrier that picks up the shipment, is impractical and creates confusion for the freight forwarding industry.

FMCSA Response. The issuance of a receipt or bill of lading is a long-standing practice observed by the entire freight forwarding industry and is required by statute. Consequently, FMCSA believes most parties to a freight forwarding transaction will not be confused or burdened by this requirement.

D. Role of the Bill of Lading With Respect to the Liability Provisions of the Carmack Amendment (49 U.S.C. 14706)

Bill of Lading Not Necessary. Three commenters assert that it is no longer necessary for freight forwarders to issue bills of lading. Tucker believes that this rule change will not benefit freight forwarders or customers because, in his view, the liability protections provided by the Carmack amendment flow from a prior contract of carriage and not the bill of lading. Transportation Intermediaries similarly asserts that, under section 14101(b), bills of lading are not necessary since freight forwarders and shippers may mutually ''waive any or all rights and remedies under this part for the transportation covered by contract.'' Monheim asserts that ICCTA abolished the distinction between common and contract carriers, allowing freight forwarders to exercise the contract authority provided under section 14101(b). Monheim comments that the provisions of the Bills of Lading Act no longer apply to freight forwarders.

FMCSA Response. The liability provisions of the Carmack amendment, codified at 49 U.S.C. 14706, apply to all transportation under the jurisdiction of the Secretary. Motor carriers and freight forwarders providing transportation or service are liable to the ''person entitled to recover [compensation for loss or damage to the property] under the receipt or bill of lading.'' Section 14706(a) makes it clear that failure to issue a receipt or bill of lading does not change the liability of the carrier. In addition, section 14706(a) does not require a prior contract of carriage to tie in the Carmack liability provisions. Whether the statute is recognized in the marketplace is immaterial because the section 14706 liability provisions apply to receipts and bills of lading. Although a contract of carriage would indeed take precedence in a court of law over a receipt or bill of lading containing no contractual terms, the receipt or bill of lading nonetheless carries legal force and effect under the general liability provisions of section 14706(a).

Finally, the assertion that a receipt or bill of lading is no longer required because of 49 U.S.C. 14101(b) is not correct. That provision enables carriers subject to chapter 135 of title 49 U.S.C. (including general commodities freight forwarders) to enter into contracts of carriage that could potentially waive any or all rights covered by the contract, with certain exceptions not pertinent to this rule. However, the option of waiving the receipt or bill of lading requirement is not reason enough to forego imposing it, since not everyone will choose to waive the requirement.

Rule Change is Impractical. Unisource contends that FMCSA's proposed amendment to § 373.201 will be impractical; cause confusion among shippers, motor carriers, dispatchers, and freight forwarders; and raise questions about liability. It asks, for example, if a freight forwarder would be liable for a shipment that was lost or damaged before it was received merely because its name is on the bill of lading.

FMCSA Response. The issue Unisource raises would be determined under contract law, other case law, and circumstantial evidence. If a forwarder has not physically accepted a shipment, the forwarder would not be liable—that is, would not be required to accept legal responsibility for the loss or damage—merely because its name is on the bill of lading, unless the contract of carriage specified otherwise.

E. Other Issues of Interest

The NPRM is Misleading. Monheim contends that the NPRM is misleading with regard to a State's role in regulating freight forwarders. Unless the carrier specifically requests that a State's regulations apply to the carrier, Monheim believes that the States are completely removed from any regulation of freight forwarders for rates, routes or services, including bills of lading.

FMCSA Response. The NPRM merely stated that, under 49 U.S.C. chapter 145, Federal preemption of general commodities freight forwarders was narrowed in several respects. Chapter 145 allows States to regulate freight forwarders' intrastate activities in these areas if compliance is no more burdensome than interstate compliance under Federal law.

Paragraphs (b) and (c) of 49 U.S.C. 14501 prohibit State regulation of intrastate rates, intrastate routes, and intrastate services of freight forwarders of property; but they make a partial exception for uniform cargo liability rules, uniform bills of lading or receipts, uniform cargo credit rules, and certain antitrust immunity. No other distinction was intended here.

Significance of this Final Rule. Tucker challenges the NPRM's estimate that the rule will have an annual effect on the general commodities segment of the freight forwarding industry of less than $100 million. He contends the Agency has no basis for assuming that the ratio of general commodities freight forwarders to household goods freight forwarders is essentially the same today as in 1986.

Unisource believes that the rule would place a significant unnecessary burden on shipments made via a general commodities freight forwarder, versus those placed on other modes of transportation.

FMCSA Response. The cost impact analysis in the NPRM assumed the same ratio of general commodities freight forwarders to household goods freight forwarders of 8.4 to 1 as in 1986, when the Deregulation Act was enacted. The ratio has decreased considerably since then. The analysis set forth below updates this information.

As of November 2007, the last complete year of available data, there were 1,402 active entities on file at FMCSA in the Licensing and Insurance (L&I) information system that identified themselves to FMCSA as freight forwarders.[4] Of these, 1,117 identified themselves as general commodities freight forwarders; and 285 identified themselves as household goods freight forwarders. This is a ratio of approximately 3.9 to 1 of general commodities freight forwarders to household goods freight forwarders. This considerable drop from the 1986 ratio of 8.4 to 1 may indicate that some

[4] All freight forwarders—general commodities and household goods—are required to register with FMCSA for their operating authority.

general commodities freight forwarders are choosing to represent themselves as brokers.

Regarding the economic impact of this rule, the issuance of receipts or bills of lading by freight forwarders—including general commodities freight forwarders—is a well-established business practice. In the words of the Freight Forwarders Council:

> All forwarders today issue bills of lading, so no change will be caused by the adoption of the proposed regulations. Not to issue a bill of lading violates [the] Federal statute [at] 49 U.S.C. 14706(a).
>
> [See docket item FMCSA–1997–2290–0005–0001]

Since forwarders have for many years been required to issue receipts or bills of lading, there should be no significant increase in cost by making 49 CFR 373.201 conform to the long-standing statutory requirement. Thus, a requirement for general commodities freight forwarders to issue a receipt or bill of lading will not, in the aggregate, generate an economic burden or create a major increase in costs or prices or have a significant adverse effect on any sector of the industry. FMCSA's issuance of this final rule merely reestablishes the consistency between statutory and regulatory requirements.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this final rule will be minimal.

A receipt or bill of lading is a document that lies at the heart of every transportation transaction. It documents a bilateral agreement under which both sides make guarantees. The requirement for all freight forwarders to issue a receipt or bill of lading for property they transport has been in effect by statute since 1942 and by regulation until 1990, when the former ICC changed its regulations to limit the requirement to household goods freight forwarders. Based on comments from the Freight Forwarders Council and verification checks made for FMCSA (as discussed in footnote 5), it appears it is a usual and customary practice for most general commodities and household goods freight forwarders to issue such a document in the normal course of doing business.

This rule revises 49 CFR 373.201 to include general commodities freight forwarders within the scope of the FMCSA's receipt and bill of lading regulation, as required by 49 U.S.C. 14706. This action requires that all parties to a transportation transaction be given documentation of their shipping arrangement. The FMCSA has evaluated the economic impact of the proposed changes on the general commodities freight forwarding segment of the industry and determined that the rule change is within the statutory mandate, and is reasonable, appropriate, and does not impose significant costs to the general commodity segment of the freight forwarding industry.

This final rule removes any uncertainty with respect to which freight forwarders are required to issue a receipt or bill of lading for property they accept for transportation in interstate commerce. Given that most general commodities freight forwarders already issue a receipt or bill of lading, FMCSA anticipates none of these freight forwarders will expend any additional effort and resources to comply with amended § 373.201.[5]

Consequently, FMCSA does not believe this final rule will have an annual effect on the general commodities freight forwarder segment of the forwarding industry of $100 million or more, lead to a major increase in costs or prices, or have a significant adverse effect on any sector of the economy. Thus, requiring all freight forwarders to comply with this final rule to provide a receipt or bill of lading will not significantly impact the industry.

The Agency is not required to prepare a stand-alone Regulatory Analysis. However, because of the concern expressed by some commenters that there might be a large impact, the Agency has prepared one to fully explain the costs and benefits of this rulemaking action. A copy of the analysis is included in the docket (FMCSA–1997–2290).

[5] After reviewing the comments to the proposed rule and conducting a literature search on the issuance of bills of lading by freight forwarders, FMCSA concluded that as a usual and customary practice freight handed over to a carrier was accompanied by a receipt or bill of lading. To confirm this, FMCSA attempted to contact some firms in the industry and the trade associations who submitted comments to the proposed rule. Calls were made on August 9, 2006, to: Transportation Intermediaries; Powers Freight Express of Lynbrook, New York; York Services, Inc. of York, Pennsylvania; and Patron Services, Inc. of Baltimore, Maryland. Each indicated that they believed most freight forwarders issue receipts or bills of lading in the normal course of doing business.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities, which comprise well above 50 percent of the freight forwarding industry, and has determined that this final regulatory action will not have a significant impact on a substantial number of small entities.

One reason this action does not have a significant impact on general commodities freight forwarders is that they have been required by statute to issue receipts and bills of lading since 1942. In 1990, the ICC removed this requirement from its regulations, notwithstanding the statutory requirement. This rule reestablishes in 49 CFR 373.201 this long standing statutory requirement that all freight forwarders are required to issue receipts or bills of lading for the transportation they arrange in interstate commerce.

Based on all information available to the Agency, including comments from Freight Forwarders Council and FMCSA checks of industry practices, the Agency believes that most freight forwarders have, for many years, been aware of this statutory requirement. Issuing a receipt or bill of lading is a well established, usual and customary business practice of general commodities freight forwarders and the industry as a whole. Accordingly, the practical consequence of today's final rule for the vast majority of freight forwarders is negligible.

The small minority of general commodities freight forwarders not already providing a receipt or bill of lading as legal documentation will now be required by regulation, as well as statute, to issue such a document. To the limited extent that this rule may result in incremental increases in compliance with the receipt or bill of lading requirements, the public, freight forwarders, and their customers alike will benefit from this requirement. In particular, small entities that rely on general commodities freight forwarder service will benefit from the Agency requiring general commodities forwarders to provide a receipt or bill of lading establishing legal documentation for any loss, damage, or injury to the property that may be transported after the freight forwarder takes possession of the goods tendered.

Commenters have not presented any information to suggest or convince us that there will be a significant economic impact on the general commodities freight forwarder industry by promulgation of this final rule. This final rule merely mandates that they be

in compliance with the long-standing statutory requirement and perform what is already the industry's usual and customary business practice—namely, to issue a receipt or bill of lading for the property for which they arrange transportation in interstate commerce.

Executive Order 13132 (Federalism)

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined that this rulemaking will not have a substantial direct effect on States, nor will it limit the policy-making discretion of the States. Nothing in this document will preempt any State law or regulation. FMCSA has therefore determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. As noted above, the practice of issuing receipts or bills of lading for cargo transported is a well established, usual and customary business practice of all freight forwarders. Therefore, FMCSA believes the paperwork reduction exception for usual and customary business practice applies in this case. Thus, this action does not involve an information collection that is subject to the requirements of the PRA.

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004, in the **Federal Register** (69 FR 9680), that this action has a categorical exclusion (CE) under Appendix 2, paragraph 6.l. of the Order from further environmental documentation. That CE relates to establishing regulations, and actions taken pursuant to these regulations, concerning motor carrier's issuance and retention of bills of lading. In addition, the Agency believes that this action involves no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

The Agency has also analyzed this final rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking action. (See 40 CFR 93.153(c)(2)(iii).) It will not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that this final rule will not increase total commercial motor vehicle (CMV) mileage, nor will it change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. By this action, FMCSA merely updates its existing regulation at § 373.201 to require that all freight forwarders issue receipts or bills of lading consistent with statutory requirements.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation.

Unfunded Mandates Reform Act of 1995

This rulemaking will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $136.1 million or more in any one year.

Executive Order 12630 (Taking of Private Property)

This final rule does 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.

Executive Order 13211 (Energy Supply, Distribution, or Use)

The FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a ''significant energy action'' under that Executive Order because it will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084. Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 13045 (Protection of Children)

The FMCSA analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FMCSA determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Privacy Impact Assessment

The FMCSA conducted a privacy impact assessment of this proposed rule as required by section 522(a)(5) of division H of the Fiscal Year (FY) 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (December 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment determined there are no privacy information impacts.

List of Subjects in 49 CFR Part 373

Bills of lading, Highway safety, Highways and roads, Motor carriers.

■ For the reasons set forth above, FMCSA amends chapter III of title 49 CFR as follows:

PART 373—RECEIPTS AND BILLS

■ 1. Revise the authority citation for part 373 to read as follows:

Authority: 49 U.S.C. 13301, 13531 and 14706; and 49 CFR 1.73.

■ 2. Revise § 373.201 of subpart B to read as follows:

§ 373.201 Receipts and bills of lading for freight forwarders.

Each freight forwarder must issue the shipper a receipt or through bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the freight forwarder's name, then the freight forwarder, upon receiving the shipment at the ''on line'' or consolidating station, must issue a receipt or through bill of lading on its form as of the date the carrier receives the shipment.

Issued on: March 30, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–7639 Filed 4–3–09; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2008–0109; 91200–1231–9BPP]

RIN 1018–AW11

Migratory Bird Permits; Revision of Expiration Dates for Double-Crested Cormorant Depredation Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of final environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, extend the expiration dates for two existing depredation orders for double-crested cormorants (*Phalacrocorax auritus*) for 5 years so that we can continue to authorize take of double-crested cormorants without a permit under the terms and conditions of the depredation orders. This action will continue to allow take of depredating double-crested cormorants to protect aquaculture, fish hatcheries, fish resources, other birds, vegetation, and habitats.

DATES: This rule will be effective on April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Terry Doyle, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1799.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). The MBTA authorizes the Secretary of the Interior, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds.

The double-crested cormorant (*Phalacrocorax auritus*), a long-lived, colonial-nesting waterbird native to North America, is a migratory bird that is federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, as amended, 50 Stat. 1311, T.S. No. 912 and is included on the list of species protected by the MBTA at 50 CFR 10.13. Therefore, take of double-crested cormorants is strictly prohibited except as authorized by regulations implementing the MBTA.

Increasing populations of the double-crested cormorant have caused biological and socioeconomic resource conflicts. The species' diet primarily consists of fish, and double-crested cormorant populations can decrease fish populations in open waters and in aquaculture facilities. In addition, their guano can kill trees, shrubs, and other vegetation. In November 2001, the Service completed a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS examined six management alternatives for addressing conflicts with double-crested cormorants: (A) No Action, (B) Nonlethal Control, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting.

On March 17, 2003, we published a proposed rule in the **Federal Register** (68 FR 12653) to implement the DEIS proposed action; Alternative D, Public Resource Depredation Order. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations and for specific purposes, without a depredation permit. The proposed rule proposed revising the existing aquaculture depredation order to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising the Fish and Wildlife Service Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries.

On August 11, 2003, we published a notice of availability for a Final Environmental Impact Statement (FEIS) (68 FR 47603). In the FEIS, we assessed the impacts of the proposed depredation orders and determined that they would not significantly affect the status of the species. The selected action in the FEIS was Alternative D, Public Resource Depredation Order. This alternative was intended to enhance the ability of resource agencies to deal with immediate, localized damages caused by depredating double-crested cormorants by giving these agencies more management flexibility. The FEIS is available by contacting us at the address in **FOR FURTHER INFORMATION CONTACT.** Finally, on October 10, 2003, we published a final rule (68 FR 58022) that set forth regulations for implementing the FEIS preferred alternative: Alternative D (establishment of a public resource depredation order and revision of the aquaculture depredation order).

These depredation orders reside in part 21 of title 50 of the Code of Federal Regulations (CFR), which covers migratory bird permits. Subpart D of part 21 deals specifically with the control of depredating birds and currently includes eight depredation orders. The depredation orders at 50 CFR 21.47 (''Depredation order for double-crested cormorants at aquaculture facilities'') and 21.48 (''Depredation order for double-crested cormorants to protect public resources'') allow for take of the species under the provisions of our 2003 EIS. When we issued the final rule in 2003 we recognized the need for more information about double-crested cormorants and their impacts on resources across a variety of ecological settings, so we established an expiration date for the depredation orders of April 30, 2009, and included requirements for annual reporting to the Service of actions taken under the orders.

The data we have gathered since the issuance of the final rule in 2003, taken in concert with data from the 2003 EIS suggest that the orders have not had any significant negative effect on double-crested cormorant populations; data suggest that cormorant populations are stable or increasing with the orders in effect. Extending the orders will not, in the judgment of Service biologists, pose a significant, detrimental effect on the long-term viability of double-crested cormorant populations and will serve to mitigate the damage that these populations can cause to certain resources.

Accordingly, we published a proposed rule December 8, 2008 (73 FR 74445), to extend the depredation orders for double-crested cormorants at 50 CFR 21.47 and 21.48 for five more years. We believe it is prudent once again to establish an expiration date to ensure appropriate consideration of accumulated information. We proposed to extend these depredation orders so that we can continue to authorize take of double-crested cormorants without a permit under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions. If we do not extend these depredation orders, any action to control depredating double-crested cormorants will require a permit. We prepared a draft environmental assessment (DEA) to analyze the environmental impacts associated with our proposed extensions and invited the public to comment on the DEA and our proposed extension.

Effective Date

In accordance with paragraph (d)(3) and (d)(1) of the Administrative Procedure Act (5 U.S.C. 553), we find good cause to make this rule effective less than 30 days after publication. This substantive rule grants an exemption in that, if we do not extend these depredation orders, any action to control depredating double-crested cormorants will require a permit. As stated earlier in the preamble, we have no data to suggest that the depredation orders have had any significant negative effect on double-crested cormorant populations, and extending the orders will serve the public good by mitigating the damage that these populations can cause to certain resources.

Comments on the Proposed Rule

We received 18 comments on the proposed rule, including one from the Mississippi Flyway, four from State agencies, one from a Tribe, and two from interest groups. Major issues raised by commenters were the following:

Issue. *The Draft Environmental Assessment (DEA) is insufficient.*

''The Draft Environmental Assessment (DEA) on which it [the proposed rule] is based is an inadequate document. Our three organizations have long been concerned that the cormorant depredation orders have not been sufficiently based on science. We are writing to emphasize the importance of completing a Supplemental Environmental Impact Statement (SEIS) before reauthorizing these depredation orders.''

''USFWS needs to examine the full scope of the conflicts it seeks to evaluate and address. Set against the background of water pollution, dredging, non-native invasive species, unsustainable commercial take, development, erosion, loss of wetlands, climate change, and other factors, the cormorant/recreational fishing/public resource conflict is extremely complex. The DEA fails to demonstrate that killing cormorants and destroying their eggs and nests will provide relief to resources impacted in systematic and myriad ways. USFWS also needs to update any population dynamics models that are to be used to justify the take of cormorants and to share those models with concerned citizens for their comment.''

''It is especially disappointing that the DEA does not address the issues raised in the 'Review of the Double-crested Cormorant Management Plan, 2003: Final Report of the American Ornithologists' Union Conservation Committee's Panel.' Their conclusions and recommendations are still relevant today: 1. Public perceptions and public attitudes related to the natural history of cormorants need to be addressed. 2. Serious attention must be given to finding innovative and economically appropriate methods for excluding piscivorous birds from fixed site facilities, such as aquaculture ponds and hatcheries, or reducing the attractiveness of such sites. 3. Further study is needed to understand better the causes and possible mitigation of declining yields in sport-fishery. 4. Management planning would benefit from new data collection on fish take by cormorants in a variety of regions, including species and size/age classes, and the relationship between local take and fish densities, and dynamics at larger (fish population) scales. All these should be fully addressed in an SEIS.''

''I believe that a 5 year extension is unwarranted and should be shortened to the minimum time required to: (1) Analyze the extant data in depth, (2) publish that analysis in the open scientific literature where it can be reviewed by the broad community of wildlife and fishery population biologists, and (3) develop a real adaptive management plan that can be discussed by stakeholder groups, including those interested in the ethical issues arising from these proposed actions, not just those with economic or fish harvest objectives. I suggest a time frame of extending these orders on the order of 2 years to force the Federal management agencies (particularly the Fish and Wildlife Service * * *) to take these issues seriously and provide leadership on these issues.''

''The DEA fails to present critical information about the impact of the past five years of cormorant management.''

Response. Data collected in support of the 2003 EIS and since the completion of the EIS continue to suggest that the affected DCCO populations are stable or increasing. For example, a Great Lakes-wide census was conducted in 2005 and 2007 by Federal, State, tribal, and provincial agencies. The total take from 2004 through 2007 under the Public Resource Depredation Order published in October 2003 in Great Lake States was 30,353 birds, which amounts to an average annual take of 7,589 or 2.2% of the total Great Lakes population. Analysis of Double-crested Cormorant banding data for birds banded in the Great Lakes from 1979–2006 indicates that the depredation orders have likely had a negative effect on annual survival of ''hatch-year'' age-class cormorants in the Great Lakes. The effect of the orders on survival after that year was unclear. We also used annual counts of nests from the Lake Erie and Ontario from 1979–2007; annual harvests of cormorants from each lake in the Great Lakes from 2003–2007; the number of eggs oiled in each lake from 2005 to 2007; and the number of nesting individuals in each lake in 2005 and 2007 to model population dynamics. Our model estimates that, if harvest or cormorants and egg oiling remain at the current rates, the population would decline by approximately 20% by 2014 which is approximately three times the size of the population in the early 1990s.

We will obtain additional data on the population trend after the censuses to be conducted this year and in the future. The depredation orders require agencies taking action under them to provide to us report detailing activities conducted under the orders, including, by date and location, a summary of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled. In addition, we have conducted Service-sponsored technical workshops have been conducted annually since 2005. Data on the impacts of control on other species of birds that nest with double-crested cormorants have been collected by Federal, State, and Canadian wildlife officials.

We recognize that it probably will be necessary to update the EIS at some time in the future. The data available to us suggest that double-crested cormorant populations have not been harmed by the orders in effect. We have complied with our goals stated in the 2003 EIS by making every effort to capture data from improved double-crested cormorant population

monitoring that will allow us to assess population changes subsequent to implementation of the depredation orders. The data that are available are summarized in the Environmental Assessment.

Issue. ''The DEA fails to evaluate any non-lethal alternatives. As they may prove to be more effective including cost effective, this is a serious omission.''

Response. An Environmental Assessment must consider a no-action alternative, which we did. The other alternatives considered were germane to the issue. We did not intend to expand double-crested cormorant management alternatives or to supplement the EIS at this time.

Issue. ''The very concept of granting states, tribes, and aquaculturists license to take cormorants without permit is a novel policy issue in that it sets a precedent for similar actions regarding other species of migratory fish-eating birds like pelicans, herons, and egrets. Many of those species were severely threatened by similarly large scale killing programs a century ago. Protection of those species in particular was a major impetus for developing the Migratory Bird Treaty under which FWS now operates. Is it now FWS policy that conserving migratory bird populations means nothing more than that those populations do not reach dangerously low, perhaps irreversibly low, levels so that they require action under the Endangered Species Act?''

Response. These depredation orders do not present a novel policy issue. We have had depredation orders for other species in place, some for many years. Depredation orders are a tool to manage migratory bird populations. Provided that we can ensure that the orders do not substantially harm the double-crested cormorant population, they are in keeping with our mandate to protect bird populations. The data do not indicate that the orders will substantially harm cormorant populations, nor cause them to reach dangerously low population levels. To the contrary, relevant data indicates that the cormorant population is stable or increasing increased since we authorized the depredation orders in 2003.

Issue. ''We hope the U.S. Fish and Wildlife Service would not use the 5 years as a waiting period, but instead starts the SEIS during this time [the proposed 5 year extension] so that the evaluation process is nearly completed by 2014.''

Response. We believe our experience under the current depredation orders and the data we have gathered since they went into effect support a five year extension. We expect to undertake a supplemental EIS if new data and population reports warrant it, but at this time, we cannot set a particular date to start that effort.

Issue. *Two commenters suggested that the depredation order should not have an expiration date.*

''Regulations such as the double-crested cormorant depredation orders should not have expiration dates. Revising the regulations and doing additional NEPA analyses when the regulations expire add additional expenses for the agency, and could interfere with other needed work. With the limited funding under which the Fish and Wildlife Service operates, the agency should not set arbitrary expiration dates for its regulations.''

Response. The five year limitation allows us to undertake a reexamination of the rule after a reasonable period of time. We will continue to review available information on cormorant populations, fish populations, habitat changes, possible cormorant exclusion measures, and other relevant factors. We believe it is prudent to establish an expiration date to ensure appropriate consideration of accumulated information at that time.

Issue. Government-to-government consultation.

''* * * the USFWS states that 'we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.' We believe that this statement is not completely accurate because the situation with cormorants nesting on Tribal lands on Leech Lake has raised many additional issues for us and our relationships with the general public, especially the resort community. It has also caused us to have to divert funding and other resources in an effort to address the issue to the satisfaction of the public. We therefore think that this section needs revised, because our tribe, and potentially others, are currently and are likely in the future to experience the effects of this federal action.'' (Leech Lake Band of Ojibwe)

Response. We recognize that the government needs to consult with Tribes on natural resource management issues that may affect them. However, we proposed only to extend a depredation order that allows control of problematic double-crested cormorant populations. Doing so would allow the Tribe to continue control actions; in this case the proposed action was simply to extend the depredation orders; no substantive regulations change was contemplated.

The Public Resources Depredation Order ensures each Tribe's ability to make decisions about control actions for double-crested cormorants on Tribal land. We understand the additional burdens that these decisions place on Tribes, and therefore our Regional Offices will continue to consult with Tribes during implementation of this public resources depredation order consistent with our Government-to-Government relationship.

Comment. ''The original PRDO [Public Resource Depredation Order, 50 CFR 21.48], implemented in 2003, has provided NYSDEC with very acceptable latitude in the management of cormorants relative to identified public resource concerns. We applaud the Service for taking the necessary steps to enact this rule. We also strongly support the continuation of the authorities provided in the PRDO. As an aside, we have found the Service's oversight of the PRDO to be simple, clearly defined, and without undue burden. We believe the PRDO has allowed NYSDEC to address our resource needs while ensuring viable cormorant populations on the landscape.'' (New York State Department Environmental Conservation)

Comment. ''The Illinois Department of Natural Resources strongly supports Alternative B: Five-year Extension. This alternative * * * is in our opinion, the best recourse for the near future in Illinois.''

''A five-year extension of the depredation orders would allow us to pursue our goals of providing for a healthy sport fish population in the State of Illinois, and to assure that there are no detrimental effects on the viability of double-crested cormorant populations.''

Comment. ''The Department supports Alternative B * * *. Continued mechanisms to facilitate take are needed to ensure that fish, wildlife, and vegetation resources can be effectively managed and protected. A limited term extension to the Public Resource Depredation Order provides the states with the ability to manage cormorants while also working with the Fish and Wildlife Service to develop a long term, regional management framework.'' (State agency)

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is

not significant under E.O. (E.O.) 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action will not have a significant economic impact on a substantial number of small entities. The rule would allow small entities to continue actions they have been able to take under the regulations—actions specifically designed to improve the economic viability of those entities—and, therefore, will not significantly affect them economically. Because of the structure of wildlife damage management, the economic impacts of our action will fall primarily on State governments and the Wildlife Services Division of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. These do not qualify as ''small governmental jurisdictions'' under the Act's definition. Effects on other small entities, such as aquaculture producers, will be positive because such facilities may continue to control depredating cormorants without having to obtain a permit from the Service, but are not predicted to be significant. We certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)).

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It will not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property. In fact, this action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

Federalism

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the MBTA. While legally this responsibility rests solely with the Federal Government, in the best interest of the migratory bird resource, we work cooperatively with States and other relevant agencies to develop and implement the various migratory bird management plans and strategies. This action does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. It will allow, but will not require, States to develop and implement their own double-crested cormorant management programs. Therefore, in accordance with Executive Order 13132, this action does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

We examined these proposed regulations under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number. The Office of Management and Budget approved the information collection requirements for this part, and assigned OMB Control Number 1018–0121, which expires December 31, 2009. There are no new information collection requirements associated with this regulations change.

National Environmental Policy Act

We have completed a Final Environmental Assessment (FEA) on this proposed regulations change. The FEA is a part of the administrative record for this rule. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.* and Part 516 of the U.S. Department of the Interior Manual (516 DM), extension of the expiration dates of the depredation orders will not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources; therefore, preparation of an Environmental Impact Statement (EIS) is not required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential significant effects. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to

regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change will not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). We consulted on threatened and endangered species when we completed the 2003 EIS, and precautions to protect wood storks (*Mycteria americana*), bald eagles (*Haliaeetus leucocephalus*), piping plovers (*Charadrius melodus*), and least terns (*Sternula antillarum*) are in place in the depredation orders. We have concluded that the regulation change will not affect listed species.

Literature Cited

U.S. Fish and Wildlife Service. 2003. Final Environmental Impact Statement: Double-crested Cormorant Management. Available at *http://www.fws.gov/migratorybirds/issues/cormorant/finaleis/CormorantFEIS.pdf*.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

■ For the reasons stated in the preamble, we hereby amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.47 [Amended]

■ 2. Amend § 21.47(f) by removing the phrase ''April 30, 2009'' and adding in its place ''June 30, 2014.''

§ 21.48 [Amended]

■ 3. Amend § 21.48(f) by removing the phrase ''April 30, 2009'' and adding in its place ''June 30, 2014.''

Dated: March 30, 2009.

Will Shafroth,

Assistant Secretary.

[FR Doc. E9–7650 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 74, No. 64
Monday, April 6, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0310; Directorate Identifier 2009–NM–012–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 the Acceptance Test Procedure (ATP) of returned Inboard Flap Actuators * * * an excessive wear condition was identified regarding endplay between the flap actuator and ball screw. Excessive wear of the screw and ball nut could potentially lead to a flap system jam. * * *

* * * * *

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 May 6, 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 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*. 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: Fabio Buttitta, 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) 228–7303; fax (516) 794–5531.

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–2009–0310; Directorate Identifier 2009–NM–012–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–33R1, dated January 9, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During the Acceptance Test Procedure (ATP) of returned Inboard Flap Actuators Part Number (PN) 601R93101–19, an excessive wear condition was identified regarding endplay between the flap actuator and ball screw. Excessive wear of the screw and ball nut could potentially lead to a flap system jam. A Temporary Revision (TR) has been made to the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM), Appendix A, ''Certification Maintenance Requirements'' (CMR) to ensure that unacceptable wear on the nut and ball screw is detected and corrected.

Revision 1 of this directive introduces a new phase-in schedule for performing a new CMR task C27–50–300–01.

Relevant Service Information

Bombardier has issued Temporary Revision 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 Maintenance Requirements Manual. 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 668 products of U.S. registry. We also estimate that it would take about 3 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 $160,320, or $240 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:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2009–0310; Directorate Identifier 2009–NM–012–AD.

Comments Due Date

(a) We must receive comments by May 6, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, all serial numbers, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During the Acceptance Test Procedure (ATP) of returned Inboard Flap Actuators Part Number (PN) 601R93101–19, an excessive wear condition was identified regarding endplay between the flap actuator and ball screw. Excessive wear of the screw and ball nut could potentially lead to a flap system jam. A Temporary Revision (TR) has been made to the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM), Appendix A, ''Certification Maintenance Requirements'' (CMR) to ensure that unacceptable wear on the nut and ball screw is detected and corrected.

Revision 1 of this directive introduces a new phase-in schedule for performing a new CMR task C27–50–300–01.

Actions and Compliance

(f) Unless already done, within 30 days after the effective date of this AD, revise the Airworthiness Requirements section of Bombardier Model CL–600–2B19 MRM to include the information in Bombardier TR 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). The initial compliance time with the new CMR task must be done within 500 flight hours after the effective date of this AD.

Note 2: The actions required by paragraph (f) of this AD may be done by inserting a copy of Bombardier TR 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 MRM. When this TR has been included in general revisions of the MRM, the general revisions may be inserted in the MRM, provided the relevant information in the general revision is identical to that in Bombardier TR 2A–41.

FAA AD Differences

Note 3: 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 (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Fabio Buttitta, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 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 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 Canadian Airworthiness Directive CF–2008–33R1, dated January 9, 2009; and Bombardier Temporary Revision 2A–41, dated November 7, 2007, to Appendix A of the Airworthiness Requirements, Part 2, of the Bombardier CL–600–2B19 Maintenance Requirements Manual; for related information.

Issued in Renton, Washington, on March 30, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7643 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0309; Directorate Identifier 2008–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, 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:

Several cases have been reported of in-flight loss of the drive strut fitting from the movable fairing of flap track No. 3. Consequently, the flap track No. 3 fairing was detached from its aft end, and found hanging. Investigations have shown that the detachment of the aft lower drive strut fitting from the fairing occurred due to the four bonded inserts being pulled out.

This condition, if not corrected, could lead to in-flight loss of the affected aircraft parts, potentially resulting in injuries to persons on the ground.

* * * * *

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 May 6, 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*; 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) 227–1320.

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–2009–0309; Directorate Identifier 2008–NM–173–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 2008–0153, dated August 8, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Several cases have been reported of in-flight loss of the drive strut fitting from the movable fairing of flap track No. 3. Consequently, the flap track No. 3 fairing was detached from its aft end, and found hanging. Investigations have shown that the detachment of the aft lower drive strut fitting from the fairing occurred due to the four bonded inserts being pulled out.

This condition, if not corrected, could lead to in-flight loss of the affected aircraft parts, potentially resulting in injuries to persons on the ground.

For the reason described above, this AD requires the modification of the movable flap track fairing No. 3, both Left Hand (LH) and Right Hand (RH) side, and prohibits re-installation of unmodified units.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A330–57–3095, Revision 02, dated April 3, 2008; and A340–57–4103, Revision 01, dated April 3, 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 35 products of U.S. registry. We also estimate that it would take about 19 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $647 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 costs. 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 the proposed AD on U.S. operators to be $75,845, or $2,167 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–2009–0309; Directorate Identifier 2008–NM–173–AD.

Comments Due Date

(a) We must receive comments by May 6, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Models A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers (MSN), except those on which Airbus modification 55674 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all MSN, except those on which Airbus modification 55674 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Several cases have been reported of in-flight loss of the drive strut fitting from the movable fairing of flap track No. 3. Consequently, the flap track No. 3 fairing was detached from its aft end, and found hanging. Investigations have shown that the detachment of the aft lower drive strut fitting from the fairing occurred due to the four bonded inserts being pulled out.

This condition, if not corrected, could lead to in-flight loss of the affected aircraft parts, potentially resulting in injuries to persons on the ground.

For the reason described above, this AD requires the modification of the movable flap track fairing No. 3, both Left Hand (LH) and Right Hand (RH) side, and prohibits re-installation of unmodified units.

Actions and Compliance

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

(1) Within 60 months after the effective date of this AD, modify the left- and right-hand movable flap track fairing No. 3, in accordance with Airbus Mandatory Service Bulletin A330–57–3095, Revision 02; or A340–57–4103, Revision 01; both dated April 3, 2008; as applicable.

(2) Modifying the left- and right-hand movable flap track fairing No. 3 is also acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A330–57–3095, Revision 01; or A340–57–4103; both dated August 28, 2007; as applicable.

(3) Installing a repaired left- and right-hand movable flap track fairing No. 3 using replacement of a damaged insert by through-bolts at the drive strut attachment fitting is acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD in accordance with the repair instructions specified in Chapter 57–56–11, page block 201, in one of the Airbus structural repair manuals listed in Table 1 of this AD, as applicable.

TABLE 1—STRUCTURAL REPAIR MANUALS

Document	Revision	Date
Airbus A330 Structural Repair Manual	60	October 1, 2008.
Airbus A330 Structural Repair Manual	61	January 1, 2009.
Airbus A340–200/–300 Structural Repair Manual	64	October 1, 2008.
Airbus A340–200/–300 Structural Repair Manual	65	January 1, 2009.

(4) As of the effective date of this AD, no person may install a movable flap track fairing No. 3 on that airplane, unless it has been modified or repaired in accordance with the requirements 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) 227–1320. 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 Airworthiness Directive 2008–0153, dated August 8, 2008; and Airbus Mandatory Service Bulletins A330–57–3095, Revision 02, and A340–57–4103, Revision 01, both dated April 3, 2008; for related information.

Issued in Renton, Washington, on March 30, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7642 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0229; Airspace Docket No. 09–ASO–13]

RIN 2120–AA66

Proposed Revocation of VOR Federal Airway V–329; Alabama-Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke very high frequency omnidirectional range (VOR) Federal airway V–329, which extends between Montgomery, AL and the Crestview, FL, area. Revocation of the route is being proposed because a navigation aid that forms a segment of V–329 is planned for decommissioning due to recurring outages and maintenance problems.

DATES: Comments must be received on or before May 21, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2009–0229 and Airspace Docket No. 09–ASO–13 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–0229 and Airspace Docket No. 09–ASO–13) and be submitted in triplicate to the Docket Management Facility (see ''**ADDRESSES**'' section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0229 and Airspace Docket No. 09–ASO–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see ''**ADDRESSES**'' section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket

may also be examined during normal business hours at the office of the Eastern Service Center, Operations Support Group, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to revoke VOR Federal airway V–329 which extends between the Montgomery, AL, very high frequency omnidirectional range/tactical air navigation (VORTAC) aid and the vicinity of Crestview, FL. The Andalusia, AL, VOR, which is used to form segments of V–329, is owned and operated by the U.S. Army. Due to recurring outages and maintenance issues, the U.S. Army requested to decommission the Andalusia, AL, VOR. This action would render V–329 unusable. The FAA has conducted an aeronautical study of the request and determined that decommissioning the Andalusia VOR would not adversely impact National Airspace System operations. An alternative route, V–115, currently extends between the Crestview, FL, VORTAC and the Montgomery, AL, VORTAC.

VOR Federal airways are published in paragraph 6010 of FAA Order 7400.9S signed October 3, 2008 and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be deleted subsequently from the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as required to preserve the safe and efficient flow of air traffic.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a and 311b. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 6010 VOR Federal airways.

* * * * *

V–329 [Removed]

* * * * *

Issued in Washington, DC, on March 27, 2009.

Edith V. Parish,

Manager, Airspace & Rules Group.

[FR Doc. E9–7679 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0123]

RIN 1625–AA00

Safety Zone; Big Bay Fourth of July Fireworks; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the Big Bay July Fourth Show to Benefit the San Diego Armed Services YMCA. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 6, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0123 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

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

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

To avoid duplication, please use only one of these methods. For instructions

on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0123), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0123'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0123 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The San Diego Armed Services YMCA is sponsoring the Big Bay July Fourth Fireworks Show, which will include a fireworks presentation originating from four separate fireworks barges. The safety zone will encompass all navigable waters within 1200 feet of each barge. The approximate locations include:

Shelter Island Barge: 32°42.83′ N, 117°13.20′ W.

Harbor Island Barge: 32°43.33′ N, 117°12.00′ W.

Embarcadero Barge: 32°43.00′ N, 117°10.80′ W.

Seaport Village Barge: 32°42.23′ N, 117°10.05′ W.

This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone are all navigable waters within 1200 feet of the four fireworks barges. The approximate locations are:

Shelter Island Barge: 32°42.83′ N, 117°13.20′ W.

Harbor Island Barge: 32°43.33′ N, 117°12.00′ W.

Embarcadero Barge: 32°43.00′ N, 117°10.80′ W.

Seaport Village Barge: 32°42.23′ N, 117°10.05′ W.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 intending to transit through, or anchor within the four areas of San Diego Bay of the Pacific Ocean from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–160 to read as follows:

§ 165.T11–160 Safety Zone; Big Bay Fourth of July Fireworks; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone are all navigable waters within 1200 feet of four fireworks barges. The approximate locations are:

Shelter Island Barge: 32°42.83′ N, 117°13.20′ W.

Harbor Island Barge: 32°43.33′ N, 117°12.00′ W.

Embarcadero Barge: 32°43.00′ N, 117°10.80′ W.

Seaport Village Barge: 32°42.23′ N, 117°10.05′ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

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

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

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

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

Dated: March 16, 2009.

T.H. Farris,

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

[FR Doc. E9–7664 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0124]

RIN 1625–AA00

Safety Zone; Mission Bay Yacht Club Fourth of July Fireworks; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of Mission Bay in support of the Mission Bay Yacht Club Fourth of July Fireworks. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 6, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0124 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0124), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0124'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the

right side of the screen, insert USCG–2009–0124 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Mission Bay Yacht Club is sponsoring the Mission Bay Yacht Club Fourth of July Fireworks, which will include a fireworks presentation originating from a barge located at approximately 32°47.01′ N, 117°14.75′ W. The safety zone will encompass all navigable waters within 800 feet of the fireworks barge. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone are all navigable waters within 800 feet of the fireworks barge located at approximately 32°47.01′ N, 117°14.75′ W.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 intending to transit or anchor in a portion of Mission Bay from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–161 to read as follows:

§ 165.T11–161 Safety Zone; Mission Bay Yacht Club Fourth of July Fireworks; Mission Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone are all the navigable waters within 800 feet of the fireworks barge located at approximately 32°47.01′ N, 117°14.75′ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

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

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

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

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

Dated: March 16, 2009.

T.H. Farris,

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

[FR Doc. E9–7660 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0126]

RIN 1625–AA00

Safety Zone; Main Street Oceanside Fourth of July Fireworks; Oceanside Harbor, Oceanside, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters near Oceanside Harbor in support of the Main Street Oceanside Fourth of July Fireworks. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels

of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 6, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0126 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0126), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0126'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0126 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Main Street Oceanside is sponsoring the Main Street Oceanside Fourth of July Fireworks, which will include a fireworks presentation originating from a barge located at approximately 33°11.35′ N, 117°23.33′ W. The safety zone will encompass all navigable waters within 1000 feet of the fireworks barge. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone are all navigable waters within 1000 feet of the fireworks barge located at approximately 33°11.35′ N, 117°23.33′ W.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 intending to transit or anchor in a portion of the Pacific Ocean from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–163 to read as follows:

§ 165.T11–163 Safety Zone; Main Street Oceanside Fourth of July Fireworks; Oceanside Harbor, Oceanside, CA.

(a) *Location.* The limits of the safety zone are all the navigable waters within 1000 feet of the fireworks barge located at approximately 33°11.35′ N, 117°23.33′ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone, is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

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

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

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

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

Dated: March 16, 2009.

T.H. Farris,

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

[FR Doc. E9–7665 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0122]

RIN 1625–AA00

Safety Zone; Ocean Beach Fourth of July Fireworks; Pacific Ocean, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the Pacific Ocean in support of the Fireworks Radio Network Fourth of July Fireworks. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 6, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0122 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0122), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0122'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble

as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0122 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Ocean Beach Main Street Association is sponsoring the Fireworks Radio Network Fourth of July Fireworks, which will include a fireworks presentation originating from the Ocean Beach Pier located at approximately 32°45.01′ N, 117°15.52′ W. The safety zone will encompass all navigable waters within 1200 feet of the pier. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone are all navigable waters within 1200 feet of the fireworks barge located at approximately 32°45.01′ N, 117°15.52′ W.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 intending to transit or anchor in a portion of the Pacific Ocean from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–159 to read as follows:

§ 165.T11–159 Safety Zone; Ocean Beach Fourth of July Fireworks; Pacific Ocean, San Diego, CA.

(a) *Location.* The limits of the safety zone are all the navigable waters within 1200 feet of the Ocean Beach Pier located at approximately 32°45.01″ N, 117°15.52″ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

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

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

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

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

Dated: March 16, 2009.

T.H. Farris,

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

[FR Doc. E9–7666 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0121]

RIN 1625–AA00

Safety Zone; City of Chula Vista Fourth of July Fireworks; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the City of Chula Vista Fourth of July Fireworks. This

temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must either be submitted to our Online docket via *http://www.regulations.gov* on or before May 6, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0121 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0121), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment Online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0121'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0121 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Chula Vista is sponsoring the City of Chula Vista Fourth of July Fireworks, which will include a fireworks presentation originating from a barge located at approximately 32°37.52′ N, 117°06.64′ W. The safety zone will encompass all navigable waters within 800 feet of the fireworks barge. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone are all navigable waters within 800 feet of the fireworks barge located at approximately 32°37.52' N, 117°06.64′ W.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 intending to transit or anchor in a portion of the San Diego Bay from 8:45 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–158 to read as follows:

§ 165.T11–158 Safety Zone; City of Chula Vista Fourth of July Fireworks; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone are all the navigable waters within 800 feet of the fireworks barge located at approximately 32°37.52′ N, 117°06.64′ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

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

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

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

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

Dated: March 16, 2009.

T.H. Farris,

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

[FR Doc. E9–7658 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0125]

RIN 1625–AA00

Safety Zone; Paradise Point Fourth of July Fireworks; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of Mission Bay in support of the Paradise Point Fourth of July Fireworks. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 6, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0125 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0125), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0125'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the

right side of the screen, insert USCG–2009–0125 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Paradise Point Resort is sponsoring the Paradise Point Resort Fourth of July Fireworks, which will include a fireworks presentation originating from a barge located at approximately 32°46.36′ N, 117°14.57′ W. The safety zone will encompass all navigable waters within 600 feet of the fireworks barge. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8:45 p.m. to 9:30 p.m. on July 3, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone are all navigable waters within 600 feet of the fireworks barge located at approximately 32°46.36′ N, 117°14.57′ W.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 intending to transit or anchor in a portion of Mission Bay from 8:45 p.m. to 9:30 p.m. on July 3, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 45 minutes late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

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 Petty Officer Kristen Beer, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security 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 made a preliminary determination this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–162 to read as follows:

§ 165.T11–162 Safety Zone; Paradise Point Resort Fourth of July Fireworks; Mission Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone are all the navigable waters within 600 feet of the fireworks barge located at approximately 32°46.36′ N, 117°14.57′ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 9:30 p.m. on July 3, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

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

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

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

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

Dated: March 16, 2009.

T.H. Farris,

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

[FR Doc. E9–7659 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

RIN 0648–AX10

Taking and Importing Marine Mammals; U.S. Navy Training in the Cherry Point Range Complex

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 16, 2009, the NMFS published its proposed regulations to govern the take of marine mammals incidental to training activities conducted within the U.S.

Navy's Cherry Point Range Complex for the period of May 2009 through May 2014. The **Federal Register** notice indicated that written comments were due by April 6, 2009, which allowed 21 days for public input. In response to a request from the Marine Mammal Commission, NMFS has decided to extend the public comment period by 7 days, to April 13, 2009, which allows 28 days for public input.

DATES: The public comment period for this action has been extended from April 6, 2009 to April 13, 2009. Written comments and information must be received no later than April 13, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX10, by any one of the following comments methods:

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

• Hand delivery or mailing of paper, disk, or CD–ROM comments should be addressed to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East–West Highway, Silver Spring, MD 20910–3225.

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

NMFS will accept anonymous comments (enter NA in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Background information concerning the proposed regulations can be found in the March 16, 2009 **Federal Register** notice (74 FR 11052), and is not repeated here. For additional information regarding the proposed regulations and the Navy's associated Environmental Impact Statement, please visit NMFS' website at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Dated: March 31, 2009.

Tammy Adams, Ph.D.,

Acting Chief, Division of Permits, Conservation, and Education, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–7703 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0811201490–9322–02]

RIN 0648–AX42

Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. The proposed regulations would amend the Central Gulf of Alaska Rockfish Program to remove a restriction that prohibits certain catcher/processors from participation in directed groundfish fisheries in the Bering Sea and Aleutian Islands Management Area in July. This action is necessary to improve flexibility and reduce operating costs for catcher/processors that participate in the Central Gulf of Alaska Rockfish Program. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Comments must be received no later than May 21, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX42,'' by any one of the following methods:

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

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

• Fax: 907–586–7557.

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

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

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

Copies of Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the categorical exclusion prepared for this action, and the Environmental Assessment (EA), RIR, and Final Regulatory Flexibility Analysis (FRFA) prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or Rachel Baker, 907–586–7425.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The North Pacific Fishery Management Council (Council) prepared both FMPs under the authority of the Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108—199) required that the Secretary of Commerce, in consultation with the Council, establish a program that recognized the historical participation of fishing vessels and fish processors for rockfish harvested in the Central GOA. Congress specified several aspects of the Central GOA Rockfish Program (Rockfish Program). Section 802 states

that the program shall (1) include the Central GOA rockfish species of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish; (2) recognize historical participation of fishing vessels in the Central GOA rockfish fisheries from 1996 to 2002; (3) recognize historical participation of processors in the Central GOA rockfish fisheries from 1996 to 2000; (4) establish catch limits for non–rockfish species and non–target rockfish species harvested with the Central GOA rockfish species and base such allocations on historical harvesting of these incidentally caught species; (5) set aside up to 5 percent of the total allowable catch (TAC) of the Central GOA rockfish fisheries for catcher vessels that are not eligible to participate in the program; and (6) have a two-year duration.

The Council developed the Rockfish Program to meet the requirements of Section 802 and improve economic efficiency in the Central GOA rockfish fisheries. The Council analyzed alternative methods to improve economic efficiency in the Central GOA rockfish fisheries. Following extensive public comment, the Council adopted the proposed Rockfish Program on June 6, 2005. Regulations implementing the Rockfish Program were published on November 20, 2006 (71 FR 67210), and are located at 50 CFR part 679. Section 802 of the Consolidated Appropriations Act of 2004 authorized the Rockfish Program for two years, from January 1, 2007, until December 31, 2008. The Magnuson–Stevens Fishery Conservation and Management Reauthorization Act of 2006, which became public law on January 12, 2007 (Public Law 109–479), extended the Rockfish Program for another three years, until December 31, 2011. Fishing began under the Rockfish Program on May 1, 2007.

The Rockfish Program is a limited access privilege program (LAPP) for the Central GOA rockfish fisheries. Participants receive exclusive harvesting privileges for a portion of the TAC assigned to the Central GOA rockfish fisheries and species caught incidentally in the Central GOA rockfish fisheries if they form cooperatives with other eligible participants. Before the Rockfish Program, harvesters competed in a limited access fishery for a portion of the Central GOA rockfish fisheries TACs by racing to maximize catch before the TAC was harvested and the fishery was closed. The limited access fishery required harvesters to hold a License Limitation Program (LLP) license to participate in the Central GOA rockfish fisheries, but did not allocate exclusive harvesting privileges. The rapid pace of fishing reduced the ability of harvesters and processors to improve product quality and extract more value from the fishery by producing high–value products that require additional processing time. Exclusive harvesting privileges enable a harvester to choose when to fish and therefore adjust to market conditions, avoid dangerous fishing conditions, and improve overall harvesting efficiency.

The Rockfish Program allocates exclusive harvesting privileges to eligible participants for the primary species: northern rockfish; Pacific ocean perch; and pelagic shelf rockfish. Historically, the Central GOA primary species have been almost entirely harvested by trawl catcher vessels and trawl catcher/processors, and participation in the Rockfish Program is primarily limited to these two sectors. Participants in the Rockfish Program receive exclusive harvesting privileges for the primary species only if they join a Central GOA rockfish cooperative. The Rockfish Program is allocated 95 percent of the Central GOA primary species TACs. The remaining 5 percent of the primary species TACs are allocated to an entry level fishery for participants who have not traditionally participated in the Central GOA rockfish fisheries, including participants using non–trawl gear.

Secondary species are incidentally harvested by vessels during rockfish fisheries in the Central GOA. The secondary species managed under the Rockfish Program include Pacific cod, rougheye rockfish, shortraker rockfish, sablefish, and thornyhead rockfish. Rockfish Program participants receive exclusive allocations of secondary species only if they join a rockfish cooperative.

Halibut also is caught and killed incidentally in the primary and secondary species fisheries. Halibut caught by trawl gear is considered prohibited species catch (PSC) and may not be retained or sold under regulations implementing the Northern Pacific Halibut Act of 1982 (73 FR 12280, March 7, 2008), and under regulations implementing the GOA FMP at 50 CFR 679.21. Limits on halibut PSC are established under authority of 50 CFR 679.21(d), which when reached, close GOA rockfish fisheries, even if the rockfish TACs are not harvested. The Rockfish Program allocates participants a fixed amount of the halibut PSC limit in the primary and secondary species fisheries. Rockfish Program participants receive a portion of the total GOA halibut PSC limit based on historical halibut mortality rates in the primary species fisheries. Only participants that join a rockfish cooperative receive an exclusive allocation of the halibut PSC limit. Additional information on primary and secondary species allocations and halibut PSC limits is in the proposed rule for the Rockfish Program (71 FR 33040, June 7, 2006) and in the EA/RIR prepared for the Rockfish Program (see **ADDRESSES**).

A person is eligible to participate in the Rockfish Program and receive exclusive harvesting privileges if that person holds an LLP license that has been associated with one or more vessels that made legal landings of Central GOA primary species during the rockfish fishing seasons from 1996 to 2002, and the landings were attributed to that LLP license. When the Rockfish Program was implemented, eligible LLP license holders who applied to NMFS received quota share (QS), which is the multi-year privilege to receive exclusive harvesting privileges under the Rockfish Program. NMFS calculated how much QS would be allocated to an LLP license based on the catch history of the associated vessels and modified LLP licenses to designate the calculated amount of QS on the license.

Eligible harvesters must elect whether to participate in the Rockfish Program by March 1 each year. To participate, a rockfish harvester who received a QS allocation assigned to a specific LLP license must assign all QS associated with that LLP license to (1) a cooperative fishery, in which the harvester receives exclusive harvest privileges, or (2) a limited access fishery, in which eligible harvesters compete for a share of Central GOA rockfish TACs. Eligible harvesters in the catcher/processor sector may elect not to participate, or ''opt out'', of the Rockfish Program and most of its requirements. Harvesters with QS in the catcher vessel sector may not opt out of the Rockfish Program. Eligible harvesters can modify their fishery participation selection prior to each fishing year, but once an LLP license and its associated QS is assigned for the year, the rockfish harvester cannot reassign the LLP license or QS to a different fishery during that year.

Rockfish cooperatives submit an application to NMFS and receive a cooperative quota (CQ) permit, which specifies how much CQ the cooperative may harvest. CQ is an exclusive annual catch limit of primary species, secondary species, and halibut PSC that can be harvested by members of the rockfish cooperative. The CQ amount is based on the sum of the QS of all harvesters who have assigned their QS to the cooperative. Cooperatives may be formed only by eligible harvesters

holding LLP licenses within the same sector, either the catcher vessel sector or the catcher/processor sector.

Harvesters in the limited access fishery compete with other eligible harvesters for a portion of the primary species TACs assigned to the limited access fishery. The catcher vessel sector and the catcher/processor sector have separate limited access fisheries. The TAC assigned to the limited access fisheries for each primary species represents the percentage of the total QS allocated to the limited access fishery in each sector for that primary species fishery. Limited access fishery participants do not receive exclusive allocations of primary or secondary species based on the QS on the eligible LLP license, nor do they receive an exclusive halibut PSC allocation.

If a harvester in the catcher/processor sector opts out of the Rockfish Program, the harvester is precluded from directed fishing for the three primary species in the Central GOA.

Sideboard Limits

The Council anticipated that rockfish cooperatives could potentially use fewer vessels to harvest the same amount of fish at a lower cost, resulting in greater net profits for rockfish cooperative members. Harvesters could use economic efficiencies created by cooperative participation to offset operational costs in other fisheries, or expand into new fisheries in the GOA and BSAI. This could economically disadvantage harvesters in these other fisheries. NMFS commonly establishes catch limits and other fishery participation restrictions, called sideboard limits, when implementing LAPPs to prevent participants who benefit from receiving exclusive harvesting privileges in the LAPP from shifting effort into fisheries that are not managed by a LAPP. The sideboard limits in the Rockfish Program are in effect only during the month of July, to restrict fishing by Rockfish Program participants during the historical timing of the Central GOA rockfish fisheries, but allow harvesters to participate in other fisheries in which they have historically fished.

The Rockfish Program has two types of sideboard limits: (1) caps on the amount of harvest by Rockfish Program participants in specific areas and fisheries during July; and (2) directed fishing prohibitions in specific areas and fisheries in July. Sideboard limits apply to all LLP licenses and vessels that could have been used to generate QS, even if the holder of an LLP license or a vessel owner did not submit an application to participate in the Rockfish Program.

Harvest sideboard limits cap the amount of primary species catch in the Western GOA and the West Yakutat District and the amount of halibut PSC that can be used in the Central GOA, Western GOA, and West Yakutat District groundfish fisheries for each Rockfish Program sector during the month of July. The harvest sideboard limits for each area and fishery are based on the historical catch of primary species and use of halibut PSC in July by vessels subject to the harvest sideboard limits. NMFS manages the primary species sideboard limits by tracking the total harvest of primary species in July in the Western GOA and the West Yakutat District by the vessels subject to the harvest sideboard limits. Once a sector sideboard limit is reached for a specific primary species, the directed rockfish fisheries are closed to the vessels within that sector. NMFS also tracks total use of halibut PSC in the Central GOA, Western GOA, and West Yakutat District in July by vessels subject to the sideboard limits, and closes directed fishing for non–primary species groundfish fisheries in the GOA once the halibut PSC sideboard limit is reached. A detailed description of the harvest sideboard limits is in the proposed rule published for the Rockfish Program (71 FR 33040, June 7, 2006) and the EA/RIR prepared for the Rockfish Program (see **ADDRESSES**).

The second type of sideboard limit in the Rockfish Program prohibits directed fishing in specific fisheries by vessels subject to the sideboard limit. This type of restriction is commonly called a ''stand down.'' Regulations at 50 CFR 679.2 define ''directed fishing'' as any activity that results in a vessel retaining an amount of a species or species group onboard that is greater than the maximum retainable amount; that is, the amount expected to be caught if the species or species group was harvested incidentally in another target fishery. Maximum retainable amounts of incidentally caught species are calculated for all groundfish species and species complexes in the GOA and BSAI and specified in the regulations at 50 CFR 679.20.

The Rockfish Program has three separate stand down restrictions for the catcher/processor sector, depending on whether the vessel owner or LLP license holder elects to participate in the cooperative fishery, the limited access fishery, or opt out of the Rockfish Program.

Catcher/Processor Cooperative Stand Downs

Vessels and LLP licenses assigned to a rockfish cooperative in the catcher/processor sector must stand down from BSAI groundfish fisheries, other than fixed–gear sablefish and pollock, from July 1 to July 14. Fixed–gear sablefish and pollock fisheries in the BSAI are managed under LAPPs that restrict participation in the fisheries and allocate exclusive harvesting allocations. Fisheries managed under a LAPP are typically excluded from sideboard limits in other LAPPs, because a LAPP allocates exclusive harvesting privileges only to eligible participants, and eliminates the possibility that ineligible harvesters can increase fishery participation to the detriment of LAPP participants.

Additionally, vessels and LLP licenses assigned to a rockfish cooperative in the catcher/processor sector must stand down from GOA groundfish fisheries, other than fixed–gear sablefish, in July. As in the BSAI, fixed–gear sablefish in the GOA is managed under a LAPP. Vessels and LLP licenses must stand down from GOA groundfish fisheries from July 1 to July 14 if the rockfish cooperative has harvested any CQ prior to July 1, or from July 1 until 90 percent of the rockfish cooperative's primary species CQ has been harvested if the rockfish cooperative has not harvested any CQ prior to July 1. However, the GOA stand down does not apply to vessels in the catcher/processor sector that participate in cooperatives that maintain a monitoring plan, as required by Rockfish Program regulations, during all fishing for CQ or any directed sideboard fishery in the GOA.

Catcher/Processor Limited Access Stand Downs

Vessels in the catcher/processor sector using an LLP license with greater than 5 percent of the Pacific ocean perch QS allocated to the catcher/processor sector and assigned to the limited access fishery are subject to a stand down in any BSAI groundfish fishery, except pollock or fixed–gear sablefish; and any GOA groundfish fishery, except fixed–gear sablefish, from July 1 until 90 percent of the CQ of Pacific ocean perch assigned to the catcher/processor limited access fishery has been harvested. The stand down was intended to preclude vessels with significant historical participation in GOA Pacific ocean perch fisheries from expanding their activities into other GOA and BSAI groundfish fisheries, specifically Aleutian Islands Pacific

ocean perch fisheries, during the historical Central GOA rockfish season.

Catcher/Processor Opt Out Stand Downs

Vessel owners and LLP license holders in the catcher/processor sector who opt out of the Rockfish Program must (1) stand down from all of the primary species fisheries in the Central GOA during the year; and (2) stand down from any GOA groundfish fishery in which that vessel or LLP license does not have prior participation, except fixed–gear sablefish, from July 1 to July 14. Prior participation in a GOA groundfish fishery is defined as at least one landing in the directed GOA groundfish fishery during any two years from 1996 through 2002 during specific time periods in early July, as specified in the regulations at 50 CFR 679.82. Vessels in the catcher/processor sector that opt out of the Rockfish Program are not subject to a stand down in the BSAI in July.

Table 1 summarizes the Rockfish Program directed fishing prohibitions for each sector.

TABLE 1.–ROCKFISH PROGRAM DIRECTED FISHING PROHIBITIONS

Sideboard limits for July	Catcher Vessel Sector	Catcher/Processor Cooperatives	Catcher/Processor Limited Access Fishery	Catcher/Processor Opt Out
Prohibited fishing:				
BSAI groundfish	Directed fishing prohibited from July 1 – July 31 for Alaska plaice, arrowtooth flounder, flathead sole, other flatfish, Pacific ocean perch, rock sole and yellowfin sole.	Directed fishing prohibited from July 1 – July 14 for all BSAI groundfish except pollock and fixed–gear sablefish.	Directed fishing prohibited from July 1 until 90% of the Pacific ocean perch assigned to the limited access fishery in the catcher/processor sector is harvested, for all BSAI groundfish except pollock and fixed–gear sablefish, and all GOA groundfish except fixed–gear sablefish. Applies only to catcher/processors with >5% of the total Central GOA Pacific ocean perch QS assigned to the catcher/processor sector.	None
GOA groundfish	None	Directed fishing prohibited for all GOA groundfish except fixed–gear sablefish from July 1– July 14 if the rockfish cooperative has harvested any CQ prior to July 1. If the rockfish cooperative has not harvested any CQ prior to July 1, directed fishing is prohibited for all GOA groundfish except fixed–gear sablefish from July 1 until 90% of the rockfish cooperatives' primary species CQ has been harvested. Prohibition does not apply if the cooperative maintains a monitoring program, as required under the regulations, during all fishing for CQ or any directed sideboard fishery in the GOA.		July 1 – July 14, unless prior participation in two years from 1996 to 2002.

Since Rockfish Program implementation, NMFS implemented Amendment 80 to the BSAI FMP, which allocated exclusive harvesting privileges for several BSAI directed trawl groundfish fisheries. Additionally, Amendment 85 to the BSAI FMP was implemented to refine sector allocations for Pacific cod in the BSAI. Implementation of Amendments 80 and 85 to the BSAI FMP has significantly reduced the likelihood that catcher/processors participating in the Rockfish Program could increase effort in BSAI groundfish fisheries to the disadvantage of other participants during the period in early July when the stand downs are in effect.

Amendments 80 and 85 to the BSAI FMP

Regulations implementing Amendment 80 to the BSAI FMP were published on September 14, 2007 (72 FR

52668), and are located at 50 CFR part 679. Fishing began under Amendment 80 on January 1, 2008. Amendment 80 is an LAPP and allocates Aleutian Islands Pacific ocean perch, yellowfin sole, flathead sole, rock sole, and Atka mackerel (Amendment 80 species) to the sector of BSAI trawl catcher/processors that predominantly harvests these species (Amendment 80 sector). Of the 15 eligible harvesters in the catcher/processor sector of the Rockfish Program, 10 also qualified for the Amendment 80 sector and received initial QS for Amendment 80 species. Consequently, the implementation of Amendment 80 affected a significant number of catcher/processors that also participate in the Rockfish Program. Amendment 80 allocates exclusive harvesting privileges for Amendment 80 species only to participants that form cooperatives. A limited access fishery for Amendment 80 species is available for catcher/processors in the Amendment 80 sector that choose not to join a cooperative, and a separate allocation of Amendment 80 species is made to this limited access fishery. Aleutian Islands Pacific ocean perch, yellowfin sole, and Atka mackerel are also allocated separately to a BSAI trawl limited access fishery for non–Amendment 80 participants.

Amendment 80 significantly increased the number of BSAI directed groundfish fisheries managed under LAPPs for which participants can receive exclusive harvesting privileges. Six directed BSAI trawl groundfish fisheries remain unallocated among sectors and are managed as limited access fisheries following the implementation of Amendment 80: Alaska plaice, the ''other flatfish'' species complex, arrowtooth flounder, Greenland turbot, non–fixed gear sablefish, and squid. Although vessels in the Amendment 80 sector are the primary participants in these fisheries, these species were not included in Amendment 80 because they are considered to be relatively minor, low value fisheries, and are not an important target for any sector. Furthermore, none of the TACs for these six species is fully harvested on a consistent basis, and expanding effort in these fisheries would not pose management or conservation concerns at this time.

Amendment 80 allocates Amendment 80 species and halibut and crab PSC that are caught incidentally in BSAI trawl groundfish fisheries to the Amendment 80 sector. The sector allocations of Amendment 80 species and halibut and crab PSC are further allocated to the Amendment 80 cooperative fishery and the Amendment 80 limited access fishery. Exclusive allocations of Amendment 80 species and halibut and crab PSC are made only to eligible catcher/processors that join cooperatives. The halibut PSC allocation is important for Amendment 80 participants because it acts as a constraint on fully harvesting the TACs for all directed trawl fisheries in the BSAI. Prior to the implementation of Amendment 80, harvesters competed in limited access fisheries for all BSAI groundfish fisheries except pollock, fixed–gear sablefish, and the Community Development Quota multispecies fishery, and there was not enough halibut PSC for trawl participants to fully harvest the TACs for all of the directed groundfish fisheries in which they were eligible to participate. Participants in the Amendment 80 sector traditionally elected to reserve halibut PSC to target the more valuable Amendment 80 species, which did not leave enough halibut PSC for NMFS to open the unallocated groundfish fisheries for directed fishing, even if their TACs were large enough to support a directed fishery.

With the implementation of Amendment 80, participants in the Amendment 80 cooperative fishery gained a significant amount of flexibility from an exclusive allocation of halibut PSC since a cooperative can dedicate halibut PSC to the target fisheries of its choice. In addition to cost savings from vessel consolidation, cooperatives facilitate more efficient and less wasteful harvest through coordination of fishing activities and the ability to trade harvesting privileges within or between cooperatives. The increased certainty and flexibility in the use of halibut and crab PSC by Amendment 80 cooperatives enabled NMFS to open fisheries for all unallocated BSAI groundfish species for directed fishing only to Amendment 80 cooperative participants in 2008. Vessels in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery continued to compete for catches of BSAI groundfish species under the halibut PSC limit and as in previous years, participants in these fisheries elected to reserve halibut PSC for the more valuable Amendment 80 species.

Regulations implementing Amendment 85 to the BSAI FMP were published on September 4, 2007 (72 FR 50788), and are located at 50 CFR part 679. Amendment 85 to the BSAI FMP was effective on January 1, 2008, and allocated BSAI Pacific cod, a directed BSAI fishery, among several sectors, including an allocation to the Amendment 80 sector. Prior to Amendment 85 to the BSAI FMP, the allocation of Pacific cod to the trawl catcher/processor sector was available to all trawl catcher/processors in the BSAI. Amendment 85 to the BSAI FMP recognized the differences between catcher/processors that primarily participate in the directed BSAI pollock fishery and catcher/processors that participate in the Amendment 80 sector by creating a separate allocation for each. Amendment 80 further divides the allocation of Pacific cod to the Amendment 80 sector between the Amendment 80 cooperative fishery and the Amendment 80 limited access fishery. Each Amendment 80 cooperative receives an exclusive allocation based on the aggregated historical Pacific cod harvest by its member vessels. Vessels that participate in the Amendment 80 limited access fishery do not receive an exclusive allocation of Pacific cod and must compete for a share of the TAC in the Amendment 80 limited access fishery.

The cooperative–level allocation of BSAI Pacific cod and the allocations of Amendment 80 species and halibut and crab PSC allow Amendment 80 cooperatives to manage most of their key target and incidental catch species within a cooperative. In contrast, participants in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery must compete for a share of the groundfish TACs, subject to incidental catch and PSC constraints. This restricts the number of directed groundfish fisheries that are available to participants in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery. In the first year of fishing under Amendment 80, participants in the Amendment 80 limited access and the BSAI trawl limited access fisheries concentrated effort in the Pacific cod, Aleutian Islands Pacific ocean perch, Atka mackerel, and yellowfin sole fisheries in the BSAI.

The Proposed Action

Following implementation of the Rockfish Program in December 2006, participants in the catcher/processor sector testified to the Council that some sideboard limits in the Rockfish Program may be too restrictive. The Council did not receive testimony from participants in the catcher vessel sector proposing to modify stand downs applicable to that sector, and the proposed action would not change those stand downs. The Council initiated an analysis in April 2007 to examine alternatives for exempting certain vessels in the catcher/processor sector

from the BSAI groundfish fishery stand downs in July.

In October 2008, the Council recommended removing the BSAI groundfish fishery stand downs for all harvesters in the catcher/processor sector. The Council based its recommendation on information received through public testimony, review of the potential effects of exempting certain vessels from the stand downs, and a review of the effects of completely removing the BSAI groundfish fishery stand downs from the Rockfish Program. The Council determined that (1) the BSAI stand down requirements for catcher/processors participating in the Rockfish Program are no longer necessary to protect participants in BSAI groundfish fisheries; and (2) several participants in the Rockfish Program catcher/processor sector would likely benefit if the BSAI stand downs were eliminated.

Effects of the Proposed Action

The proposed action would remove BSAI groundfish fishery stand downs in July that apply to certain catcher/processors that also participate in the Rockfish Program. The proposed action would not affect other GOA fisheries, because removing the BSAI stand downs would not change the allocations to or timing of the Central GOA rockfish fisheries. Participants in the Rockfish Program catcher/processor sector are subject to sideboard limits in other GOA fisheries, and the proposed action would not change the existing GOA sideboard limits.

The following sections describe the Council's rationale for the proposed action to permanently remove the BSAI groundfish fishery stand downs in July for harvesters in the catcher/processor sector of the Rockfish Program and the effects of removing the BSAI stand downs from the Rockfish Program.

Effects of the proposed action on catcher/processors participating in the Rockfish Program. The effects of removing the BSAI stand downs from the Rockfish Program would vary for individual participants in the catcher/processor sector, depending on whether they participate in the Central GOA rockfish cooperative fishery, limited access fishery, or choose to opt out of the Rockfish Program.

Fifteen vessels and LLP licenses are eligible to participate in the catcher/processor sector in the Rockfish Program. Under the current regulations, all harvesters in the catcher/processor sector that elect to participate in a rockfish cooperative are prohibited from directed fishing in BSAI groundfish fisheries, except pollock and fixed–gear sablefish, for the first two weeks in July. A maximum of 15 harvesters would be subject to the BSAI stand down if all eligible harvesters elected to join a rockfish cooperative. In the first two years of the Rockfish Program, five harvesters participated in the rockfish cooperative fishery in the catcher/processor sector and were subject to the BSAI stand down in July.

In the years prior to the Rockfish Program implementation, the Central GOA rockfish fisheries opened around July 1. Participants in the catcher/processor sector of the Central GOA rockfish fisheries typically moved to the Western GOA and West Yakutat District to harvest rockfish and other flatfish species at the conclusion of the Central GOA rockfish fisheries. After completing the Western GOA and West Yakutat District groundfish fisheries, some catcher/processor vessels moved to the BSAI, typically to harvest Pacific ocean perch in the Aleutian Islands. When the Rockfish Program was implemented, the Central GOA rockfish fisheries opening date shifted from July 1 to May 1 for vessels that are members of a cooperative. In the first year of the Rockfish Program, most cooperative participants in the catcher/processor sector had completed fishing in the Central GOA rockfish and other GOA fisheries in June, but all five harvesters in the cooperative fishery were prohibited from participating in BSAI groundfish fisheries from July 1 to July 14 by the stand down, and some vessels rested idle for approximately two weeks. The disruption in harvesting operations adversely impacted vessel owners subject to the BSAI stand down. Any stand down reduces efficiency because crew and fuel costs are still incurred while the vessel is idle. Consequently, the BSAI stand down requirement may act as a disincentive for harvesters in the catcher/processor sector to join a rockfish cooperative. Five out of 15 eligible harvesters (33 percent) elected to participate in the cooperative fishery in the catcher/processor sector in the first two years of the Rockfish Program, which may reflect the disincentive to join a rockfish cooperative created by the BSAI stand down. The Council received testimony from owners of catcher/processor vessels eligible to participate in the Rockfish Program that the BSAI stand down adversely impacted fishing operations and increased vessel costs in the first year of the Rockfish Program. Removing the BSAI stand down from the Rockfish Program would relieve these adverse impacts and would most benefit harvesters in the catcher/processor sector that participate in BSAI groundfish fisheries and elect to participate in a Central GOA rockfish cooperative.

Harvesters in the Rockfish Program catcher/processor limited access fishery with greater than 5 percent of the Central GOA Pacific ocean perch QS assigned to the catcher/processor sector are subject to a stand down in any BSAI groundfish fishery, except pollock or fixed–gear sablefish, from July 1 until 90 percent of the Central GOA Pacific ocean perch assigned to the catcher/processor limited access fishery has been harvested. Of the 15 eligible harvesters in the catcher/processor sector, 8 (53 percent) hold more than 5 percent of the Central GOA Pacific ocean perch QS allocated to the catcher/processor sector and would be subject to the BSAI stand down if they elected to participate in the Rockfish Program limited access fishery. In 2007, two participants in the limited access fishery in the catcher/processor sector were subject to the BSAI stand down and in 2008, three participants were subject to the BSAI stand down.

The BSAI stand down did not likely have a negative impact on these vessels, however. In 2007, the threshold to relieve the stand down (i.e., harvest of 90 percent of the Central GOA Pacific ocean perch allocated to the catcher/processor sector) was reached on July 5. Prior to Rockfish Program implementation, the Central GOA rockfish fisheries opened around July 1. The Rockfish Program did not shift the fishery opening dates for catcher/processors participating in the limited access fishery, and these vessels currently cannot participate in the Central GOA rockfish fisheries before July 1. In the years prior to the Rockfish Program implementation, vessels that participated in the GOA rockfish and flatfish fisheries did not complete the GOA fisheries and move on to the BSAI groundfish fisheries before July 5. Therefore, the five-day stand down period in 2007 did not disrupt historical fishing patterns for these vessels. This suggests that removing the stand down may not benefit catcher/processors in the limited access fishery as much as catcher/processors in the cooperative fishery. Nonetheless, it is possible that the risk of a BSAI stand down of unknown length may have deterred some vessels from participating in the limited access fishery in the catcher/processor sector, and more eligible harvesters may choose to participate in the Rockfish Program if the BSAI stand down is removed.

Harvesters in the catcher/processor sector who opt out of the Rockfish

Program are not subject to a BSAI stand down and would not be affected by the proposed action. In 2007, six harvesters in the catcher/processor sector opted out of the Rockfish Program. Three catcher/processors elected to opt out of the Rockfish Program in 2008.

In summary, while the BSAI stand downs have a minimal effect on non–Rockfish Program operations for catcher/processors that do not elect to join a cooperative, they may be important factors for harvesters in the catcher/processor sector when determining whether to participate in the Rockfish Program. The BSAI stand downs likely are a significant disincentive for eligible catcher/processors to join a rockfish cooperative. Although the proposed action would most benefit harvesters in the catcher/processor sector who elect to participate in the Rockfish Program cooperative fishery, it is possible that more catcher/processors would choose to participate in the Rockfish Program if the BSAI stand downs were removed.

Effects of the proposed action on participants in fisheries with species–specific allocations under Amendments 80 and 85 to the BSAI FMP. The effects of removing the BSAI stand downs for Rockfish Program catcher/processors on non–Rockfish Program participants in BSAI groundfish fisheries would vary according to the fishery in which they participate: Amendment 80 cooperative fishery, Amendment 80 limited access fishery, or the BSAI trawl limited access fishery. There is a low probability that removing the stand downs would have an adverse effect on participants in any of these fisheries.

The Amendment 80 species allocations are defined in Amendment 80, and Rockfish Program catcher/processors cannot participate in these fisheries unless they are eligible for the Amendment 80 sector. Participants in the Amendment 80 cooperative fishery receive exclusive allocations of Amendment 80 species, Pacific cod, and halibut and crab PSC. There are 24 vessels in the Amendment 80 sector, and 17 vessels participated in an Amendment 80 cooperative in 2008. If this level of participation continues, the proposed action would not affect approximately 70 percent of the Amendment 80 sector participants, because Rockfish Program participants could not increase effort in Amendment 80 cooperative fisheries. Additionally, 7 of the 15 eligible harvesters (46 percent) in the catcher/processor sector of the Rockfish Program also participated in an Amendment 80 cooperative. Removal of the BSAI stand downs would benefit these catcher/processors by enabling them to coordinate fishing activities in the GOA and BSAI and avoid the costs of idling a vessel during the BSAI stand down period in July.

Seven catcher/processors participated in the Amendment 80 limited access fishery in 2008. Six of these vessels are owned by one company, and three of the six catcher/processors with common ownership also participated in the Rockfish Program in 2008. As with participants in the Amendment 80 cooperative fishery, removing the BSAI stand down would likely benefit the company with multiple vessels that participates in the Rockfish Program and the Amendment 80 limited access fishery by providing more flexibility to coordinate harvesting operations. The seventh participant in the Amendment 80 limited access fishery did not qualify for the Rockfish Program and could potentially be disadvantaged by the proposed action if the six other Amendment 80 limited access fishery participants were able to increase effort in the Amendment 80 limited access fisheries in July to the detriment of the other participant. However, based on historical catch data analyzed in the RIR for this proposed rule (see **ADDRESSES**), the Amendment 80 catcher/processor that did not qualify for the Rockfish Program has little historical participation in the Amendment 80 target fisheries at any time of the year, and thus has no history of dependence on the Amendment 80 fisheries in July that could be affected by removal of the BSAI stand down. In addition, if the Amendment 80 catcher/processor that does not participate in the Rockfish Program wishes to increase participation in the Amendment 80 limited access fisheries, directed fishery openings for species in the Amendment 80 limited access fishery occur outside of the early July time period in January, February, and September.

Participants in the BSAI limited access trawl fisheries for Pacific cod, yellowfin sole, Atka mackerel and Aleutian Islands Pacific ocean perch could be negatively impacted by the removal of the stand down if the five catcher/processors that participate in the Rockfish Program, but do not qualify for the Amendment 80 sector, increased effort in these fisheries in July. This is unlikely, however, because the BSAI limited access trawl fisheries are allocated a relatively small portion of the species TACs, which reflects the historically low level of participation by non–Amendment 80 vessels. The low TACs in the BSAI limited access trawl groundfish fisheries, combined with halibut PSC constraints, significantly limit the amount of fish available for a directed fishery. For most species and areas the BSAI limited access trawl directed fishery either (1) remains closed to directed fishing because the TAC is not sufficient to support a directed fishery, or (2) opens in January or February, but is closed to directed fishing prior to July in order to prevent participants from exceeding the seasonal TAC. In 2008, only the yellowfin sole and Western Aleutian Islands Atka mackerel fishery were open to the BSAI limited access trawl participants for directed fishing in early July. Consequently, the Rockfish Program catcher/processors would be unlikely to increase participation in July in BSAI limited access trawl fisheries. Rockfish Program participants could potentially increase participation in these fisheries at other times during the year, but the BSAI stand down is limited to July 1 through July 14 and does not protect non–Rockfish Program participants in the BSAI limited access trawl fisheries from increased competition outside of that time period.

Effects of the proposed action on participants in unallocated BSAI fisheries. Removal of the July BSAI stand down for Rockfish Program catcher/processors is unlikely to adversely affect non–Rockfish Program participants in unallocated BSAI groundfish fisheries. These fisheries have had limited historical participation owing to low market values. In practice, the most desirable unallocated BSAI groundfish fisheries will likely open for directed fishing only to participants in the Amendment 80 cooperative fishery, because only these participants have sufficient control over halibut PSC use to enable directed fisheries for these species. Rockfish Program participants relieved from the BSAI stand downs under the proposed action likely could not participate in fisheries for unallocated BSAI species unless they were also participants in the Amendment 80 cooperative fishery. Even if participants in the Amendment 80 limited access fishery and the BSAI trawl limited access fishery were not constrained by halibut PSC and could undertake directed fishing for the unallocated groundfish species in July, the current BSAI stand protects participants in these limited access fisheries from increased effort by Rockfish Program participants who are also Amendment 80 cooperative participants only from July 1 to July 14. These Rockfish Program and Amendment 80 cooperative participants could still use the benefits of cooperative harvest management to increase participation in the unallocated

BSAI groundfish fisheries at other times during the year.

As described in detail above and in the RIR/IRFA prepared for this action (see **ADDRESSES**), the proposed rule would permanently remove the BSAI stand downs that apply to Rockfish Program participants in the catcher/processor sector in July.

NMFS is proposing to modify the Rockfish Program regulations to remove all instances in which Central GOA rockfish catcher/processors are required to stand down from BSAI directed fisheries in July. These references occur in regulatory text at 50 CFR 679.82.

Classification

The Assistant Administrator for Fisheries, NMFS, has determined that this proposed rule is consistent with Amendment 85 to the GOA FMP, the Magnuson–Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts that this action may be expected to have. Additionally, an IRFA was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**). The RIR/IRFA prepared for this proposed rule incorporates by reference an extensive RIR/IRFA prepared for Amendment 68 to the GOA FMP that detailed the impacts of the Rockfish Program on small entities.

The IRFA for this proposed action describes in detail the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson–Stevens Fishery Conservation and Management Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities.

The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here. The proposed rule directly regulates all catcher/processor vessels and LLP licenses that qualify for the Rockfish Program. There are a total of 15 catcher/processor LLP licenses that qualify for the Rockfish Program, representing the maximum number of entities that could be directly regulated under the proposed action in any given year. If all 15 catcher/processors chose to join a rockfish cooperative, the proposed action to remove the BSAI stand down would apply to all Rockfish Program catcher/processors.

Under principles established by the U.S. Small Business Administration at 13 CFR 121.03, business concerns are affiliated when they have identical or substantially identical business or economic interests, or are economically dependent through contractual or other relationships. The interests of affiliated individuals or firms are aggregated when measuring whether the entity is a small business under the Regulatory Flexibility Act. If all 15 catcher/processors chose to participate in cooperatives and were thus subject to the stand down under the status quo, they would all be considered large entities for the purposes of the Regulatory Flexibility Act. Available catch and earnings data suggest that cooperatives created under the Rockfish Program would likely have aggregate gross receipts, from all sources, including affiliated worldwide, in excess of the $4 million threshold specified by the Small Business Administration.

If all 15 catcher/processors chose to participate in the limited access sector, 8 of the 15 would be subject to the BSAI stand down. Of these eight catcher/processors, six are also part of the Amendment 80 sector in the BSAI. Four of these vessels were part of an Amendment 80 cooperative in 2008, and would be considered affiliated by their membership in the cooperative. The other two Amendment 80 vessels are also affiliated because they are owned by the same company. The remaining two vessels are also affiliated by common ownership, and all eight catcher/processors would be considered large entities for purposes of the Regulatory Flexibility Act.

Based upon available information, it does not appear that the proposed action has the potential to directly regulate any small entities. However, current empirical data on cost structure, affiliation, operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are incomplete. The available information is insufficient to permit preparation of a ''factual basis'' upon which to certify that the preferred alternative does not have the potential to result in ''significant economic impacts on a substantial number of small entities,'' as defined under Regulatory Flexibility Act. Therefore, a formal IRFA was prepared and is included in this analytical package.

The proposed rule would not change existing reporting, recordkeeping, and other compliance requirements. The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

All of the directly regulated entities would be expected to benefit from this action relative to the status quo alternative because it would relieve restrictions that limit their ability to participate in directed BSAI groundfish fisheries in early July.

The Council analyzed and considered four alternatives for the specific participants and fisheries subject to the July BSAI stand down periods. These alternatives included the status quo, exempting Amendment 80 cooperative participants from the BSAI stand downs, exempting all Amendment 80 sector participants from the BSAI stand downs, and removing the BSAI stand downs for all catcher/processors in the Rockfish Program. The RIR prepared for this proposed rule determined both Amendment 80 and non–Amendment 80 catcher/processors participating in the Rockfish Program likely would be unable to increase effort in BSAI groundfish fisheries to the disadvantage of other participants during the short period in early July when the stand downs are in effect. Based on this information, the Council determined there was little benefit to retaining the July BSAI stand downs for any subset of the Rockfish Program catcher/processor sector. The Council recommended removing the BSAI stand downs for all catcher/processors in the Rockfish Program. Compared with the status quo, the proposed action recommended by the Council would have the greatest potential to reduce operating costs and increase flexibility for participants in the catcher/processor sector of the Rockfish Program, and would have a low likelihood of negatively impacting other participants in BSAI groundfish fisheries in early July.

Collection–of–Information

This proposed rule does not contain a collection–of–information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: March 30, 2009.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108 447.

2. In § 679.82, paragraph (f)(3) is removed, paragraph (f)(4) is redesignated as paragraph (f)(3), and newly redesignated paragraphs (f)(3)(i)(A), (f)(3)(ii)(A) and paragraph (g)(3) are revised to read as follows:

§ 679.82 Rockfish Program use caps and sideboard limits.

* * * * *

(f) * * *

(3) * * *

(i) * * *

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(3)(iii) of this section; and

* * * * *

(ii) * * *

(A) Any vessel in the rockfish cooperative does not meet monitoring standards established under paragraph (f)(3)(iii) of this section; and

* * * * *

(g) * * *

(3) *Prohibition from directed fishing in GOA groundfish fisheries.* If a vessel named on an LLP license used in the rockfish limited access fishery has been assigned rockfish QS greater than an amount equal to 5 percent of the Pacific ocean perch rockfish QS allocated to the catcher/processor sector, then that vessel may not participate in any GOA groundfish fishery and adjacent waters open by the State of Alaska for which it adopts the applicable Federal fishing season for that species other than the rockfish limited access fishery and sablefish harvested under the IFQ Program.

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[FR Doc. E9–7557 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 64
Monday, April 6, 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

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet April 28–30, 2009. The public may file written comments before and up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at the National Press Club, 529 14th Street, NW., Washington, DC 20045 and the Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005. Written comments from the public may be sent to the contact person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue, SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Karen Hunter, Executive Director or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; *telephone:* (202) 720–3684; *fax:* (202) 720–6199; or *e-mail:* *Karen.hunter@ars.usda.gov* or *Shirley.morgan@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: On Tuesday, April 28, 2009, from 8:45 a.m.–4:45 p.m., the Advisory Board will meet at the National Press Club located at 529 14th Street, NW., Washington, DC. On Wednesday, April 29, 2009, from 8:30 a.m.–5:30 p.m. the Board will convene at the Double Tree Hotel, 1515 Rhode Island Avenue, Washington, DC 20005 and begin with introductory remarks from the Chair of the Advisory Board and the Acting Under Secretary for Research, Education, and Economics (REE), USDA. Guest speaker comments will follow. Remarks will be heard from a variety of distinguished leaders and experts in the field of agriculture, as well as officials and/or designated experts from USDA. Various presentations and sessions throughout the day will focus on Global Climate Change and Agriculture. Board members will consider information received during the meeting to formulate recommendations for USDA to enhance its research, extension, education, and economic programs. On Thursday, April 30, 2009, the Board will reconvene at the Doubletree Hotel to continue discussions on recommendations, to determine future directions for the Board, and to evaluate the meeting. The meeting will adjourn by 12 p.m. (noon). An opportunity for public comment will be offered after the conclusion of this session. Written comments by attendees or other interested stakeholders are invited for the public record before and up to two weeks following the Board meeting (by close of business Thursday, May 14, 2009). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 30th day of March 2009.

Katherine Smith,

Acting Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. E9–7578 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0010]

Notice of Request for Extension of Approval of an Information Collection; Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the bovine tuberculosis regulations.

DATES: We will consider all comments that we receive on or before June 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0010* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0010, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0010.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the domestic

tuberculosis program, contact Dr. Charles W. Hench, Senior Staff Veterinarian, Ruminant Health Programs, VS, APHIS, 2150 Centre Avenue, Building B MS 320, Fort Collins, CO 80526; (970) 494–7378. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Number: 0579–0146.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests and for conducting programs to detect, control, and eradicate pests and diseases of livestock. In connection with this mission, APHIS participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis from the United States. This program is conducted under various States' authorities supplemented by Federal authorities regulating interstate movement of affected animals.

The tuberculosis regulations contained in 9 CFR part 77 provide several levels of tuberculosis risk classifications to be applied to States and zones within States, and classify States and zones according to their tuberculosis risk. The regulations restrict the interstate movement of cattle, bison, and captive cervids from the various classes of States or zones to prevent the spread of tuberculosis.

These regulations contain information collection activities, including requirements for epidemiological reviews, certificates for animals moved interstate, tuberculosis management plans, submission by States of requests to APHIS for State or zone status, and submission by States of an annual report to APHIS for renewal of State or zone status.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.6433521 hours per response.

Respondents: State animal health officials and accredited veterinarians.

Estimated Annual Number of Respondents: 2,585.

Estimated Annual Number of Responses per Respondent: 2.4003868.

Estimated Annual Number of Responses: 6,205.

Estimated Total Annual Burden on Respondents: 3,992 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7622 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0009]

Notice of Request for Extension of Approval of an Information Collection; Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Horse Protection Program.

DATES: We will consider all comments that we receive on or before June 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0009* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0009, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0009.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the Horse Protection Program, contact Dr. Rachel Cezar, Horse Protection National Coordinator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1238; (301) 734–5784. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Horse Protection Regulations.

OMB Number: 0579–0056.

Type of Request: Extension of approval of an information collection.

Abstract: In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821 *et seq.*), referred to below as the Act, that prohibits the showing, sale, auction, exhibition, or transport of horses subjected to a cruel and inhumane

practice referred to as ''soring.'' This practice causes a horse to suffer pain in any of its limbs for the purpose of affecting the horse's performance in competition. All breeds of horses are covered under the Act, although enforcement emphasis has historically been placed on Tennessee Walking horses and other gaited breeds due to the prevalence of soring documented in that industry.

To carry out the Act, the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (USDA) administers and enforces regulations at 9 CFR part 11. The regulations prohibit devices and methods that might sore horses. They also contain provisions under which show management may, to avoid liability for any sore horses that are shown, hire private individuals trained to conduct preshow inspections. These individuals are referred to as designated qualified persons (DQPs). DQPs must be trained and licensed under USDA-certified and monitored programs that are sponsored by horse industry organizations (HIOs).

Enforcement of the Act and its regulations relies on horse inspections conducted by APHIS veterinarians and by DQPs. To ensure that DQP enforcement and USDA-certified DQP programs are effective, APHIS requires DQPs, HIOs, and horse show management to maintain or submit to APHIS records related to these inspections, their DQP programs, and the horse events. No official government form is necessary for the reporting and recordkeeping required.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.6280487 hours per response.

Respondents: Designated qualified persons, horse industry organizations, and horse show management.

Estimated Annual Number of Respondents: 1,514.

Estimated Annual Number of Responses per Respondent: 2.3830911.

Estimated Annual Number of Responses: 3,608.

Estimated Total Annual Burden on Respondents: 2,266 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7625 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0019]

Notice of Request for Extension of Approval of an Information Collection; Peer Reviewer's Certification Regarding Conflict of Interest

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection related to peer review of scientific information disseminated to the public by the Agency.

DATES: We will consider all comments that we receive on or before June 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0019* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0019.

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

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

FOR FURTHER INFORMATION CONTACT: For information on APHIS' peer review process or the peer reviewer's certification regarding conflict of interest, contact Dr. Natalie Roberts, APHIS Peer Review Officer, Planning Evaluation and Monitoring, PPD, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737; (301) 734–8937. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: APHIS Peer Reviewer's Certification Regarding Conflict of Interest.

OMB Number: 0579–0304.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) protects and promotes U.S. agricultural health, administers the Animal Welfare Act, and carries out wildlife damage management activities. In carrying out its mission, APHIS collects, generates, and disseminates a wide variety of scientific information.

Some of the information APHIS disseminates is ''influential''—that is, it has a clear and substantial impact on important public policies or important private sector decisions. A very small portion of APHIS' scientific information takes the form of ''highly influential scientific assessments,'' which have a potential impact of more than $500

million in any year, or are novel, controversial, precedent-setting, or of significant interagency interest.

In order to ensure the objectivity and highest level of quality of such scientific information, APHIS arranges for these documents to be peer reviewed in accordance with the Office of Management and Budget's (OMB's) ''Final Information Quality Bulletin for Peer Review,'' which is available on the Web at *http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf*.

To ensure the effectiveness and integrity of the peer review process, APHIS pays careful attention to potential conflicts of interest when selecting peer reviewers. APHIS has developed a standard letter to prospective peer reviewers, which, among other things, asks them to consider whether they may have a conflict of interest related to review of a specific scientific document and, if no, asks them to sign a form certifying that they have no conflicting interests.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Peer reviewers for agency scientific documents.

Estimated Annual Number of Respondents: 50.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Annual Number of Responses: 50.

Estimated Total Annual Burden on Respondents: 12.5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7626 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0012]

Notice of Request for Extension of Approval of an Information Collection; Specimen Submission

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with livestock disease surveillance programs.

DATES: We will consider all comments that we receive on or before June 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0012* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0012, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0012.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding livestock disease surveillance programs, contact Ms. Connie J. Osmundson, Financial Analyst, National Veterinary Services Laboratories, VS, APHIS, P.O. Box 844, Ames, IA 50010; (515) 663–7571. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Specimen Submission.

OMB Number: 0579–0090.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to carry out activities to detect, control, and eradicate pests and diseases of livestock within the United States.

In connection with this mission, APHIS' Veterinary Services (VS) conducts disease surveillance programs. The VS form 10–4 and its supplemental sheet (VS form 10–4A) are critical components of these programs. They are routinely used whenever specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to our National Veterinary Services Laboratories for testing.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.1680434 hours per response.

Respondents: State veterinarians or other State representatives, accredited veterinarians, animal owners, private laboratories, and research institutions.

Estimated Annual Number of Respondents: 2,762.

Estimated Annual Number of Responses per Respondent: 9.9927588.

Estimated Annual Number of Responses: 27,600.

Estimated Total Annual Burden on Respondents: 4,638 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 31st day of March 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–7629 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 2009–0007]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of adjusted dollar limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing new dollar limitations on the amount of meat, meat food products, poultry, and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements. In accordance with FSIS' regulations, for calendar year 2009, the dollar limitation is increased for meat and meat food products from $56,900 to $60,200 and for poultry products from $46,700 to $49,400. FSIS is changing the dollar limitations from calendar year 2008 based on price changes for these products evidenced by the Consumer Price Index.

DATES: *Effective Date:* This notice is effective April 6, 2009.

FOR FURTHER INFORMATION: Contact John O'Connell, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 3532 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 720–0345, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide a comprehensive statutory framework to ensure that meat, meat food products, poultry, and poultry products prepared for commerce are wholesome, are not adulterated, and are properly labeled and packaged. 21 U.S.C. 661(c)(2) and 454(c)(2) also provide that the statutory provisions requiring inspection of the preparation or processing of meat, meat food, poultry, and poultry products do not apply to the types of operations traditionally and usually conducted at retail stores and restaurants when those operations are conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities. FSIS' regulations 9 CFR 303.1(d) and 381.10(d) elaborate on the conditions under which requirements for inspection do not apply to retail operations involving the preparation or processing of meat, meat food, poultry, and poultry products.

Sales to Hotels, Restaurants, and Similar Institutions

Under these regulations, sales to hotels, restaurants, and similar institutions (other than household consumers) disqualify a store for exemption if the product sales exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, shows an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (*See* 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*).)

The CPI for 2008 revealed an average annual price increase for meat and meat food products of 5.8 percent and for poultry products of 5.8 percent. When rounded off to the nearest $100, the price increase for meat and meat food products is $3,300, and the price increase for poultry products is $2,700. Because the price of meat and meat food products has increased by more than $500, and because the price of poultry products has increased by more than $500, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions from $56,900 to $60,200 for meat and meat food products and from $46,700 to $49,400 for poultry products for calendar year 2009, in accordance with 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: March 30, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–7579 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *FAX:* (202) 720–8435. *E-mail: michele.brooks@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA, Rural Utilities Service, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. *FAX:* (202) 720–8435. *E-mail: michele.brooks@wdc.usda.gov*.

Title: Deferment of Rural Development Utilities Programs Loan Payments for Rural Development Projects.

OMB Control Number: 0572–0097.

Type of Request: Extension of a currently approved collection.

Abstract: The Deferment of Rural Development Utilities Programs Loan Payments for Rural Development Projects allows RUS electric and telecommunications borrowers to defer the payment of principal and interest on any insured or direct loan made under the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912). The purpose of the Deferment program is to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses. This program is administered through 7 CFR 1703, subpart H. The burden required by this collection consists of information that will allow the Agency to determine eligibility for deferment; specific purposes of the deferment; the term of the deferment; cost of the project and degree of participation from other sources; and compliance with Agency and other regulations and legal requirements.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1.23 hours per response.

Respondents: Business or other for profit, Not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Burden on Respondents: 11 hours.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992. *FAX:* (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 31, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–7652 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–15–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: Alaska Individual Fishing Quota Cost Recovery Program Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0398.

Type of Request: Regular submission.

Burden Hours: 5,984.

Number of Respondents: 2,500.

Average Hours per Response: 2 hours.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act requires that the Secretary of Commerce maintain a Cost Recovery Program to cover the management and enforcement costs of the Individual Fishing Quotas (IFQ) for Pacific Halibut and Sablefish in the Alaska Fisheries Program. This Cost Recovery Program requires Registered Buyers to submit information about the volume and value of IFQ species landings and for the IFQ permit holders to calculate and submit fees.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

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: April 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7678 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: Final Results of Changed-Circumstances Review, Revocation of Antidumping Duty Order, and Termination of Five-Year (Sunset) Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 17, 2009, the Department of Commerce (the Department) published a notice of initiation of changed-circumstances review, preliminary results of review, intent to revoke the antidumping duty order, and intent to terminate the five-year (sunset) review of the antidumping duty order on gray portland cement and clinker from Mexico.

We received comments from various interested parties supporting our preliminary results of review, revocation of the order, and termination of the sunset review. After consideration of those comments we are revoking the order and terminating the sunset review of the order.

DATES: *Effective Date:* April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla 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) 482–3477 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2006, the Office of the United States Trade Representative, Secretaria de Economia of the United Mexican States, and the Department entered into an Agreement on Trade in Cement. *See Gray Portland Cement and Clinker From Mexico: Agreement Between the Office of the United States Trade Representative, The United States Department of Commerce and Secretaria de Economia of Mexico on Trade in Cement,* 71 FR 13082 (March 14, 2006) (Agreement). Pursuant to the Agreement, the domestic industry, represented by the Southern Tier Cement Committee and its members, Capitol Aggregates, Ltd., and Holcim (U.S.) Inc., submitted letters stating that they have ''no interest'' in maintaining the order after the expiration of the Agreement.

On February 17, 2009, the Department of Commerce published the notice of initiation of changed-circumstances review, preliminary results of review, intent to revoke the antidumping duty order, and intent to terminate the five-year (sunset) review of antidumping duty order. *See Gray Portland Cement and Clinker From Mexico: Initiation of Changed-Circumstances Review, Preliminary Results of Review, Intent to Revoke Antidumping Duty Order, and Intent to Terminate Five-year (Sunset) Review of Antidumping Duty Order*, 74 FR 7393 (February 17, 2009) (*Intent to Revoke*).

We received comments from various interested parties supporting our preliminary results of review, revocation of the order, and termination of the sunset review.

Final Results of Review

We determine that all of the terms of the Agreement (*see Intent to Revoke*) have been satisfied.

Revocation of Order

Because we determine that the terms of the Agreement and, therefore, the terms of the ''no interest'' letters from producers accounting for substantially all of the production of the domestic like product have been met, we hereby revoke the antidumping duty order on gray portland cement and clinker from Mexico in its entirety, effective April 1, 2009.

Termination of Sunset Review

Because we determine that all the terms of the Agreement have been fulfilled and in accordance with letters filed by interested parties that are attached in Appendix 12 of the Agreement requesting the termination of the sunset review on March 31, 2009, we hereby terminate the suspended sunset review.

Suspension of Liquidation

We will instruct U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation and to cease the collection of cash deposits on entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 1, 2009. In addition, we will instruct CBP to liquidate all entries made on or after April 1, 2009, without regard to antidumping duties.

This notice is published in accordance with sections 751(d)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.221(b)(5).

Dated: March 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7692 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period of review (POR) April 1, 2007, through March 31, 2008. One respondent reported it had no shipments to the United States. As a result, the Department intends to rescind the review in part.

The Department preliminarily determines that the remaining respondent made sales to the United States at less than normal value. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the respondent's merchandise during the POR. The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

DATES: *Effective Date:* April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla 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) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on magnesium metal from the Russian Federation on April 15, 2005. See *Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005) (*Antidumping Duty Order*). On April 1, 2008, the Department published in the **Federal**

Register a notice of opportunity to request an administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 17317 (April 1, 2008). On April 30, 2008, PSC VSMPO–AVISMA Corporation (AVISMA), a Russian Federation producer of the subject merchandise, requested that the Department conduct an administrative review. On April 30, 2008, U.S. Magnesium Corporation LLC, the petitioner in this proceeding, also requested that the Department conduct an administrative review with respect to AVISMA and Solikamsk Magnesium Works (SMW), another Russian Federation producer of the subject merchandise. On June 4, 2008, the Department published a notice of initiation of an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period April 1, 2007, through March 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 31813 (June 4, 2008).

On December 29, 2008, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from December 31, 2008, to March 31, 2009. *See Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Magnesium Metal From the Russian Federation*, 73 FR 79442 (December 29, 2008).

Scope of the Order

The merchandise covered by the order is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy.''

The scope of the order excludes: (1) Magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[1]

The merchandise subject to the order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Intent To Rescind Review in Part

On June 20, 2008, SMW submitted a letter indicating that it made no sales to the United States during the POR. We have not received comments on SMW's submission. We confirmed SMW's claim of no shipments by reviewing customs documentation. See Memorandum from International Trade Compliance Analyst to the File dated March 24, 2009. Because we preliminarily find that SMW had no shipments of subject merchandise during the POR, we intend to rescind the administrative review with respect to SMW. If we continue to find at the time of our final results that SMW had no shipments of subject merchandise from the Russian Federation, we will rescind the administrative review with respect to SMW pursuant to 19 CFR 351.213(d)(3).

Use of Facts Otherwise Available

For the reasons discussed below, we preliminarily determine that the use of adverse facts available (AFA) is appropriate with respect to AVISMA.

A. Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act), provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

On January 21, 2009, AVISMA notified the Department that it would not continue to participate in this administrative review and it requested the removal of all of its business-proprietary information (BPI) from the administrative record. We granted AVISMA's request and have removed all of its BPI from the administrative

[1] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2001 investigations of magnesium from China, Israel, and Russia. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel*, 66 FR 49349 (September 27, 2001); *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not chemically combined in liquid form and cast into the same ingot.

record. We also have instructed counsel for the petitioner to destroy all copies of AVISMA's BPI data. See Memorandum from Program Manager to Office Director dated March 30, 2009; see also letters from the Department to the petitioner and AVISMA dated March 30, 2009.

Because AVISMA has ended its participation in the instant administrative review and requested the removal of its BPI from the administrative record, AVISMA's actions constitute a refusal to provide information necessary to conduct the Department's antidumping analysis pursuant to sections 776(a)(2)(A) and (B) of the Act. Moreover, AVISMA's withdrawal significantly impedes conduct of the administrative review. *See* section 776(a)(2)(C) of the Act. Therefore, we find that we must base the margin for AVISMA on facts otherwise available pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Further, absent any response on the record from AVISMA, sections 782(d) and (e) of the Act do not apply.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) at 870 (*SAA*). Further, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

AVISMA's request to return or destroy the company's BPI constitutes a refusal to participate in the administrative review and demonstrates that AVISMA failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Therefore, pursuant to section 776(b) of the Act, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Section 776(b) of the Act provides that the Department may use as AFA information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. When selecting an AFA rate from among the possible sources of information, the Department's practice has been to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner. *See*, *e.g.*, *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

As total AFA, we have assigned to exports of subject merchandise produced and/or exported by AVISMA the rate of 43.58 percent which is the highest transaction-specific rate we calculated in the 2006/07 administrative review of the order with respect to AVISMA. See Memorandum to File from International Trade Compliance Analyst entitled ''Transfer of Information from Record of 2006/07 Review,'' dated March 31, 2009. We find that this rate is sufficiently adverse to serve the purposes of facts available and is appropriate, considering that this AFA rate is the highest calculated transaction-specific rate determined for AVISMA in this proceeding. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior transaction-specific margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

Section 776(c) of the Act provides that, to the extent practicable, the Department shall corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information. *See SAA* at 870 and *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004). The word ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996). To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

In selecting the AFA rate for AVISMA, we assigned the rate of 43.58 percent, which is based on information AVISMA submitted in a previous segment of the proceeding. Thus, we find that the AFA rate of 43.58 percent is reliable. Because the AFA rate of 43.58 percent is based on AVISMA's questionnaire responses and accompanying data from the immediately preceding administrative review, we find that the rate is relevant for use in this administrative review and, therefore, it has probative value for use as AFA. As such, the Department finds this rate to be corroborated to the extent practicable consistent with section 776(c) of Act.

Therefore, as facts available with an adverse inference, we have selected the rate of 43.58 percent for AVISMA, the highest calculated transaction-specific margin we calculated for AVISMA in the immediately preceding administrative review. We consider the 43.58 percent rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the dumping margin for AVISMA is 43.58 percent for the period April 1, 2007, through March 31, 2008.

Disclosure and Public Comment

We will disclose pertinent memoranda concerning these preliminary results to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. *See* 19 CFR 351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. See 19 CFR 351.309(d). The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are relying on total AFA to establish AVISMA's dumping margin, we will instruct CBP to apply a dumping margin of 43.58 percent to all entries of subject merchandise during the POR that was produced and/or exported by AVISMA.

The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

Cash-Deposit Requirements

If these preliminary results are adopted in the final results of review, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash-deposit rate for AVISMA will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous segment of the proceeding, the cash-deposit rate will continue to be the all-others rate established in the LTFV investigation which is 21.01 percent. *See Antidumping Duty Order*. These cash-deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The preliminary results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7690 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–840]

Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioners and two producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain orange juice (OJ) from Brazil with respect to two producers/exporters of the subject merchandise to the United States. This is the second period of review (POR), covering March 1, 2007, through February 29, 2008.

We have preliminarily determined that sales to the United States have not been made below normal value (NV). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Miriam Eqab, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3874 or (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

In March 2006, the Department published in the **Federal Register** an antidumping duty order on certain orange juice from Brazil. *See Antidumping Duty Order: Certain Orange Juice from Brazil*, 71 FR 12183 (Mar. 9, 2006) (*OJ Order*). Subsequently, on March 3, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain orange juice from Brazil for the period March 1, 2007, through February 29, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 11389 (Mar. 3, 2008).

In accordance with 19 CFR 351.213(b)(2), in March 2008, the Department received requests to conduct an administrative review of the antidumping duty order on OJ from Brazil from two producers/exporters of the subject merchandise, Fischer S.A. Comercio, Industria, and Agricultura (Fischer) and Sucocitrico Cutrale, S.A. (Cutrale). In accordance with 19 CFR 351.213(b)(1), also in March 2008, the petitioners (Florida Citrus Mutual, A. Duda & Sons, Citrus World Inc., and Southern Gardens Citrus Processing Corporation), requested that the

Department conduct an administrative review for Cutrale and Fischer.

In April 2008, the Department initiated an administrative review for each of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337 (Apr. 25, 2008). Also in April 2008, we issued questionnaires to them.

In June 2008, we received responses to section A of the questionnaire (*i.e.*, the section covering general information) from Cutrale and Fischer, as well as responses to sections B and C of the questionnaire (*i.e.*, the sections covering sales in the home market and United States) and section D (*i.e.*, the section covering cost of production (COP)/constructed value (CV)).

In July and September 2008, we issued two supplemental sales questionnaires and one cost questionnaire to Cutrale. We received responses to these supplemental questionnaires in July and October 2008.

On October 9, 2008, the Department extended the deadline for the preliminary results in this review until no later than March 31, 2009. *See Certain Orange Juice from Brazil: Notice of Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 59603 (Oct. 9, 2008).

In November 2008, we issued a supplemental cost questionnaire to Fischer. We received a response to this questionnaire in December 2008.

In December and January 2008, we issued a third supplemental sales questionnaire to Cutrale, a second supplemental cost questionnaire to Cutrale, and a supplemental sales questionnaire to Fischer. We received responses to these supplemental questionnaires in January and February 2009.

In February 2009, we issued an additional supplemental cost questionnaire to Fischer. In March 2009, we issued an additional supplemental sales questionnaire to each respondent. Responses to these questionnaires, as well as to the additional cost questionnaire for Fischer, were received in the same month.

Scope of the Order

The scope of this order includes certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as frozen concentrated orange juice for manufacture (FCOJM); and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as not-from-concentrate (NFC). At the time of the filing of the petition, there was an existing antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). Therefore, the scope of this order with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil as of December 27, 2004. Those companies are Cargill Citrus Limitada (Cargill), Coinbra-Frutesp, Cutrale, Fischer, and Montecitrus Trading S.A.

Excluded from the scope of the order are reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42 Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

The subject merchandise is currently classifiable under subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS). These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive. Rather, the written description of the scope of the order is dispositive.

Comparisons to Normal Value

To determine whether sales of OJ by Cutrale and Fischer to the United States were made at less than NV, we compared constructed export price (CEP) to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Curtrale and Fischer covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of orange juice to sales of orange juice in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: Product type and organic designation.

Constructed Export Price

For all U.S. sales made by Cutrale and Fischer, we used the CEP methodology specified in section 772(b) of the Act because the subject merchandise was sold for the account of these respondents by their U.S. subsidiaries in the United States to unaffiliated purchasers.

A. Cutrale

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Cutrale's U.S. sales as CEP sales because they were made in the United States by Cutrale's U.S. affiliates on behalf of Cutrale, within the meaning of section 772(b) of the Act.

Cutrale reported in its U.S. sales listing certain futures contract sales made during the most recently completed review period. Although Cutrale should have reported these transactions during that review period, it did not. In this instance, we have included in our analysis those pre-POR CEP sales with entry dates during the POR because the number of these sales was significant. In future segments of the proceeding, we will require Cutrale to report all sales made during the review period under consideration.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. For sales made pursuant to futures contracts, we adjusted the reported

gross unit price (*i.e.*, the notice price) to include gains and losses incurred on the futures contract which resulted in the shipment of subject merchandise. Where appropriate, we made adjustments for billing adjustments and rebates.

In addition, we made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight, U.S. brokerage and handling (offset by reimbursements from the customer), U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements), U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and U.S. warehousing expenses. We capped reimbursements for brokerage and handling expenses and U.S. customs duties, as well as U.S. drawback, by the amount of brokerage and handling expenses and U.S. customs duties, respectively, incurred on the subject merchandise, in accordance with our practice. *See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (Aug. 11, 2008), and accompanying Issues and Decision Memorandum (*2005–2007 OJ from Brazil*) at Comment 7.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, commissions, imputed credit expenses (as recalculated), and repacking (offset by pallet revenue)), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). We capped U.S. pallet revenue by the amount of repacking expenses. In addition, we recalculated inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the ''Calculation of Cost of Production'' section of this notice, below. We also recalculated indirect selling expenses for Cutrale's U.S. subsidiary Citrus Products, Inc. (CPI) to include financing expenses, offset by interest income. Because Cutrale did not report financing expenses incurred by CPI during the POR as requested in our February 13, 2009, supplemental questionnaire, we used the amount reported for the period October 1, 2006, through December 1, 2007, as facts available, under section 776(a)(2)(A) of the Act. Finally, we recalculated indirect selling expenses for Cutrale's U.S. subsidiary Cutrale Citrus Juices U.S.A., Inc. to include certain bonus payments accrued during the POR and included in the company's 2007 financial statement, as well as financing expenses.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Cutrale and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

For further discussion of the changes made to Cutrale's reported U.S. sales data, see the March 31, 2009, memorandum from Miriam Eqab, Analyst, to the File, entitled ''Calculation Adjustments for Sucocitrico Cutrale Ltda. for the Preliminary Results'' (Cutrale Sales Calculation Memo).

B. Fischer

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we are treating all of Fischer's U.S. sales as CEP sales because they were made in the United States by Fischer's U.S. affiliate on behalf of Fischer, within the meaning of section 772(b) of the Act.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign brokerage and handling expenses, ocean freight expenses, bunker fuel surcharges, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties, harbor maintenance fees and merchandise processing fees (offset by U.S. duty drawback and customs duty reimbursements), U.S. inland freight expenses (*i.e.*, freight from port to warehouse or to customer), and U.S. warehousing expenses. We capped reimbursements for U.S. customs duties, as well as U.S. duty drawback, by the amount of U.S. customs duties incurred on the subject merchandise, in accordance with our practice. *See 2005–2007 OJ from Brazil* at Comment 7.

In accordance with sections 772(d)(1) and (2) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, additional processing expenses, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Fischer and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the aggregate volume of home market sales of the foreign like product for both respondents was sufficient to permit a proper comparison with its U.S. sales of the subject merchandise.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution

system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[1] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Cutrale

Cutrale reported that it made CEP sales through one channel of distribution in the United States (*i.e.*, sales via affiliated resellers) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Cutrale performed the following selling functions: Order Processing; arranging for freight and the provision of customs clearance/brokerage services; packing; and maintaining inventory at the port of exportation. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Cutrale performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Cutrale reported that it made sales through one channel of distribution (*i.e.*, direct sales to soft drink manufacturers). We examined the selling activities performed for home market sales, and found that Cutrale performed the following selling functions: Sales forecasting, strategic/economic planning, engineering services, advertising, packing, inventory maintenance, order input/processing, employment of direct sales personnel, technical assistance, provision of guarantees, and provision of after-sales services. Accordingly, based on the four selling function categories listed above, we find that Cutrale performed sales and marketing, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Cutrale.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, neither an LOT adjustment nor a CEP offset is warranted for Cutrale. We note that, while Cutrale is claiming a CEP offset in this proceeding, Cutrale itself admits that there are no significant differences between its sales process during the POR of the previous administrative review and the current POR, with the exception of an increase in advertising expenses in the home market. *See* Cutrale's July 17, 2008, section A supplemental response at page 6. Consequently, because no compelling evidence exists that Cutrale's sales process materially changed during the POR of this administrative review, we continue to find that no CEP offset is warranted for Cutrale, as we did in the previous administrative review. *See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (Aug. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 5.

2. Fischer

Fischer reported that it made CEP sales through one channel of distribution in the United States (*i.e.*, sales via an affiliated reseller) and thus the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for this channel and found that Fischer performed the following selling functions: Customer contact and price negotiation; order processing; arranging for freight and the provision of customs clearance/brokerage services; and inventory maintenance. Selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Accordingly, based on these selling function categories, we find that Fischer performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Fischer reported that it made sales through one channel of distribution and that the selling activities it performed did not vary by the type of customer. We examined the selling activities performed for home market sales, and found that Fischer performed the following selling functions: Customer contact and price negotiation; order processing; arranging for freight; cold storage and inventory maintenance; sales and marketing support; and technical assistance. Accordingly, based on the selling function categories listed above, we find that Fischer performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because all home market sales are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market for Fischer.

Finally, we compared the CEP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers do not differ significantly. Therefore, we determine that sales to the U.S. and

[1] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

home markets during the POR were made at the same LOT, and as a result, neither an LOT adjustment nor a CEP offset is warranted for Fischer.

C. Cost of Production Analysis

We found that both Cutrale and Fischer had made sales below the COP in the less-than-fair-value (LTFV) investigation, the most recently completed segment of this proceeding as of the date of initiation of this review, and such sales were disregarded. *See LTFV Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Critical Circumstances Determination: Certain Orange Juice from Brazil*, 70 FR 49557, 49563 (Aug. 24, 2005) (*LTFV Preliminary Determination*), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (Jan. 13, 2006) (*LTFV Final Determination*). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Cutrale and Fischer made home market sales at prices below the cost of producing the merchandise in the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* ''Test of Comparison Market Sales Prices'' section, below, for treatment of home market selling expenses).

The Department relied on the COP data submitted by each respondent in its most recently submitted cost database for the COP calculation, except in the following instances:

a. *Cutrale*

i. In accordance with the transactions disregarded rule, *i.e.*, section 773(f)(2) of the Act, we adjusted Cutrale's cost of manufacturing to reflect the market value of oranges that were purchased from an affiliate.

ii. We revised the financial expense ratio calculation to reduce the denominator by the by-product sales revenue.

iii. We revised the G&A expense ratio calculation to include goodwill expenses in the numerator and to reduce the denominator by the by-product sales revenue.

For further discussion of these adjustments, *see* the Memorandum from Gina Lee, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results—Sucocitrico Cutrale Ltda,'' dated March 31, 2009.

b. *Fischer*

i. We revised Fischer's G&A expense rate calculation to include amortization of goodwill and a loss provision on fruit contract advances.

For further discussion of this adjustment, *see* the Memorandum from Frederick W. Mines, Accountant, to Neal M. Halper, Director Office of Accounting, entitled, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Fischer S.A. Comercio, Industria, and Agricultura,'' dated March 31, 2009.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, rebates, direct and indirect selling expenses and packing expenses, revised where appropriate, as discussed below under the ''Price-to-Price Comparisons'' section.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) or the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Cutrale's and Fischer's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

1. Cutrale

For Cutrale, we calculated NV based on ex-factory prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes in accordance with section 773(a)(6)(B)(iii) of the Act. We made deductions to the starting price for foreign warehousing expenses (offset by warehousing revenue) in accordance with section 773(a)(6)(B)(ii) of the Act. We capped warehousing revenue by the amount of warehousing expenses incurred on home market sales, in accordance with our practice. *See 2005–2007 OJ from Brazil* at Comment 7. We also made deductions from the starting price for home market credit expenses (offset by interest revenue) pursuant to section 773(a)(6)(C) of the Act. We recalculated credit expenses using the formula provided in Cutrale's response. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission. We calculated home market inventory carrying costs using the manufacturing costs reported in Cutrale's most recent cost response, adjusted as noted in the ''Calculation of Cost of Production'' section of this notice, above.

We deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act. We recalculated packing expenses to state them on a packing-type basis (*e.g.*, drums in varying sizes). For further

discussion of these adjustments, *see* the Cutrale Sales Calculation Memo.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

2. Fischer

We calculated NV based on delivered prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). We also made adjustments, where appropriate, to the starting price for Brazilian taxes in accordance with section 773(a)(6)(B)(iii) of the Act. We deducted foreign inland freight expenses and inland insurance expenses in accordance with section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions under section 773(a)(6)(C) of the Act for credit expenses (offset by interest revenue). We deducted home market packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

In its February 2, 2009, submission, Fischer provided exchange rate data to show that the U.S. dollar fell against the Brazilian real during the POR, and it argued that the Department should account for this currency fluctuation in its preliminary results calculations in accordance with the policy set forth in *Notice: Change in Policy Regarding Currency Conversions*, 61 FR 9434 (Mar. 8, 1996) (*Currency Policy Bulletin*). The Department considers a ''fluctuation'' to exist when the daily exchange rate differs from the benchmark rate by 2.25 percent or more. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (For an explanation of this method, *see Currency Policy Bulletin*.) *See also Frozen Concentrated Orange Juice from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 35892 (June 6, 2000), unchanged in *Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review*, 65 FR 60406 (Oct. 11, 2000). Because we have used the benchmark rates here where warranted, in accordance with our normal practice, we find that no additional adjustment is necessary.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period March 1, 2007, through February 29, 2008, as follows:

Manufacturer/exporter	Percent margin
Sucocitrico Cutrale, S.A.	0.02
Fischer S.A. Comercio, Industria, and Agricultura.	0.00

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific

company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.51 percent, the all-others rate made effective by the LTFV investigation. *See OJ Order*, 71 FR at 12184. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7691 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before April 27, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m.at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–007. Applicant: University of Utah, Consortium for Astro–Particle Research, 215 South State Street, Suite 200, Salt Lake City, UT 84111. Instrument: Electron Light Source (ELS) accelerator. Manufacturer: University of Tokyo, Japan. Intended Use: The instrument will be used as a component of a large ground Telescope Array, which will allow the scientists to calibrate the telescopes by generating a particle beam that accurately simulates a cosmic ray shower. Justification for Duty–Free Entry: No instruments of the same general category as the foreign instrument begin manufactured in the United States. Application accepted by Commissioner of Customs: March 10, 2009.

Dated: March 31, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–7689 Filed 4–3–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–849]

Commodity Matchbooks from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of commodity matchbooks from India. For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty investigation of commodity matchbooks from India.

EFFECTIVE DATE: April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Douglas Kirby, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3964 and (202) 482–3782, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. *See Commodity Matchbooks from India: Initiation of Countervailing Duty Investigation*, 73 FR 70968 (November 24, 2008) (*Initiation Notice*).

On December 10, 2008, the Department selected as mandatory respondent, Triveni Safety Matches Pvt., Ltd. (Triveni), the only producer/exporter of commodity matchbooks from India identified in the Petition during the period 2005 through 2008. The Department found no information indicating that there were other Indian producers or exporters of commodity matchbooks. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Commodity Matchbooks from India: Respondent Identification.'' A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. On December 16, 2008, we issued the CVD questionnaire to the Government of India (GOI), requesting that the GOI forward the company sections of the questionnaire to the mandatory respondent company.

On December 19, 2008, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of commodity matchbooks from India. *See Commodity Matchbooks from India; Determinations*, 73 FR 77840 (December 19, 2008); and *Commodity Matchbooks from India (Preliminary)*, USITC Pub. 4054, Inv. Nos. 701–TA–459 and 731–TA–1155 (December 2008).

On January 7, 2009, we postponed the preliminary determination of this investigation until March 30, 2009. *See Commodity Matchbooks from India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 683 (January 7, 2009). We received a response from

the GOI on February 12, 2009. Triveni, the mandatory respondent, submitted a response on February 11, 2009, that the Department was unable to accept for the record because it did not conform to the Department's filing requirements. *See* February 12 and February 20, 2009 letters from the Department to Triveni identifying areas of the submission and explaining filing procedures that needed to be corrected in order for the Department to accept the information on the record. On February 20, 2009, Triveni submitted a letter informing the Department that all the information submitted in its February 11, 2009 response may be treated as public information. On February 25, 2009, the Department accepted Triveni's response and placed it on the record. *See* Memorandum to The File from Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, ''Placing Response by Triveni Safety Matches Pvt. Ltd. (Triveni) to the Countervailing Duty Questionnaire on the Record of the Investigation of Commodity Matchbooks from India'' (*Memorandum and Questionnaire Response*). Attached to this memorandum, on file in the Department's CRU, is Triveni's February 11, 2009 response which includes a notation on its cover page indicating that this document contains only public information.

The Department issued supplemental questionnaires to Triveni on February 26, 2009, and to the GOI on February 27, 2009. Complete responses to these supplemental questionnaires were received from the GOI on March 12, 2009 (GOI Supplemental) and Triveni on March 16, 2009 (Triveni Supplemental).

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On November 24, 2008, the Department initiated the countervailing duty and antidumping duty investigations of commodity matchbooks from India. *See Initiation Notice* and *Commodity Matchbooks from India: Initiation of Antidumping Duty Investigation*, 73 FR 70965 (November 24, 2008). The countervailing duty investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On March 12, 2009, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner requested alignment of the final countervailing duty determination with the final antidumping duty determination of commodity matchbooks from India. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final countervailing duty determination with the final antidumping duty determination. Consequently, the final countervailing duty determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued no later than August 10, 2009, unless postponed.

Scope Comments

As explained in the preamble to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 73 FR at 70968. No such comments were filed on the record of either this investigation or the companion antidumping duty investigation.

Scope of the Investigation

The scope of this investigation covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.[1] Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this investigation may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, with store brands (e.g., Kroger, 7–Eleven, Shurfine or Giant); product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (e.g., Penley Corp. or Diamond Brands). They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of this investigation. All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR § 1202.1 et seq.

The scope of this investigation excludes promotional matchbooks, often referred to as ''not for resale,'' or ''specialty advertising'' matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.[2] Also excluded are all other matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike–anywhere matches (aka ''SAW'' matches), strike–on-box matches (aka ''SOB'' matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

The commodity matchbooks that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 3605.00.0060. Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product.

[1] Such commodity matchbooks are also referred to as ''for resale'' because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.*, convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

[2] The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) if it has no printing, or is printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or individual establishment prominently displayed on the matchbook cover, it is promotional.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2007 through December 31, 2007.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding as described in 19 CFR 351.524(d)(2) is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture commodity matches. No party in this proceeding has disputed this allocation period.

Denominator and Attribution of Subsidies

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the bases for Triveni's approval of benefits under each program at issue. For export–related subsidies, the Department attributed the subsidies only to products exported by the respondents and used export sales as the denominator. *See* 19 CFR 351.525(b)(2). The Department preliminarily determines that Triveni received only export subsidies during the POI.

Benchmark Interest Rates and Discount Rates

For programs requiring the application of a benchmark interest rate or a discount rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable loan in the commercial market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient could actually obtain on the market, the Department will normally rely on actual short–term and long–term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government–owned special purpose bank for purposes of calculating benchmark rates. *See*, *e.g.*, *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 71 FR 7534 (February 13, 2006), and accompanying Issues and Decision Memorandum, at Comment 3; *also Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008) (*PET Film from India*), and accompanying Issues and Decision Memorandum, at ''Benchmark Interest Rates and Discount Rates.''

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government-provided, short–term loan program, the preference would be to use a company–specific annual average of the interest rates on comparable commercial loans during the year in which the government–provided loan was taken out, weighted by the principal amount of each loan. For this investigation, the Department required both rupee–denominated and U.S. dollar–denominated short–term loan benchmark rates to determine benefits received under the Pre–Shipment and Post–Shipment Export Financing programs. For further information regarding this program, *see* the ''Pre–Shipment and Post–Shipment Export Financing'' section below.

We requested from Triveni information on rupee–denominated and U.S. dollar–denominated short–term commercial loans outstanding during the POI separate from those obtained under the Pre–Shipment Export Financing and Post–Shipment Export Financing programs. Triveni reported that all of its short–term financing was obtained from one bank, and that all of this financing consisted of loans made under the Pre–Shipment and Post–Shipment Export Financing programs. Therefore, the Department is using national average rupee–denominated and dollar–denominated short–term interest rates, as reported in the International Monetary Fund's publication ''International Financial Statistics'' (IMF Statistics), in accordance with 19 CFR 351.505(a)(3)(ii), to determine benefits received under the Pre–Shipment and Post–Shipment Export Financing programs.

With respect to long–term loans and grants allocated over time, the Department required benchmarks and discount rates to determine benefits received under the Export Promotion Capital Goods Scheme (EPCGS) program. Normally, for those years for which we do not have company–specific information, the Department relies on comparable long–term rupee–denominated benchmark interest rates from the immediately preceding year, as directed by 19 CFR 351.505(a)(2)(iii). When the respondent has no comparable long–term, rupee–denominated loans from commercial banks during either the year under consideration or the preceding year, the Department uses national average interest rates from the IMF Statistics, pursuant to 19 CFR 351.505(a)(3)(ii). Triveni did not receive comparable commercial long–term rupee–denominated loans in the required years or the relevant preceding years that can be used as long–term rupee–denominated benchmark interest rates. Therefore, we relied on the IMF statistics for national average long–term interest rates as benchmarks for the required years.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and excise taxes on imports of capital goods used in the production of exported products. Under this program, producers pay reduced duty rates on imported capital equipment by committing to earn convertible foreign currency equal to five or eight times the value of the capital goods within a period of eight years. Once a company has met its export obligation, the GOI will formally waive the duties on the imported goods. If a company fails to meet the export obligation, the company is subject to payment of all or part of the duty reduction, depending on the extent of the shortfall in foreign currency earnings, plus penalty interest.

The Department has previously determined that import duty reductions provided under the EPCGS are a countervailable export subsidy because the scheme: (1) provides a financial contribution pursuant to section 771(5)(D)(ii) in the form of revenue forgone for not collecting import duties; (2) as explained below, respondents benefit under section 771(5)(E) of the Act in two ways by participating in this program; and (3) the program is contingent upon export performance, and is specific under sections 771(5A)(A) and (B) of the Act. *See PET Film from India*, and accompanying Issues and Decision Memorandum at section entitled ''Export Promotion Capital Goods Scheme (EPCGS).'' There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, for this

preliminary determination, we continue to find this program countervailable.

The first benefit results from the provisional waiver of import duties that the exporter will have to pay if the accompanying export obligations are not met. The repayment of these duties is contingent on subsequent events, and in such instances, it is the Department's practice to treat the balance of provisionally waived duties as an interest–free loan. *See PET Film from India* and accompanying Issues and Decision Memorandum, at Comment 4. The second benefit results from the final waiver of duty on imports of capital equipment which the GOI grants when the exporter fulfills the export requirements of the EPCGS license. *Id.* For those licenses for which companies demonstrate that they have completed their export obligations and have been granted the final exemption of duties, we treat the import duty savings as grants received in the year in which the GOI waived the contingent liability on the import duty exemption. *Id.*

Import duty exemptions under this program are provided for the purchase of capital equipment. The preamble to our regulations states that if a government provides an import duty exemption tied to major equipment purchases, ''it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non–recurring . . . .'' *See Countervailing Duties; Final Rule*, 63 FR 65348, 65393 (November 25, 1998). In accordance with 19 CFR 351.524(c)(2)(iii), we are treating the final duty exemptions as non–recurring benefits.

Triveni reported that it imported capital goods under the EPCGS in years prior to the POI. According to the information provided in its responses, Triveni received various EPCGS licenses to import equipment involved in the production of subject merchandise. Further, we note that Triveni did not demonstrate that its EPCGS licenses and the imported equipment are tied, within the meaning of 19 CFR 351.525(b)(5), to the production of a particular product. As such, we preliminarily find that Triveni's EPCGS licenses benefit all of the company's exports.

Triveni met the export requirements for certain EPCGS licenses prior to the POI, and the GOI formally waived the relevant import duties prior to the POI. For other licenses, Triveni reported that it had met the export requirements; however, the final GOI waivers of the obligation to pay the duties for these licenses were received either after the POI or had yet to be issued by the GOI. Therefore, although Triveni received a deferral from paying import duties when the capital goods were imported, the final waivers for these licenses were granted after the POI.

For Triveni's imports for which the GOI has formally waived the duties prior to or during the POI, we treat the full amount of the waived duty as a grant received in the year in which the GOI officially granted the waiver. To calculate the benefit received from the GOI's formal waiver of import duties on Triveni's capital equipment imports prior to the POI, we considered the total amount of duties waived (net of any required application fees paid) to be the benefit. *See* section 771(6) of the Act. Further, consistent with the approach followed in *PET Film from India*, we determine the year of receipt of the benefit to be the year in which the GOI formally waived Triveni's outstanding import duties. See PET Film from India and accompanying Issues and Decision Memorandum at the section entitled ''Export Promotion Capital Goods Scheme (EPCGS).'' Next, we performed the ''0.5 percent test,'' as prescribed under 19 CFR 351.524(b)(2), for each year in which the GOI granted Triveni an import duty waiver. In each year in which the GOI granted Triveni an import duty waiver, the total waivers Triveni received exceeded 0.5 percent of Triveni's total export sales; therefore we allocated the total waivers over the AUL period. *See* ''Allocation Period'' section, above.

As noted above, Triveni received import duty reductions on its imports of capital equipment for which it had not yet met its export obligations by the end of the POI. Consistent with our practice and prior determinations, we will treat the outstanding unpaid import duty liability in the POI as an interest–free loan. *See* 19 CFR 351.505(d)(1); and, *e.g.*, *Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin From India*, 70 FR 13460 (March 21, 2005), and accompanying Issues and Decision Memorandum (*Final Determination Indian PET Resin*), at ''EPCGS.''

The amount of the unpaid duty liabilities to be treated as an interest–free loan is the amount of the import duty reduction or exemption for which the respondent applied, but, as of the end of the POI, had not been formally waived by the GOI. Accordingly, we find the benefit to be the interest that Triveni would have paid during the POI had it borrowed the full amount of the duty reduction or exemption at the time of importation. *See*, *e.g.*, *Preliminary Results and Rescission in Part of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 70 FR 46483, 46485 (August 10, 2005) (unchanged in the final results, 71 FR 7534 (February 13, 2006)).

As stated above, the time period for fulfilling the export commitment expires eight years after importation of the capital good. Consequently, the date of expiration of the time period to fulfill the export commitment occurs at a point in time more than one year after the date of importation of the capital goods. Pursuant to 19 CFR 351.505(d)(1), the appropriate benchmark for measuring the benefit is a long–term interest rate because the event upon which repayment of the duties depends (*i.e.,* the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital good. As the benchmark interest rate, we used the national average long–term interest rate from the IMF statistics for the year in which the capital good was imported. *See* the ''Benchmark Interest Rates and Discount Rates'' section above.

The benefit received under the EPCGS is the total amount of: (1) the benefit attributable to the POI from the grant of formally waived duties for imports of capital equipment for which respondents met the export obligation by December 31, 2007, and/or (2) interest that should have been paid on the contingent liability loans for imports of capital equipment for which Triveni has not met its export obligation. To calculate the benefit from the formally waived duties for imports of capital equipment for which Triveni has met its export requirements, we took the total amount of the waived duties in each year and treated each year's waived amount as a non–recurring grant. We applied the grant methodology set forth in 19 CFR 351.524(d), using the discount rates discussed in the ''Benchmark Interest Rates and Discount Rates'' section above to determine the benefit amounts attributable to the POI.

To calculate the benefit from the contingent liability loans for Triveni, we multiplied the total amount of unpaid duties under each license by the long–term benchmark interest rate for the year in which the license was approved. This amount was then summed with the benefits from the final duty exemptions to determine the total benefit. We then divided the total benefit under the EPGCS by Triveni's total exports to determine a subsidy of 1.48 percent *ad valorem* for Triveni.

B. Duty Entitlement Passbook Scheme (DEPS/DEPB)

India's DEPS was enacted on April 1, 1997, as a successor to the Passbook Scheme (PBS). As with PBS, the DEPS program enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPS credits on a post–export basis, provided that the GOI has established a Standard Input Output Norm for the exported product. DEPS credits can be used to pay import duties for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPS credits are earned.

The Department has previously determined that the DEPS program is countervailable. *See*, *e.g.*, *PET Film from India*, and accompanying Issues and Decision Memorandum, at ''Duty Entitlement Passbook Scheme (DEPS/DEPB).'' The Department determined that under the DEPS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the GOI provides credits for the future payment of import duties; and, that a benefit is conferred pursuant to section 771(5)(E) of the Act in the amount of the duty exemptions because the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. *See* 19 CFR 351.519(a)(4). Finally, because this program is contingent upon export, it is specific under sections 771(5A)(A) and (B) of the Act. *Id.* No new information or evidence of changed circumstances has been presented in this investigation to warrant reconsideration of this finding. Therefore, we continue to find that the DEPS is countervailable.

In accordance with past practice and pursuant to 19 CFR 351.519(b)(2), we find that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned. *See*, *e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Cut–to-Length Carbon–Quality Steel Plate From India*, 64 FR 73131, 73134 (December 29, 1999), and accompanying Issues and Decision Memorandum, at Comment 4. We calculated the benefit on an ''as–earned'' basis upon export because DEPS credits are provided as a percentage of the value of the exported merchandise on a shipment–by-shipment basis and, as such, it is at this point that recipients know the exact amount of the benefit (*e.g.*, the available credits that amount to a duty exemption).

Triveni reported that it received post–export credits on shipments of subject merchandise under the DEPS program during the POI. Triveni also reported that it paid required application fees for each DEPS license associated with its export shipments made during the POI. We recognize that these fees provide an allowable offset to DEPS benefits in accordance with section 771(6)(A) of the Act. Because DEPS credits are earned on a shipment–by-shipment basis, we consider that the benefits are tied to particular products and markets, in accordance with 19 CFR 351.525(b)(5). As such, we measure the benefit by identifying all DEPS credits granted on exports of subject merchandise to the United States during the POI. We calculate the subsidy rate by dividing these benefits (net of application fees) by total exports of subject merchandise to the United States during the POI. *Id.* On this basis, we preliminarily determine Triveni's countervailable subsidy from the DEPS program to be 7.25 percent *ad valorem*.

C. Pre–Shipment and Post–Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short–term pre–shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre–shipment loans for working capital purposes (*i.e.*, purchasing raw materials, warehousing, packing, transportation, etc.) for merchandise destined for exportation. Companies may also establish pre–shipment credit lines upon which they draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post–shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post–shipment financing is, therefore, a working capital program used to finance export receivables. In general, post–shipment loans are granted for a period of not more than 180 days.

The Department has previously determined that the pre–shipment and post–shipment export financing programs are countervailable because: (1) the provision of the export financing constitutes a financial contribution, pursuant to section 771(5)(D)(i) of the Act, as a direct transfer of funds in the form of loans; 2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act to the extent that the interest rates provided under these programs are lower than commercially available interest rates; and (3) these programs are specific under sections 771(5A)(A) and (B) of the Act because they are contingent upon export performance. *See*, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002), and accompanying Issues and Decision Memorandum, at ''Pre–Shipment and Post–Shipment Export Financing.'' There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, for this preliminary determination, we continue to find this program countervailable.

Triveni reported that under this program, it obtained packing credits for pre–shipment financing and discounted trade bills for post–shipment export financing, denominated in both Indian rupees and U.S. dollars. As noted above in the ''Benchmark Interest Rates and Discount Rates'' section, Triveni reported that all of its short–term financing was obtained from one bank under the Pre–Shipment and Post–Shipment Export Financing programs. As a result, the Department is using the short–term rupee–denominated and dollar–denominated interest rates published in the IMF Statistics as the benchmark interest rates for calculating the benefit received under this program. *See* ''Benchmark Interest Rates and Discount Rates'' section, above.

The benefit conferred by the pre–shipment and post–shipment export loans is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan during the

POI. Because pre–shipment loans are not tied to exports of a particular product, or to particular markets, we calculated the subsidy rate for these loans by dividing the total benefit by the value of Triveni's total exports during the POI, in accordance with 19 CFR 351.525(b)(2). On this basis, we determine the countervailable subsidy from pre–shipment export financing to be 1.36 percent *ad valorem* for Triveni.

Because post–shipment loans are normally tied to specific shipments of a particular product to a particular market, we normally divide the benefit from post–shipment loans tied to exports of subject merchandise to the United States by the value of total exports of subject merchandise to the United States during the POI. *See* 19 CFR 351.525(b)(4). Since the information on the record demonstrates that Triveni's post–shipment loans were tied to a particular market, we have calculated the subsidy rate for these loans by dividing the benefit from the post–shipment loans by the value of Triveni's total exports to the United States during the POI. On this basis, we determine the countervailable subsidy provided to Triveni from post–shipment export financing to be 1.14 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Triveni did not apply for or receive benefits during the POI under the programs listed below.

A. Export Oriented Unit Scheme

1. Duty–Free Import of Capital Goods and Raw Materials
2. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
3. Duty Drawback on Fuel Procured from Domestic Oil Companies
4. Exemption from Income Tax under Sections 10A and 10B of Income Tax Act

B. Advance License Program

C. Duty Free Import Authorisation Scheme

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the GOI and Triveni prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for Triveni, the only known producer/exporter of the subject merchandise during the POI. We preliminarily determine the total estimated net countervailable subsidy rate to be 11.23 percent *ad valorem* for Triveni.

Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all–others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. In this investigation, Triveni is the sole respondent and meets the criteria for the all–others rate. Therefore, we have assigned Triveni's rate to all other producers and exporters.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we will direct U.S. Customs and Border Protection to suspend liquidation of all entries of commodity matchbooks from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise at the rates indicated above.

International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c) for a further discussion of case briefs. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 30, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7694 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Preliminary Results and Partial Rescission of the 2007–2008 Administrative Review and Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is currently conducting the 2007–2008 administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC). We preliminarily determine that sales have been made below normal value (NV) with respect to Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune). Accordingly, we preliminarily find that Max Fortune does not qualify for revocation under 19 CFR 351.222(b)(2).

In addition, we are preliminarily rescinding the review with respect to six companies which reported they made no exports of subject merchandise during the period of review (POR), as confirmed by our review of import data from U.S. Customs and Border Protection (CBP).

If these preliminary results are adopted in our final results of this review, we will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise made during the period of review (POR).

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1823, respectively.

Case History

On March 30, 2005, the Department published in the **Federal Register** the antidumping duty order on certain tissue paper products from the PRC. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*).

On March 3, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain tissue paper products from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 73 FR 11389 (March 3, 2008).

On March 31, 2008, the Department received a timely request for an administrative review of this antidumping duty order in accordance with 19 CFR 351.213 from Max Fortune. On March 31, 2008, the Department also received a timely request from the petitioner [1] for an administrative review of nine companies.[2]

On April 25, 2008, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain tissue paper products from the PRC for nine individually named firms covering the period March 1, 2007, through February 29, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* FR 22337 (April 25, 2008) (*Initiation Notice*).

On May 2, 2008, the Department placed on the record the CBP data for U.S. imports of subject merchandise from the PRC during the POR. In its May 2, 2009 letter to the interested parties in this review, the Department stated that it intended to select respondents for individual review based on the CBP import data and provided parties with an opportunity to comment on the CBP import data and respondent selection. On May 9 and 12, 2008, Max Fortune and the petitioner, respectively, submitted comments to the Department on the respondent selection process.

On June 9, 2008, we requested that the Import Administration's Office of Policy (the Office of Policy) issue a surrogate-country memorandum for the selection of the appropriate surrogate country in this review.[3]

Based on the comments received from the parties regarding respondent selection, on June 10, 2008, the Department issued letters to each of the nine companies for which a review was initiated requesting that each: (1) Provide POR quantity and value data and complete a separate-rate certification or application; or (2) submit a no-shipment statement if applicable.

On June 12, 2008, the Office of Policy provided us with a list of five countries at a level of economic development comparable to that of the PRC.[4]

On June 24, 2008, the Department received submissions from eight companies. One of those companies (*i.e.,* Max Fortune) provided its quantity and value data. Seven companies [5] certified that they had no shipments of subject merchandise during the POR and one of these seven companies, Quijiang, requested that the Department rescind the review with respect to it based on its POR no-shipment claim. Also on June 24, 2008, seven of these eight companies submitted their separate-rate certifications in response to the Department's request.[6] On June 27, 2008, the remaining company for which a review was requested, Guilin Qifeng, informed the Department that it would not be participating in this review.

On July 2, 2008, we issued Max Fortune the antidumping duty questionnaire. On July 9, 2008, we also issued Quijiang the antidumping duty questionnaire and informed it, with respect to its sales reporting, that the POR had been expanded back to September 5, 2006.[7] *See* July 9, 2008 cover letter to questionnaire issued to Quijiang.

On July 10, 2008, the Department invited interested parties participating in this review to submit comments on surrogate-country selection and to submit publicly available information as

[1] The petitioner is the Seaman Paper Company of Massachusetts, Inc.

[2] These companies are as follows: (1) Max Fortune; (2) Guilin Qifeng Paper Co., Ltd. (Guilin Qifeng); (3) Vietnam Quijiang Paper Co., Ltd. (Qujiang); (4) Foshan Sansico Co., Ltd. (Foshan Sansico); (5) Sansico Asia Pacific Limited (Sansico Asia); (6) PT Grafitecindo Ciptaprima (Grafitecindo); (7) PT Printec Perkasa (Printec I); (8) PT Printec Perkasa II (Printec II); and (9) PT Sansico Utama (Sansico Utama).

[3] *See* the Department's memorandum entitled, ''Request for Surrogate Country Selection,'' dated June 9, 2008.

[4] *See* the Department's memorandum entitled, ''Administrative Review of the Antidumping Duty Order on Brake Rotors from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated August 7, 2008 (Policy Memorandum).

[5] The seven companies claiming no shipments of subject merchandise during the POR are Quijiang, Foshan Sansico, Sansico Asia, Grafitecindo, Printec I, Printec II, and Sansico Utama.

[6] The seven companies submitting separate rate certifications are Max Fortune, Foshan Sansico, Sansico Asia, Grafitecindo, Printec I, Printec II, and Sansico Utama.

[7] The normal POR in this case is March 1, 2007 through February 29, 2008. However, we expanded the POR with respect to Quijiang back to September 5, 2006, in order to include Quijiang's entries of tissue paper products covered by the Department's preliminary determination in an anti-circumvention inquiry which was ongoing at that time. *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 73 FR 21580 (April 22, 2008). In that proceeding, the Department found that Quijiang had circumvented the order by exporting tissue paper products to the United States that were processed in Vietnam using PRC-origin jumbo rolls of tissue paper produced by its parent company (Guilin Qifeng). *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591 (October 3, 2008).

surrogate values (SVs) for purposes of calculating NV.[8]

On August 8, 2008, Quijiang informed the Department that it would not be responding to the Department's antidumping duty questionnaire, arguing that it was prematurely issued pending the Department's final determination in the anti-circumvention inquiry involving Quijiang.

During August 2008, Max Fortune submitted its responses to the antidumping duty questionnaire.

On August 14 and September 19, 2008, the petitioner submitted surrogate-country comments and publicly available surrogate value information (PAI), respectively, in this administrative review.

Upon the completion of the Department's final circumvention determination involving Quijiang, on September 23, 2008, the Department provided Quijiang one final opportunity to respond to the antidumping questionnaire issued on July 9, 2008. On October 3, 2008, Quijiang submitted a letter stating that it had not issued any certifications pursuant to the certification procedures outlined in the Department's affirmative preliminary and final determinations of circumvention involving Quijiang. As Quijiang's letter lacked the necessary certifications, the Department informed Quijiang on October 8, 2008, that it needed to resubmit its October 3, 2009, letter with the required certifications. On October 9, 2008, Quijiang submitted another letter stating that it had closed its factory as of April 20, 2008, and would not be participating in this review.

On October 24, 2009, the Department discontinued the certification program for Quijiang's U.S. entries of tissue paper products based on its non-participation in this administrative review.[9]

On November 20, 2008, the Department postponed the preliminary results of this review until March 31, 2009. *See Certain Tissue Paper Products From the People's Republic of China: Extension of Time Limit for Preliminary Results of 2007–2008 Administrative Review*, 73 FR 70323 (November 20, 2008).

The Department issued a supplemental questionnaire to Max Fortune on December 17, 2008, and received Max Fortune's supplemental questionnaire response on January 5, 2009. Max Fortune submitted additional information related to its January 5, 2009, response on January 19, 2009.

On January 29, 2009, the Department issued Max Fortune the verification outline. Pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act), the Department conducted verification of the questionnaire responses submitted by Max Fortune in February 2008. *See* Memorandum to The File from Case Analysts entitled ''Verification of the Questionnaire Responses of Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China,'' dated March 31, 2009 (Verification Report). The verification report is on file and available in the Central Records Unit (CRU), Room 1117 of the Department's main building.

On March 13, 2009, the petitioner submitted additional PAI for consideration in the preliminary results.

Period of Review

The POR is March 1, 2007, through February 29, 2008.

Scope of the Order

The tissue paper products covered by this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[10]

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

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 unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to its export activities. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991). In this review, in support of its claim for a separate rate, Max Fortune reported that it is a wholly foreign-owned company registered and located in Hong Kong. *See* August 1, 2008, Section A Response (Section A Response) at page 2. Our verification findings corroborated Max Fortune's separate-rate claim. *See* Verification Report at pages 2–11. Consequently, no additional separate-rate analysis is necessary for Max Fortune. *See Notice of Final Determination of Sales at Less than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996).

[8] *See* the Department's letter regarding, ''2007–2008 Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China,'' requesting parties to provide comments on surrogate-country selection and provide surrogate factors of production values from the potential surrogate countries (*i.e.,* India, Indonesia, the Philippines, Colombia and Thailand).

[9] *See* October 24, 2008, memorandum entitled ''Discontinuation of Certification Program for Quijiang.''

[10] On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

Application of Adverse Facts Available

For the reasons outlined below, we have preliminarily applied adverse facts available (AFA) to the PRC-wide entity which includes Guilin Qifeng and Quijiang. Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority * * *, the administering authority * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.Rep. No. 103–316 at 870 (1994) (SAA). It is the Department's practice to make an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

In this administrative review, Guilin Qifeng and Quijiang failed to respond to the Department's questionnaires. Specifically, we issued a quantity and value questionnaire along with a separate-rates application and certification form to Guilin Qifeng and Quijiang for purposes of selecting the mandatory respondents in this review. *See* June 10, 2008, letters to Guilin Qifeng and Quijiang. However, Guilin Qifeng subsequently stated that it would not be participating in this review. *See* June 27, 2008, letter from Guilin Qifeng. Although Quijiang initially submitted a no-shipment response to the Department's quantity and value questionnaire on June 24, 2008, we subsequently issued an antidumping duty questionnaire to Quijiang for purposes of reporting its sales tissue paper products exported from Vietnam which were produced with PRC-origin jumbo rolls during the period September 5, 2006, through February 29, 2008. *See* July 9, 2008, letter to Quijiang. We gave Quijiang a second and final opportunity to respond to this questionnaire on September 23, 2008. *See* September 23, 2008, letter to Quijiang. In response, Quijiang stated that it had closed its factory and would no longer be participating in this review. *See* October 9, 2008, letter from Quijiang.

Because Guilin Qifeng and Quijiang did not demonstrate that they qualify for separate-rate status, we consider both entities to be part of the PRC-wide entity for purposes of this review. In the *Initiation Notice*, the Department stated that if one of the companies on which we initiated a review does not qualify for a separate rate, all other exporters of tissue paper products from the PRC which have not qualified for a separate rate are deemed to be part of the single PRC-wide entity of which the named exporter is a part. *See Initiation Notice*, 73 FR at 22338. Based upon the failure of Guilin Qifeng and Quijiang, as part of the PRC-wide entity, to submit responses to the Department's questionnaires, the Department finds that the PRC-wide entity withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act. Therefore, the Department must rely on the facts otherwise available in order to determine a margin for the PRC-wide entity, pursuant to section 776(a)(2)(A), (B) and (C) of the Act. *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

Because the PRC-wide entity, including Guilin Qifeng and Quijiang, failed to cooperate to the best of its ability in providing the requested information in this review, as discussed above, we find it necessary, pursuant to sections 776(a)(2)(A), (B) and (C), as well as section 776(b), of the Act, to use total adverse facts available (AFA) as the basis for these preliminary results of review for the PRC-wide entity. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007)).

Selection of Adverse Facts Available Rate

As discussed above, section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the less-than-fair-value (LTFV) investigation, any previous administrative review, or any information placed on the record. In selecting an AFA rate in reviews, the Department's practice has been to assign the highest margin on the record of any segment of the proceeding. *See*, *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l* v. *United States*, 24 CIT 678, 689 (July 31, 2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; *see also Final Determination of Sales at Less than Fair Value: Certain Frozen*

and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 22. In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the statute, court precedent, and our normal practice, as AFA, we are assigning the PRC-wide entity, which includes Guilin Qifeng and Quijiang, the highest rate on the record of any segment of this proceeding, *i.e.*, 112.64 percent. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. To corroborate the information, the Department seeks to determine that the information used has probative value. *See* SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 6.

To be considered corroborated, information must be found to be both reliable and relevant. The AFA rate of 112.64 percent that we are applying in the current review represents the highest rate from the petition in the LTFV investigation segment of this proceeding. *See Tissue Paper Order*. The Department corroborated the information used to calculate the 112.64 percent rate in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005). Furthermore, the AFA rate we are applying for the current review was applied in a review subsequent to the LTFV investigation, and no information has been presented in the current review that calls into question the reliability of this information. *See Certain Tissue Paper from the People's Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 17477, 17480–17481 (April 9, 2007) (unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72FR 58642, 58644–58645 (October 16, 2007)). Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (finding that the Department cannot use a margin that has been judicially invalidated in its calculations). The AFA rate we are applying for the instant review was calculated based on export price information and production data from the petition, as well as the most appropriate surrogate value information available to the Department during the LTFV investigation. As there is no information on the record of this review that demonstrates this rate is not appropriate for use as AFA, we determine this rate has relevance.

Because the AFA rate, 112.64 percent, is both reliable and relevant, we determine that it has probative value. As a result, we determine that the 112.64 percent rate is corroborated to the extent practicable for the purposes of this administrative review, in accordance with section 776(c) of the Act, and may reasonably be applied to the exports of the subject merchandise by the PRC-wide entity as AFA.

Preliminary Partial Rescission of 2007–2008 Administrative Review

With respect to Foshan Sansico, Sansico Asia, Grafitecindo, Printec I, Printec II, and Sansico Utama, each of these companies informed the Department that it did not export the subject merchandise to the United States during the POR.

Based on the record of this review, including the CBP data provided to the parties on May 2, 2009, we conclude preliminarily that Foshan Sansico, Sansico Asia, Grafitecindo, Printec I, Printec II, and Sansico Utama did not export subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this administrative review for Foshan Sansico, Sansico Asia, Grafitecindo, Printec I, Printec II, and Sansico Utama.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 58672 (October 7, 2005) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006)). None of the parties in this administrative review has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production (FOPs), valued in a surrogate market-economy (ME) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below. *See also* the

Department's memorandum entitled, ''Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Factor Valuation for the Preliminary Results,'' dated March 31, 2009 (Surrogate Value Memorandum).

The Department determined that India, Indonesia, the Philippines, Colombia and Thailand are countries comparable to the PRC in terms of economic development. *See* Policy Memorandum. Customarily, we select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a comparable level of economic development to the PRC; is a significant producer of the subject merchandise (*i.e.*, tissue paper); and has publicly-available and reliable data. *See* March 31, 2009, Memorandum to the File entitled ''2007–2008 Antidumping Duty Administrative Review on Certain Tissue Paper Products from the People's Republic of China: Selection of a Surrogate Country'' (Surrogate Country Memorandum).

Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate-country selection. *See* Surrogate Country Memorandum. We obtained and relied upon publicly-available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in antidumping administrative reviews, interested parties may submit publicly-available information to value FOPs within 20 days after the date of publication of these preliminary results.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Max Fortune to the United States were made at prices below NV, we compared Max Fortune's export prices (EPs) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below, pursuant to section 773 of the Act.

Export Price

Because Max Fortune sold subject merchandise to an unaffiliated purchaser in the United States prior to importation into the United States and use of a constructed-export-price methodology was not otherwise indicated, we used EP in accordance with section 772(a) of the Act.

We calculated EP based on the reported terms of delivery to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC pursuant to section 772(c)(2)(A) of the Act.[11] Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. *See* ''Factor Valuations'' section below for further discussion of surrogate rates.

In determining the most appropriate surrogate values (SVs) to use in a given case, the Department's practice is to use review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available data. *See, e.g. Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the subject merchandise. There is no information of that type on the record of this review. Therefore, the Department used three sources to calculate an SV for domestic brokerage expenses: (1) Data from Kejriwal Paper Ltd. (Kejriwal) for the period of investigation July 1, 2004, to June 30, 2005 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in *Notice of Final Determination of Sales at less Than Fair Value and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006)); (2) data from Essar Steel Limited (Essar) for the POR July 1, 2004, through June 30, 2005 (*see Certain Hot-Rolled Carbon Steel Flat Products from India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006)); and (3) data from Agro Dutch Industries Ltd. for the POR February 1, 2004, through January 31, 2005 (*see Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 10597 (March 4, 2005) (unchanged in *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005)). Because these values were not concurrent with the period of this administrative review, we adjusted them for inflation using the Wholesale Price Index (WPI) for India as published in the International Monetary Fund's *International Financial Statistics*, available at *http://ifs.apdi.net/imf*, and then calculated a simple average of the three companies' brokerage expense data.

The Department valued inland truck freight expenses using a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Because this rate is not contemporaneous with the POR, we deflated it using WPI data. *See* Surrogate Value Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

For purposes of calculating NV, we valued the PRC FOPs in accordance with section 773(c)(1) of the Act. The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including

[11] *See* the Department's memorandum entitled, ''2007–2008 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Preliminary Results Margin Calculation for Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively referred to as Max Fortune),'' dated March 31, 2009 (*Max Fortune Calculation Memo*).

depreciation. We used the FOPs reported by Max Fortune for materials, energy, labor, and packing. *See* section 773(c)(3) of the Act.

In examining SVs, we selected, where possible, the publicly-available value, which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005)). For a detailed explanation of the methodology used to calculate SVs, *see* Surrogate Value Memorandum.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Max Fortune for the POR. We relied on the factor-specific data submitted by Max Fortune for the production inputs in its questionnaire and supplemental questionnaire responses, where applicable, for purposes of selecting SVs. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available Indian SVs for all but two inputs.

Max Fortune reported that it purchased two inputs (*i.e.*, pulpboard and cartons), which it consumed in the production of the subject merchandise under review from a ME supplier and paid for in a market-economy currency. Section 773(c) of the Act and 19 CFR 351.408(c)(1) requires the Department to accept input prices to value the FOPs when the input is purchased from a ME supplier and paid for in a ME currency. Furthermore, consistent with the Department's stated policy reflected in *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback: and Request for Comments*, 71 FR 61716 (October 19, 2006) (*2006 Statement of Policy*), when a sufficient proportion of an input is purchased from a ME, the Department will use the reported ME price to value the input if it was paid for in a ME currency. For purposes of the preliminary results, we have determined that Max Fortune's reported ME purchases of the two inputs identified above accounted for a significant portion of its total purchases of these two inputs and, therefore, have used the reported purchase prices to value these two inputs in our NV calculation. *See* Max Fortune Calculation Memo for further discussion on the valuation of cartons.

Normally, the Department prefers to use FOP data that accurately represent the quantity of inputs consumed on a control number (CONNUM)-specific basis. In this review, Max Fortune has indicated that it started maintaining records for dye and ink consumption in the paper-making and printing stages of production on a product-specific and color-specific basis in November 2007 for purposes of reporting its FOP data in a manner consistent with the Department's instructions in the prior review segment. *See* January 5, 2009, supplemental response at pages 11–14. Accordingly, for the last four months of the POR (November 2007 through February 2008), Max Fortune reported its paper-making dye consumption amounts and printing ink consumption amounts on a product-code-specific and color-specific basis. However, for the portion of the POR prior to the Department's instruction (March 2007 through February 2008), Max Fortune did not report these consumption amounts on a product-specific and color-specific basis. In addition, Max Fortune did not provide product-specific and color-specific printing dye consumption amounts for any portion of the POR.

At verification, we examined Max Fortune's ink and dye consumption records and confirmed that it started maintaining consumption records for dyes used for paper-making and inks used for printing on both a color-specific and product-specific basis as of November 2007. However, Max Fortune did not maintain these records before that date. *See* Verification Report at pages 22–24. The Department finds such information necessary in order to accurately value the FOPs utilized in tissue paper production. Therefore, pursuant to section 776(a)(1) of the Act, because necessary information relevant to the Department's analysis is not on the record, the Department has determined it necessary to apply facts otherwise available to value Max Fortune's dye and ink consumption factors which were not reported on a color-specific and product-specific basis. Consistent with the Department's decisions in prior segments of this review, as facts available, the Department has preliminarily determined it appropriate to rely on the aggregate, non-color-specific paper-making dye consumption factors reported by Max Fortune prior to November 2007. The Department valued such dye consumption using an average of Indian import values for different dye types commonly used in tissue-paper production. For dyes used in printing, as facts available, for the entire POR, the Department has preliminarily determined it appropriate to accept Max Fortune's aggregate, non-color specific print dye consumption factors. The Department valued print dye consumption using an average Indian import value for non-black printing dyes. For inks used for printing, while Max Fortune reported product-specific and color-specific ink consumption factors as of November 2007, the Department has been unable to obtain color-specific ink values. Thus, we have valued all ink consumption using a non-color-specific average Indian import value.

In selecting the SVs, consistent with our past practice, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). *See Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers (*e.g.*, ME-purchased inputs), we based freight for these inputs on the actual distance from the input supplier to the site at which the input was consumed. Where necessary, we adjusted the SVs for inflation/deflation using the WPI as published in the International Monetary Fund's *International Financial Statistics*, available at *http://ifs.apdi.net/imf.*

We valued the raw material and packing material inputs, and the by-product (*i.e.,* paper scrap) using weighted-average unit import values derived from the *Monthly Statistics of the Foreign Trade of India* (*MSFTI*), as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by the World Trade Atlas (WTA), available at *http:www.gtis.com/*

wta.htm. The Indian WTA import data are reported in rupees and are contemporaneous with the POR.[12] Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. *See http://www.ia.ita.doc.gov/exchange/index.html*. Where appropriate, we converted the units of measure to kilograms. *See* Surrogate Value Memorandum.

Furthermore, with regard to the WTA Indian import-based SVs, we disregarded prices from NME countries [13] and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that these exporting countries maintain broadly available, non-industry-specific export subsidies and, therefore, there is reason to believe or suspect that all exports to all markets from such countries may be subsidized.[14] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excluded export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import-based SVs. *See* Surrogate Value Memorandum. Finally, we excluded imports that were labeled as originating from an ''unspecified'' country from the average Indian import values, because we could not be certain that they were not from either an NME or a country with general export subsidies.

As discussed above, the Department valued surrogate truck freight cost by using a deflated per-unit average rate calculated from data on the following web site: *http://www.infobanc.com/logistics/logtruck.htm. See Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282, 52286 (September 9, 2008) (and unchanged in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009); and Surrogate Value Memorandum at Attachment 8.

We valued water using data from the Maharashtra Industrial Development Corporation because it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province from July 2007; 189 for the ''inside industrial areas'' usage category; and 189 for the ''outside industrial areas'' usage category.[15]

The Department calculated a simple average price for domestic coal using data obtained from Coal India Limited. Because these data were not contemporaneous with the POR, we adjusted the average value for inflation using WPI. *See* Surrogate Value Memorandum at Attachment 6.

To value electricity, the Department used July 2006 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, published by the Central Electricity Authority of the Government of India. Because these data were not contemporaneous with the POR, we adjusted the average value for inflation using WPI. *See* Surrogate Value Memorandum at Attachment 5.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in ME countries as reported on Import Administration's Web site. *See* ''Expected Wages of Selected NME Countries'' (revised January 2007) (available at *http://www.trade.gov/ia/*). For further details on the labor calculation, *see* Surrogate Value Memorandum at Attachment 8. Because the regression-based wage rates do not separate the labor rates into different skill levels or types of labor, we applied the same wage rate to all skill levels and types of labor reported by Max Fortune.

Max Fortune reported that during the manufacturing process, its subject merchandise was transported from its paper-making facility to its tissue paper-processing facility. Using Max Fortune's reported distance and the reported weight of its tissue paper products, we valued the other PRC distance (*i.e.*, domestic inland freight cost of transporting paper from Max Fortune's Putian facility to Max Fortune's Mawei processing facility) with the surrogate truck rate discussed above. This additional freight value was added to the cost of manufacture (COM). *See* Max Fortune Calculation Memorandum.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, consistent with 19 CFR 351.408(c)(4), we used the public information from the 2007–2008 annual report of Pudumjee Pulp & Paper Mills Ltd. (Pudumjee).[16] From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, COM); and the profit rate as a percentage of the COM plus SG&A. Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial report. For a full discussion of the calculation of these ratios, *see* Surrogate Value Memorandum and its accompanying calculation worksheets at Attachment 7.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Max Fortune for use in our preliminary results. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Max Fortune. *See* Verification Report.

Intent Not To Revoke Order In Part

On March 31, 2008, Max Fortune requested, that pursuant to 19 CFR 351.222(b)(2), the Department revoke it from the antidumping duty order on certain tissue paper products from the PRC at the conclusion of this administrative review. Max Fortune submitted along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i)); (2) the company has sold the subject merchandise to the

[12] *See* Surrogate Value Memorandum at Attachment 1.

[13] The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

[14] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; and *China National Machinery Imp. & Exp. Corp.* v. *United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

[15] Web site available at *http://www.midcindia.org.*

[16] *See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497, 18502 (April 4, 2008) (unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008) (*Tissue Paper AR2*)).

United States in commercial quantities during each of the past three years (*see* 19 CFR 351.222(e)(1)(ii)); and (3) the company agrees to immediate reinstatement of the antidumping duty order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV (*see* CFR 351.222(e)(1)(iii)).

In determining whether or not to revoke an antidumping duty order with respect to a particular producer/exporter under 19 CFR 351.222(b)(2), the Department considers whether: (1) The producer/exporter has sold the subject merchandise at not less than NV for a period of at least three consecutive years; (2) the producer/exporter has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping. In this case, our preliminary margin calculation shows that Max Fortune sold the subject merchandise at less than NV during the current review period. *See* ''Preliminary Results of the Review'' section below. Therefore, we preliminarily find that Max Fortune does not qualify for revocation from the order, pursuant to 19 CFR 351.222(b)(2).

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. *See http://www.ia.ita.doc.gov/exchange/index.html*.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period March 1, 2007, through February 29, 2008:

CERTAIN TISSUE PAPER PRODUCTS FROM THE PRC

Individually reviewed exporter 2007–2008 administrative review	Weighted-average percent margin (percent)
Max Fortune	4.13
PRC-Wide Rate	Margin (percent)
PRC-Wide Rate (including Guilin Qifeng Paper Co., Ltd. and Vietnam Quijiang Paper Co., Ltd.)	112.64

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.*, Microsoft Word, pdf, etc.). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for Max Fortune, we calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. Because we do not have entered values on the record for Max Fortune's sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

With respect to the PRC-wide entity (including Guilin Qifeng and Quijiang), we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 112.64 percent.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of certain tissue paper products from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) A cash deposit rate of 4.13 percent will be required for certain tissue paper products from the PRC exported by Max Fortune; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 112.64 percent; and (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[17] All entries of certain tissue paper products from Quijiang will be presumed to be of PRC origin regardless of whether they are declared to be of Vietnamese or Chinese origin. *See* October 24, 2008, memorandum entitled ''Discontinuation of Certification Program for Quijiang.''

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–7688 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Basic Requirements for Special Exemption Permits and Authorizations To Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection, the Fur Seal, and the Endangered Species Acts

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

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan, (301) 713–2289 or *Amy.Sloan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA), Fur Seal Act (16 U.S.C. 1151 *et seq.*; FSA), and Endangered Species Act (16 U.S.C. 1531 *et seq.*; ESA) prohibit certain actions affecting marine mammals and endangered and threatened species, with exceptions. Permits can be obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or threatened or endangered species; commercial and educational photography of marine mammals; and import and capture of marine mammals for public display. Letters of Confirmation can be obtained under the General Authorization (GA) for scientific research that involves minimal disturbance to marine mammals. The applicants desiring a permit or authorization must provide certain information for the National Marine Fisheries Service (NMFS) to determine whether a proposed activity is consistent with the purposes, policies, and requirements of the applicable laws, and that the activity is in the best interest of the protected species and the public. Permit holders and authorized researchers must report on activities conducted to ensure compliance with permit conditions and protection of the animals. Holders of captive marine mammals must report changes to their animal inventory.

This information collection applies to protected species for which NMFS is responsible, including the marine mammal species of cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions) and threatened and endangered species including sea turtles (in water), white abalone, black abalone, smalltooth sawfish, shortnose sturgeon, and elkhorn and staghorn corals. The regulations implementing permit, authorization, and inventory requirements under the MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222.

Respondents will be researchers, photographers, and other members of the public seeking exceptions to prohibited activities on marine mammals and endangered and threatened species through permits or authorizations for purposes described above; and holders of marine mammals in captivity.

II. Method of Collection

Permit and authorization application materials and reports are available in paper and electronic versions, and are written to respond to a required format. Inventory materials and reports are paper forms. Methods of submission include mail, facsimile transmission, and electronic submission via e-mail or through an on-line application system known as Authorizations and Permits for Protected Species (APPS).

III. Data

OMB Control Number: 0648–0084.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not-for-profit institutions; business or other for-profit organizations; Federal Government; and State, Local, or Tribal Government.

Estimated Number of Respondents: 514.

Estimated Time per Response: 50 hours for an application for a scientific research or enhancement permit; 30 hours for an application for a public display permit; 10 hours for an application for a photography permit or GA Letter of Confirmation; 35 hours for a major amendment or modification to a permit; 3 hours for a minor amendment or modification to a permit or for a change to a GA Letter of Confirmation; 12 hours for a scientific research or enhancement permit report; 8 hours for a GA Letter of Confirmation report; 2 hours for a public display or photography permit report; request to retain or transfer a rehabilitated marine mammal, or a marine mammal inventory (1 hour for a transport notification; 30 minutes each for a data sheet and a person/holder/facility sheet); and 2 hours for recordkeeping.

Estimated Total Annual Burden Hours: 7,716.

Estimated Total Annual Cost to Public: $2,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7676 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting Requirements for Commercial Fisheries Authorization Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia Lawson, (301) 713–2232 or *Patricia.Lawson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Reporting injury to and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to categorize commercial fisheries into Categories I, II, or III. Participants in the first two categories must be authorized to take marine mammals, while those in Category III are exempt from that requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

II. Method of Collection

Reports are required from participants, and methods of submittal include Internet, mail and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0292.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; and business or other for-profits organizations.
Estimated Number of Respondents: 200.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7677 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Groundfish Tagging Program

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

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Clary, (206) 526–4039 or e-mail *john.c.clary@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The groundfish tagging program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Northwest Pacific. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, and the Alexander Archipelago of Southeast Alaska), California, Oregon, and Washington. Fish movement information from recovered tags is used in population dynamics models for stock assessment. There are two general categories of tags. The simple plastic tags (spaghetti tags) are external tags approximately two inches long printed with code numbers. When a tag is returned the tag number is correlated with databases of released, tagged fish to determine the net movement and growth rate of the tagged fish. Archival tags are microchips with sensors encased in plastic cylinders that record the depth, temperature or other data, which can be downloaded electronically from the recovered tags. The groundfish tagging and tag recovery program is part of the fishery resource assessment and data collection that National Marine Fisheries Service (NMFS) conducts under the Magnuson-Stevens Act authority as codified in 16 U.S.C. 1801(a)(8).

II. Method of Collection

This is a volunteer program requiring the actual tag from the fish to be returned, along with recovery information. Reporting forms with pre-addressed and postage-free envelopes are distributed to processors and catcher vessels.

III. Data

OMB Control Number: 0648–0276.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 661.

Estimated Time per Response: 5 minutes for returning a regular tag; and 20 minutes for returning an internal archival tag.

Estimated Total Annual Burden Hours: 88.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–7685 Filed 4–3–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO42

Marine Mammals; File Nos. 14197 and 782–1812

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that the U.S. Air Force, 30th Space Wing Civil Engineer Environmental Flight, Vandenberg Air Force Base, CA, has applied in due form for a permit to conduct research on marine mammals (File No. 14187); and NMFS National Marine Mammal Laboratory, Seattle, WA, has applied for a major amendment to Scientific Research Permit No. 782–1812 for research on marine mammals.

DATES: Written, telefaxed, or e–mail comments must be received on or before May 6, 2009.

ADDRESSES: The applications and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14197 or 782–1812 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e–mail. The mailbox address for providing e–mail comments is *NMFS.Pr1Comments@noaa.gov*. Include the File No. (14197 or 782–1812) in the subject line of the e–mail comment as a document identifier.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit and major amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

File No. 14197. The proposed permit would authorize continued studies of the effects of noise from rocket and missile launches and subsequent launch–generated sonic booms on pinnipeds inhabiting Vandenberg Air Force Base (VAFB) and the northern Channel Islands (NCI). Continuing research would examine effects from new launch vehicles, including the Delta IV. Target species are Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*). Anticipated research activities include capture with physical or chemical restraint, hearing tests, blood sampling, physiological measurements, and attachment of telemetry instruments. The applicant proposes to capture 50 harbor seals per year at VAFB, with incidental harassment of up to 600 harbor seals, 50 northern elephant seals, and 10 California sea lions annually. On the NCI, the applicant proposes to capture 450 harbor seals per year with incidental harassment of 2,700 animals annually, inclusive for the three targeted species. No mortalities are anticipated, but two incidental harbor seal deaths annually are requested at VAFB, as are two incidental deaths per species annually for the NCI. The permit is requested for a 5-year period.

File No. 782–1812. The proposed permit amendment would authorize an increase in the number of California sea lions that could be taken per year for the duration of the permit, which expires June 30, 2011. The location of the research would remain the California Channel Islands. The applicant is requesting changes in research protocols and objectives that require capture, marking, and sampling of additional animals, and would result in incidental harassment of additional animals. The permit would be amended to increase numbers of takes of California sea lions for (1) harassment incidental to live and dead pup censuses in the California Channel Islands; (2) capture of pups 4 to 11 months old for condition health studies; (3) evaluating various methods of chemical immobilization for adult males; (4) evaluating different handling and marking methods of pups; and (5) investigating the breeding system using molecular genetics and behavioral observations of adult males.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 31, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–7708 Filed 4–6–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board task force on Joint Professional Military Education will meet in closed session.

DATES: April 28–29, 2009.

ADDRESSES: SAIC, 4001 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: CDR Kenneth Spurlock, Navy Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *Kenneth.spurlock@osd.mil*, or via phone at (703) 571–0083.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss the identification of leader competencies—joint, service, and generic—to include parsing their inter-relationship; the current PME practices in the Services and joint communities; expansion of the JPME; service and joint community plans to modify JPME practices; how the Service and Joint PME programs support one another; advances in learning approaches and methods from academia, the private sector and other government agencies; the ability to administer JPME education in a more efficient and effective manner; and the ability to rapidly incorporate lessons learned from current operations into joint and Service JPME curricula.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1) and (4).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7595 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board task force on Joint Professional Military Education will meet in closed session.

DATES: June 10–11, 2009.

ADDRESSES: SAIC, 4001 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: CDR Kenneth Spurlock, Navy Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *Kenneth.spurlock@osd.mil*, or via phone at (703) 571–0083.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss the identification of leader competencies—joint, service, and generic—to include parsing their inter-relationship; the current PME practices in the Services and joint communities; expansion of the JPME; service and joint community plans to modify JPME practices; how the Service and Joint PME programs support one another; advances in learning approaches and methods from academia, the private sector and other government agencies; the ability to administer JPME education in a more efficient and effective manner; and the ability to rapidly incorporate lessons learned from current operations into joint and Service JPME curricula.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1) and (4).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7596 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board task force on Joint Professional Military Education will meet in closed session.

DATES: May 21–22, 2009.

ADDRESSES: SAIC, 4001 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: CDR Kenneth Spurlock, Navy Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *Kenneth.spurlock@osd.mil*, or via phone at (703) 571–0083.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss the identification of leader competencies—joint, service, and generic—to include parsing their inter-relationship; the current PME practices in the Services and joint communities; expansion of the JPME; service and joint community plans to modify JPME practices; how the Service and Joint PME programs support one another; advances in learning approaches and methods from academia, the private sector and other government agencies; the ability to administer JPME education in a more efficient and effective manner; and the ability to rapidly incorporate lessons learned from current operations into joint and Service JPME curricula.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Quarterly meetings will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1) and (4).

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed above, at any point; however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7597 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Board of Actuaries Open Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense published a notice March 17, 2009 (74 FR 11353) announcing a meeting of the DoD Board of Actuaries that will take place August 27–28, 2009. This notice is being published to correct the suite number for the meeting location. The meeting will be held in Suite 250 instead of Suite 270. All other information remains the same.

ADDRESSES: 4040 N. Fairfax Drive, Suite 250, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203; telephone 703–696–7413.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E9–7594 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Medicare-Eligible Retiree Health Care Board of Actuaries

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense published a notice March 2, 2009 (74 FR 9085) announcing a meeting of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries that will take place July 31, 2009. This notice is being published to correct the suite number for the meeting location. The meeting will be held in Suite 250 instead of Suite 270. All other information remains the same.

ADDRESSES: 4040 N. Fairfax Drive, Suite 250, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Margot Kaplan, 703–696–7404.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7600 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces a meeting of the Department of Defense Historical Advisory Committee. The committee will discuss the report of the Department of the Army Subcommittee. The meeting will be open to the public.

DATES: Friday, April 24, 2009 at 10:30 a.m.

ADDRESSES: The meeting will be held on the 15th Floor, Room 2, 1777 North Kent Street, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Thorne at 703–588–7890 for information or upon arrival at the building in order to be admitted.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7599 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of advisory committee closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150, the Department of Defense announces the following closed meeting notice pertaining to the U.S. Strategic Command Strategic Advisory Group Federal advisory committee.

DATES: April 30, 2009—8 a.m. to 5 p.m.

May 1, 2009—8 a.m. to 11:30 a.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Blvd, Suite 1F7, Offutt AFB, NE 68113–6030. Contact Mr. Floyd March, Joint Staff, (703) 697–0610 for supplementary information.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General Kevin P. Chilton, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, U.S.C.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public of interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: April 1, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–7619 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD(CPP)), Department of Defense (DoD).

ACTION: Notice of amendment of the demonstration project plan.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, as amended (10 U.S.C. 2358 note) by section 1109 of NDAA FY 2000 and section 1114 of NDAA FY 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management.

This amendment revises the Air Force Research Laboratory's (AFRL) personnel management demonstration project plan by providing flexibility to change the job categories in the future, eliminating the mandatory use of and providing guidance on optional use of Contribution-based Compensation System (CCS) factor weights.

DATES: This amendment to the demonstration project may be implemented beginning on the date of the publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

AFRL: Ms. Michelle Williams, AFRL/DPL, 1864 4th Street, Wright-Patterson AFB, Ohio 45433–7130.

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

The AFRL Personnel Management Demonstration Project's final plan was published in the **Federal Register** November 27, 1996 (61 FR 60399). This demonstration project involves simplified job classifications, two types of appointment authorities, an extended probationary period, pay banding, and a CCS. Two amendments to the final plan have been published in the **Federal Register**. The first amendment to clarify which employees are subject to the extended probationary period; provide the CCS bonus to eligible employees subject to the GS–15, step 10 pay cap; and change the name of broadband level descriptor ''Cooperation and Supervision'' and CCS Factor 6 ''Cooperation and Supervision'' to ''Teamwork and Leadership'' was published in the **Federal Register** January 21, 2000 (65 FR 3498). The second amendment changed the amount of time required to be assessed under CCS from 180 to 90 calendar days and was published in **Federal Register** October 18, 2005 (70 FR 60495).

2. Overview

Through the past twelve CCS cycles, experience has revealed that guidelines for setting factor weights are overly restrictive and the six (originally five) job categories used for assessment may need to be modified or expanded to cover new and emergent work. This amendment gives more flexibility and authority to the Pay Pool Manager to use and set CCS factor weights and establish and use job categories as the need for new professional skills emerges within the laboratory environment.

I. Executive Summary

The Department of the Air Force established the AFRL personnel management demonstration project to be generally similar to the Department of the Navy China Lake personnel demonstration project. The AFRL demonstration project was built upon the concepts of a contribution-based compensation system, pay banding, two appointing authorities, extended probationary period, and simplified classification procedures.

II. Introduction

Purpose

The AFRL Demonstration Project provides managers, at the lowest practical level, the authority and flexibility needed to achieve a quality laboratory and quality research. The purpose of this notice is to provide flexibility to change the job categories, eliminate the mandatory use of and provide guidance on optional use of Contribution-based Compensation System (CCS) factor weights in an effort

to grant management greater flexibility to base the factor weights on the requirements of the position.

Organizational Description

Of the 5,025 employees assigned to AFRL, the majority are located in/at Arlington VA, Brooks City Base TX, Edwards AFB CA, Eglin AFB FL, Hanscom AFB MA, Kirtland AFB NM, Rome NY, Tyndall AFB FL, and Wright-Patterson AFB OH. Employees are also located at locations around the world. At the time this Demonstration Project was implemented, there were four Air Force research laboratories. Later, these merged into AFRL, with 10 technical directorates, plus the AFRL Headquarters, each with a pay pool manager (total of 11 pay pools). There are currently 2,640 Scientists and Engineers (S&Es) in the Demonstration Project.

III. Personnel System Changes

Contribution-Based Compensation System

A. Change Section III.D.7, Weights, by replacing it in its entirety as follows:

7. Factor Weights

This Demonstration Project, in part, is predicated on the belief that the continued success and viability of the laboratory depends on all employees seeking to contribute in each of the areas defined by the CCS factors.

Job categories may be assigned based upon the majority of the duties of a position. The AFRL commander and directors have the option to apply varying weights to the CCS factors based on assigned job categories or other relevant position information (*e.g.* broadband level). If varying weights are not used, then all factors are considered to be weighted equally.

If varying weights are used they must be applied consistently within a pay pool. As an example, Technical Problem Solving may be more heavily weighted for bench-level S&Es than the factor of Communication. The overall CCS score is determined by multiplying the score for each factor by the weight, adding the results, and then dividing by the sum of the weights. Making all employees accountable for all factors shifts organizational values in new directions. For this reason, if factor weights are used, generally no factor should be given a weight of zero.

Factor weights should be reviewed annually to determine if those that are below 1.0 can be increased toward a weighting of 1.0 to encourage and allow employees to raise their CCS contribution assessment by contributing in a broader range of activities. Contribution in the factors is important to ensure both the overall success of AFRL and individual S&E career growth.

Guidelines for establishing job categories and setting factor weights will be documented in AFRL implementing issuances.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E9–7592 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0023]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on 01 June 2009, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Air Force Act Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, *Attn:* SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley at (703) 696–6648.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

F033 AF E

SYSTEM NAME:

Air Force Directory Services (February 25, 2005, 70 FR 9283).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''HQ 754 Electronic Systems Group/DON, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex, Maxwell AFB, AL 36114–3014.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Information includes name, Electronic Data Interchange–Personal Identifier (EDI–PI), Social Security Number, date of birth, gender, citizenship status, Major Command (MAJCOM), base name, office symbol, assigned and attached unit/Personnel Accounting Symbol (PAS), personnel category code, duty assigned code, generational qualifier, pay plan, pay grade, rank, reservist/Air National Guard (ANG) category code, non-publish Status (protected airman), phone number, fax number, e-mail address, DoD Public Key Infrastructure (PKI) certificate.''

PURPOSE(S):

Delete entry and replace with ''Air Force Directory Services (AFDS) is a near real time data service that consolidates authoritative personnel identity data from multiple Department of Defense (DoD) and Air Force personnel systems integrating it into a single directory. AFDS' consolidated identity data directory provides transparency to the authoritative data required for access authorization and authentication purposes into these mission support systems and applications.''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Program Manager, Air Force Directory Services, Program Management Office, HQ 754 ELSG/DON, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex, Maxwell AFB, AL 36114–3014.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records may contact the Air Force Directory Services Technical Lead, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex, Maxwell AFB, AL 36114–3014.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system of records may contact the Air Force Directory Services Technical Lead, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex-Maxwell AFB, AL 36114–3014.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program, 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete Entry and replace with ''Information is derived from data originating from the following official DoD systems: Military Personnel Data System (MilPDS), Defense Manpower Data Center (DMDC), Defense Civilian Personnel Data System (DCPDS), Global Directory Services (GDS), Air Force Global Address Listing (AFGAL) and Military Personnel Execution System (MPES).''

* * * * *

F033 AF E

SYSTEM NAME:

Air Force Directory Services (AFDS)

SYSTEM LOCATION:

HQ 754 Electronic Systems Group/DON, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex, Maxwell AFB, AL 36114–3014.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty, reserve and guard members, civilian employees, contractors, foreign nationals, and retirees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes name, Electronic Data Interchange–Personal Identifier (EDI–PI), Social Security Number, date of birth, gender, citizenship status, Major Command (MAJCOM), base name, office symbol, assigned and attached unit/Personnel Accounting Symbol (PAS), personnel category code, duty assigned code, generational qualifier, pay plan, pay grade, rank, reservist/Air National Guard (ANG) category code, non-publish Status (protected airman), phone number, fax number, e-mail address, DoD Public Key Infrastructure (PKI) certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 33–213, Identity Management and E.O. 9397 (SSN).

PURPOSE(S):

Air Force Directory Services (AFDS) is a near real time data service that consolidates authoritative personnel identity data from multiple Department of Defense (DoD) and Air Force personnel systems integrating it into a single directory. AFDS' consolidated identity data directory provides transparency to the authoritative data required for access authorization and authentication purposes into these mission support systems and applications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Records are retrieved by a unique 10-digit identifier, Electronic Data Interchange–Personal Identifier (EDI–PI).

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. The storage area network hosting the data is located in a controlled area secured by an electronic entry system relying on a security token and PIN. Access to the automated records is controlled and limited.

RETENTION AND DISPOSAL:

Deleted when superseded, obsolete, or no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Air Force Directory Services, Program Management Office, HQ 754 ELSG/DON, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex, Maxwell AFB, AL 36114–3014.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records may contact the Air Force Directory Services Technical Lead, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex, Maxwell AFB, AL 36114–3014.

Written request should contain full name, Social Security Number (SSN)

and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records may contact the Air Force Directory Services Technical Lead, 201 E. Moore Dr., Bldg 856, Room 202, Gunter Annex-Maxwell AFB, AL 36114–3014.

Written request should contain full name, Social Security Number (SSN) and complete mailing address with notarized signature as below.

An unsworn declaration under penalty of perjury in accordance with section 1746 of 28 U.S.C. (Reference (n)) or notarized signatures are acceptable as a means of proving the identity of the individual.

If an unsworn declaration is executed within the United States, its territories, possessions, or commonwealths, it shall read ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If an unsworn declaration is executed outside the United States, it shall read ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is derived from data originating from the following official DoD systems: Military Personnel Data System (MilPDS), Defense Manpower Data Center (DMDC), Defense Civilian Personnel Data System (DCPDS), Global Directory Services (GDS), Air Force Global Address Listing (AFGAL) and Military Personnel Execution System (MPES).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–7598 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2009–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 6, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer.

A0025–2 SAIS DoD

SYSTEM NAME:

Defense Biometric Services (February 19, 2009, 74 FR 7669).

CHANGES:

* * * * *

ADD CATEGORY:

SYSTEM LOCATION:

Director, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

* * * * *

A0025–2 SAIS DoD

SYSTEM NAME:

Defense Biometric Services.

SYSTEM LOCATION:

Director, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include, but are not limited to, members of the U.S. Armed Forces, DoD civilian and contractor personnel, military reserve personnel, Army and Air National Guard personnel, foreign national partners, and other individuals (who are U.S. citizens or aliens lawfully admitted for permanent residence) requiring or requesting employment by DoD and/or access to DoD or DoD controlled information systems and/or DoD or DoD contractor operated or controlled installations and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biometrics images; biometric templates; supporting documents; identifying biographic information including, but not limited to, name, Social Security Number (SSN), date of birth, place of birth, height, weight, eye color, hair color, race, globally unique identifier, organization, telephone number, office symbol, clearance, gender, and similar relevant information; and information from and electronic images of international, Federal, Tribal, or State issued individual identity documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; E.O. 12333, United States Intelligence Activities; E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information; National Defense Authorization Act of 2008, Section 1069; DoDD 8521.01E, Department of Defense Biometrics; DoDD 8500.1, Information Assurance; AR 25–2,

Information Assurance and E.O. 9397 (SSN).

PURPOSE(S):

To control logical and physical access to Department of Defense (DoD) and DoD controlled information systems and DoD or DoD contractor operated or controlled installations and facilities and to support the DoD physical and logical security, force protection, identity management, personnel recovery, and information assurance programs, by identifying an individual or verifying/authenticating the identity of an individual through the use of biometrics (*i.e.*, measurable physiological or behavioral characteristics) for purposes of protecting U.S./Coalition/allied government and/or U.S./Coalition/allied national security areas of responsibility and information.

Information assurance purposes include the administration of passwords and identification numbers for operators/users of data in automated media; identifying data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and determining the propriety of individual access into the physical data residing in automated media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, Tribal, local, or foreign agencies, for the purposes of law enforcement, counterterrorism, immigration management and control, and homeland security as authorized by U.S. Law or Executive Order, or for the purpose of protecting the territory, people, and interests of the United States of America against breaches of security related to DoD controlled information or facilities, and against terrorist activities.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), biometric template, fingerprints, face, iris, DNA and other biometric data.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later by shredding, pulping, degaussing or erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Biometrics Task Force, 1901 South Bell Street, Suite 900, Arlington, Virginia 22202–4512.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Director, Biometrics Task Force, 1901 South Bell Street, Suite 900, Arlington, Virginia 22202–4512.

For verification purposes, individual should provide full name, Social Security Number (SSN), sufficient details to permit locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Biometrics Task Force, 1901 South Bell Street, Suite 900, Arlington, Virginia 22202–4512.

For verification purposes, individual should provide full name, Social Security Number (SSN), sufficient details to permit locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Department of Defense sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–7593 Filed 4–3–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 6, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–6974 or send e-mail to *OIRA-Submission@omb.eop.gov*.

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.

Dated: March 31, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual State Application Under Part B of the Individuals with Disabilities Education Act as Amended in 2004.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.
Burden Hours: 720.

Abstract: The Individuals with Disabilities Education Act, signed on December 3, 2004, became Public Law 108–446. In accordance with 20 U.S.C. 1412(a) a State is eligible for assistance under Part B for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the conditions found in 20 U.S.C. 1412. Information Collection 1820–0030 is being extended so that a State can provide assurances that it either has or does not have in effect policies and procedures to meet the eligibility requirements of Part B of the Act as found in Public Law 108–446. Information Collection 1820–0030 corresponds with 34 CFR Sections 300.100–176; 300.199; 300.640–645; and 300.705. These sections include the requirement that the Secretary and local educational agencies located in the State be notified of any State-imposed rule, regulation, or policy that is not required by this title and Federal regulations.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3935. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–7567 Filed 4–3–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 6, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–6974 or send email to *OIRA-Submission@omb.eop.gov*.

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.

Dated: March 31, 2009.

Angela C. Arrington,

Director, IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: State and Local Educational Agency Record and Reporting Requirements Under Part B of the Individuals with Disabilities Education Act.

Frequency: On occasion and annually.

Affected Public: State, local or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 79,194.
Burden Hours: 472,651.

Abstract: OMB Information Collection 1820–0600 reflects the provisions in the Individuals with Disabilities Act (IDEA) and the Part B regulations requiring States and/or local educational agencies (LEAs) to collect and maintain information or data and, in some cases, report information or data to other public agencies or to the public. However, such information or data are not reported to the Secretary. Data are collected in the areas of private schools, parentally placed private school students, State high cost fund, notification of free and low cost legal services, early intervening services, notification of hearing officers and mediators, State complaint procedures, and the LEA application under Part B.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3936. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–7568 Filed 4–3–09; 8:45 am]

BILLING CODE 4000–01–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 June 5, 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: April 1, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: National Household Education Survey (NHES): 2009 Pilot Test.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 9,292.
Burden Hours: 1,549.

Abstract: The National Household Education Surveys Program (NHES) collects data directly from households on early childhood care and education, children's readiness for school, parent perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult and continuing education, parent involvement in education, school choice, homeschooling, and civic involvement. NHES surveys have been conducted approximately every other year from 1991 through 2007 using random digit dial (RDD) sampling and telephone data collection from landline telephones only. Each survey collection included the administration of household screening questions (Screener) and two or three topical surveys. Like virtually all RDD surveys, NHES Screener response rates have declined (from above 80% in early 1990s to 53% in 2007) and the decline in the percentage of households without landline telephones (from ~93% in early 2004 to about 80% in the first half of 2008; mostly due to conversion to cellular-only coverage) raises issues about population coverage. While studies examining possible biases in the NHES survey estimates have not identified nonresponse bias, some indications of possible coverage bias were detected in a special bias study conducted in 2007. As a result, NCES is redesigning the NHES program to develop and assess approaches to collecting data with improved response and population coverage. The Pilot Test will be conducted in the fall of 2009 to examine proposed methods on a smaller and more economical scale prior to a large-scale Field Test planned for 2011. The NHES:2009 Pilot Test will use a reduced sample (approximately 10% of the anticipated 2011 Field Test sample size) and involve screening of approximately 11,800 households to identify those with eligible children and youth. Parents or guardians of sampled children will be (ECPP), and the Parent and Family Involvement in Education Survey (PFI). The PFI Survey has been divided into two questionnaire forms for ease of self-administration: One focuses on children enrolled in school for kindergarten through 12th grade and one focuses on children who are homeschooled.

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 3997. 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. E9–7670 Filed 4–3–09; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Higher Education Disaster Relief

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice reopening the Higher Education Disaster Relief fiscal year (FY) 2009 competition.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.938R.

SUMMARY: On January 16, 2009, we published in the **Federal Register** (74 FR 3005) a notice inviting applications for the new awards for fiscal year (FY) 2009 under the Higher Education Disaster Relief Program. On January 26, 2009, we published in the **Federal Register** (74 FR 4417) a notice correcting the date for transmittal of pre-applications and the date for transmittal of applications. The January 26, 2009 notice established a new February 4, 2009 deadline date for eligible applicants to submit a pre-application for this funding. The January 26, 2009 notice also provided that only applicants who timely submitted a pre-application and received an e-mail from

the Department with the applicant's calculated allotment for an award were eligible to submit an application by the new March 19, 2009 application deadline.

To afford an opportunity to receive funding to those eligible applicants that submitted their pre-applications on time, we are reopening the Higher Education Disaster Relief FY 2009 competition only for eligible applicants who timely submitted a pre-application and received an e-mail from the Department with the applicant's calculated allotment for an award.

Note: The January 16, 2009 **Federal Register** notice is available at: *http://www.ed.gov/legislation/FedRegister/announcements/2009-1/011609c.html*. The January 26, 2009 **Federal Register** correction notice is available at: *http://www.ed.gov/legislation/FedRegister/announcements/2009-1/012609d.html*.

Applicants that successfully submitted their complete applications on or before the deadline date of March 19, 2009 are not required to resubmit their applications. All other eligible applicants who timely submitted a pre-application and received an e-mail from the Department with the applicant's calculated allotment for an award must submit their applications by mail as provided in this notice.

All information in the January 16, 2009 notice, as amended by the January 26, 2009 correction notice, remains the same, except for the following updates.

DATES: *Deadline for Transmittal of Applications:* April 8, 2009.

Note: Applications for grants under the Higher Education Disaster Relief program must be mailed on or before the application deadline date, for next business-day delivery, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.938R),
550 12th Street, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark with evidence demonstrating that next business-day delivery was scheduled.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service with evidence demonstrating that next business-day delivery was scheduled.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Note for Mail of Paper Applications: When you mail your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424, the CFDA Number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Courtney, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8544. *Telephone*: (202) 502–7506 or by *e-mail*: *HEDR@ed.gov* or *Cassandra.Courtney@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1138–1138d.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the function of the Assistant Secretary for Postsecondary Education.

Dated: March 31, 1009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–7701 Filed 4–3–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Public Meeting.

DATE AND TIME: Wednesday, April 15, 2009:

2–4 p.m. Mountain Daylight Time (MDT),

[4–6 p.m. Eastern Daylight Time (EDT)].

PLACE: The Westin Tabor Center, 1672 Lawrence Street, Denver, Colorado 80202, (303) 572–9100.

AGENDA: The Commission will hold a public meeting and a workshop to receive presentations on the following topic: Cost-Saving Practices for Election Management. The Commission will consider other administrative matters. Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener; *Telephone:* (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9–7846 Filed 4–2–09; 4:15 pm]

BILLING CODE 6820–KF–P

* View EAC Regulations Implementing Government in the Sunshine Act.

DEPARTMENT OF ENERGY

[Certification Notice—219]

Office Electricity Delivery and Energy Reliability; Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On March 16, 2009, NRG Texas Power LLC., as operator of a new base load electric powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to section 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. Section 201(d) of FUA requires DOE to publish a notice of receipt of self-certifications in the **Federal Register**.

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA section 201(d), in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** reciting that the certification has been filed.

The following operator of a proposed new base load electric powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Operator: NRG Texas Power LLC.

Capacity: 600 megawatts (MW).

Plant Location: Near Eldon, Texas in Chambers County, Texas.

In-Service Date: June 2009.

Issued in Washington, DC on March 27, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–7649 Filed 4–3–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–916–000]

Commission Information Collection Activities (FERC–916); Comment Request; Extension

March 30, 3009.

AGENCY: Federal Energy Regulatory Commission (DOE).

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due June 1, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–916–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*.

Comments may be eFiled. The eFiling option, under the Documents & Filings tab on the Commission's home Web page (*http://www.ferc.gov*), directs users to the eFiling Web page. First-time users follow the eRegister instructions on the eFiling Web page to establish a user name and password before eFiling. Filers will receive an e-mailed confirmation of their filed comments. Commenters filing electronically should not make a paper filing. If electronic filing is not possible, deliver original and 14 paper copies of the filing to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Parties interested in receiving automatic notification of activity in this docket may do so through eSubscription. The eSubscription option under the Documents & Filings tab on the Commission's home Web page directs users to the eSubscription Web page. Users submit the docket numbers of the filings they wish to track and will subsequently receive an e-mail notification each time a filing is made under the submitted docket numbers. First-time users will need to establish a user name and password before eSubscribing.

Filed comments and FERC issuances may be viewed, printed and downloaded remotely from the Commission's Web site. The eLibrary link found at the top of most of the Commission's Web pages directs users to FERC's eLibrary. From the eLibrary Web page, choose General Search, and in the Docket Number space provided, enter IC09–916, then click the Submit button at the bottom of the page. For help with any of the Commission's electronic submission or retrieval systems, e-mail FERC Online Support: *ferconlinesupport@ferc.gov*, or telephone toll-free: (866) 208–3676 (TTY (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202)502–8663, by fax at (202)273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: The Commission is requesting comments on the record retention requirements of FERC–916,[1] ''Record Retention Requirements for Pipelines Providing Unbundled Sales Service, and Persons Holding Blanket Marketing Certificates,'' OMB Control No. 1902–0224. The FERC–916 record retention requirements are contained in 18 CFR 284.288(b) and 284.403(b).

The Commission's regulations at 18 CFR 284.288 and 284.403 provide that applicable sellers of natural gas adhere to a code of conduct when making gas sales in order to protect the integrity of the market. The Commission imposes the FERC–916 record retention requirement on applicable sellers to ''retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.'' FERC uses the FERC–916 records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

[1] FERC–916 was formerly called ''FERC–916(549),'' with the intent of consolidating the FERC–916 into the FERC–549 (OMB Control No. 1902–0086). FERC has decided not to consolidate the FERC–916 into the FERC–549, so this Notice deals only with the FERC–916 requirements.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (regulations adopted in Order No. 670, implementing the EPAct 2005 anti-manipulation provisions [2]) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission is unable to perform its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–916, with no changes to the requirements.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC requirements	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–916	222	1	1	222

The estimated total annual cost to respondents includes hours for labor (222 hrs. at $17 per hour, for a labor cost of $3,774) and record storage costs (using an estimated 12,548 cu. ft of records in off-site storage, for a total record storage cost of $81,051). The total annual cost (labor plus off-site record storage) is $84,825; the total annual cost per respondent is $382.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to retaining these records, such as administrative costs, off-site records storage, and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7571 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–914–000]

Commission Information Collection Activities (FERC–914); Comment Request; Extension

March 30, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due June 1, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–914–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*.

Comments may be eFiled. The eFiling option, under the Documents & Filings tab on the Commission's home Web page (*http://www.ferc.gov*), directs users to the eFiling Web page. First-time users follow the eRegister instructions on the eFiling Web page to establish a user name and password before eFiling. Filers will receive an e-mailed confirmation of their filed comments. Commenters filing electronically should not make a paper filing. If electronic filing is not possible, deliver original and 14 paper copies of the filing to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

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[2] 18 CFR 1c.1 and 1c.2, 71 FR 4244 (2006).

Filed comments and FERC issuances may be viewed, printed and downloaded remotely from the Commission's Web site. The eLibrary link found at the top of most of the Commission's Web pages directs users to FERC's eLibrary. From the eLibrary Web page, choose General Search, and in the Docket Number space provided, enter IC09–914 then click the Submit button at the bottom of the page. For help with any of the Commission's electronic submission or retrieval systems, e-mail FERC Online Support: *ferconlinesupport@ferc.gov,* or telephone toll-free: (866) 208–3676 (TTY (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: FERC is requesting comments on the FERC–914,[1] ''Cogeneration and Small Power Production—Tariff Filings'', OMB Control No. 1902–0231. The information filed in FERC–914 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act, the Department of Energy Organization Act (DOE Act) and EPAct 2005.

In Orders 671 and 671–A,[2] the Commission revised its regulations that govern qualifying small power production and cogeneration facilities. Among other things, the Commission eliminated certain exemptions from rate regulation that were previously available to qualifying facilities (QFs). New qualifying facilities may need to make tariff filings if they do not meet the new exemption requirements of 18 CFR Part 292.

Section 205(c) of the FPA requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to FERC and the public of any changes to its jurisdictional rates and tariffs, file such changes with FERC, and make them available for public inspection, in such manner as directed by the Commission. In addition, FPA section 206 requires FERC, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential. FPA section 207 further requires the Commission upon complaint by a state commission and a finding of insufficient interstate service, to order the rendering of adequate interstate service by public utilities, the rates for which would be filed in accordance with FPA sections 205 and 206.

FERC implemented the Congressional mandate of EPAct 2005 to establish criteria for new qualifying cogeneration facilities by: (1) Amending the exemptions available to qualifying facilities from the FPA and from PUHCA [resulting in the burden imposed by FERC–914, the subject of this Notice]; (2) ensuring that these facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial, residential or industrial purposes; and there is a continuing progress in the development of efficient electric energy generating technology; (3) amending the FERC Form 556 [3] to reflect the criteria for new qualifying cogeneration facilities; and (4) eliminating ownership limitations for qualifying cogeneration and small power production facilities. FERC satisfied the statutory mandate and its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for energy customers.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–914,[1] with no changes to the reporting requirements.

Burden Statement: Public reporting burden for this collection is estimated at:

FERC data collection—FERC–914	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FPA Section 205 filings	100	1	183	18,300
Electric quarterly reports (initial)	100	1	230	23,000
Electric quarterly reports (later)	100	3	6	1,800
Change of status	100	1	3	300
Total				43,400

The estimated total annual cost to respondents is $2,676,966.10 [43,400 hours divided by 2,080 hours [4] per year, times $128,297 [5] equals $2,676,966.10]. The cost per respondent is $26,769.66. The estimated burden covers the qualifying facilities required to file electric quarterly reports, change of status filings, and tariff filings to comply with section 205 of the Federal Power Act (FPA).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information;

[1] Normally, these requirements and burden would be included in FERC–516, ''Electric Rate Schedule Filings'' (OMB Control No.1902–0096). However, FERC–516 is currently the subject of OMB review, so the Commission will continue to track these requirements (and the related burden hours) separately under FERC–914 [formerly labeled ''FERC–914(516)'']. FERC–914 covers the tariff filing requirements under 18 CFR Part 35 for those qualifying facilities that do not meet the exemption requirements in 18 CFR Part 292.

In the future, FERC plans to incorporate the FERC–914 reporting requirements and related burden into the FERC–516.

[2] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006); and *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order 671–A, 71 FR 30585 (May 30, 2006), in Docket No. RM05–36.

[3] The FERC–556 is cleared separately as OMB Control No. 1902–0075 and is not a subject of this Notice.

[4] Number of hours an employee works each year.

[5] Average annual salary per employee.

(3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7574 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–915–000]

Commission Information Collection Activities (FERC–915); Comment Request; Extension

March 30, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due June 1, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–915–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*.

Comments may be eFiled. The eFiling option, under the Documents & Filings tab on the Commission's home Web page (*http://www.ferc.gov*), directs users to the eFiling Web page. First-time users follow the eRegister instructions on the eFiling Web page to establish a user name and password before eFiling. Filers will receive an e-mailed confirmation of their filed comments. Commenters filing electronically should not make a paper filing. If electronic filing is not possible, deliver original and 14 paper copies of the filing to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

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Filed comments and FERC issuances may be viewed, printed and downloaded remotely from the Commission's Web site. The eLibrary link found at the top of most of the Commission's Web pages directs users to FERC's eLibrary. From the eLibrary Web page, choose General Search, and in the Docket Number space provided, enter IC09–915, then click the Submit button at the bottom of the page. For help with any of the Commission's electronic submission or retrieval systems, e-mail FERC Online Support: *ferconlinesupport@ferc.gov*, or telephone toll-free: (866) 208–3676 (TTY (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202)502–8663, by fax at (202)273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: FERC is requesting comments on the record retention requirement FERC–915,[1] ''Public Utility Market-Based Rate Authorization Holders—Records Retention Requirement,'' OMB Control No. 1902–0223.

In accordance with the Federal Power Act, the Department of Energy Organization Act (DOE Act), and the Energy Policy Act of 2005 (EPAct 2005), the Commission regulates the transmission and wholesale sales of electricity in interstate commerce, monitors and investigates energy markets, uses civil penalties and other means against energy organizations and individuals who violate FERC rules in the energy markets, and administers accounting and financial reporting regulations and oversees conduct of regulated companies.

The Commission imposes the FERC–915 record retention requirement, in 18 CFR 35.41(d), on applicable sellers to retain, for a period of five years, all data and information upon which they bill the prices charged for ''electric energy or electric energy products it sold pursuant to Seller's market-based rate tariff, and the prices it reported for use in price indices.''

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (adopted in Order No. 670) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–915,[1] with no changes to the requirements.

[1] The FERC–915 requirements (formerly labeled ''FERC–915(516)'') are contained in 18 CFR 35.41(d)).

Burden Statement: Public reporting burden for this collection is estimated at:

FERC requirements	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–915	1,150	1	1	1,150

The estimated total annual cost to respondents includes hours for labor (1,150 hrs. at $17 per hour, for a labor cost of $19,550) and storage costs (using an estimated 65,000 cu. ft of records in off-site storage, for a total storage cost of $419,858). The total annual cost (labor plus off-site storage) is $439,408; the total annual cost per respondent is $382.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7575 Filed 4–3–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 30, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–237–013; ER03–1151–007; ER02–1695–006; ER02–2309–005.

Applicants: J. Aron & Company, Power Receivable Finance, LLC, Cabazon Wind Partners, LLC, Whitewater Hill Wind Partners LLC.

Description: Notice of Change in Status of J. Aron & Company, *et al.*

Filed Date: 03/26/2009.

Accession Number: 20090326–5081.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER08–364–005.

Applicants: APX, Inc.

Description: Notice of Non-Material Change in Status of APX, Inc.

Filed Date: 03/26/2009.

Accession Number: 20090326–5077.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER08–654–003.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits instant filing in compliance with the Commission Order Granting Clarification, Denying Rehearing, and Conditionally Accepting Compliance Filing.

Filed Date: 02/27/2009.

Accession Number: 20090304–0146.

Comment Date: 5 p.m. Eastern Time on Friday, April 17, 2009.

Docket Numbers: ER08–980–001.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Interstate Power and Light Company submits an amended Agreement to identify the Service Agreement as Service Agreement 1, FERC Electric Tariff, Original Volume 1.

Filed Date: 03/26/2009.

Accession Number: 20090327–0036.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER08–1288–004.

Applicants: Wapsipinicon Wind Project, LLC.

Description: Notice of Non-Material Change in Status of Wapsipinicon Wind Project, LLC.

Filed Date: 03/27/2009.

Accession Number: 20090327–5075.

Comment Date: 5 p.m. Eastern Time on Friday, April 17, 2009.

Docket Numbers: ER09–343–002.

Applicants: SC Landfill Energy, LLC.

Description: Refund Report of SC Landfill Energy, LLC.

Filed Date: 03/27/2009.

Accession Number: 20090327–5043.

Comment Date: 5 p.m. Eastern Time on Friday, April 17, 2009.

Docket Numbers: ER09–414–000.

Applicants: Aquila Inc.

Description: Aquila, Inc et al submits a supplement to their 12/15/08 request to withdraw from the MISO Transmission Owners Agreement.

Filed Date: 03/04/2009.

Accession Number: 20090306–0007.

Comment Date: 5 p.m. Eastern Time on Thursday, April 09, 2009.

Docket Numbers: ER09–779–001.

Applicants: Nordic Energy Services, LLC.

Description: Nordic Energy Services, LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.

Filed Date: 03/26/2009.

Accession Number: 20090327–0020.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–885–000.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Indiana, Inc submits summary schedules for the Transmission and Local Facilities Agreement for Calendar Year 2007 between Duke Energy and Wabash Valley Power Association, Inc.

Filed Date: 03/24/2009.

Accession Number: 20090325–0129.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 14, 2009.

Docket Numbers: ER09–889–000.

Applicants: City of Dover Delaware.

Description: City of Dover submits Rate Schedule No 1 for Reactive Power Service from the Mckee and VanSant Facilities.

Filed Date: 03/25/2009.

Accession Number: 20090326–0149.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 15, 2009.

Docket Numbers: ER09–891–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits notice of cancellation and cancellation cover sheet for its service agreement with the Florida Municipal Power Agency etc.

Filed Date: 03/26/2009.

Accession Number: 20090327–0019.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–892–000.

Applicants: Reliant Energy Solutions, LLC.

Description: Reliant Energy Electric Solutions, LLC submits Notice of Cancellation of REES, FERC Electric Tariff, Second Revised Volume 1.

Filed Date: 03/26/2009.

Accession Number: 20090327–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–893–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Large Generator Interconnection Agreement Facilities Maintenance Agreement dated 3/1/09 with PacifiCorp Energy designated as Service Agreement 551, Seventh Revised Volume 11 etc.

Filed Date: 03/26/2009.

Accession Number: 20090327–0033.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–894–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits an updated Exhibit B to a Network Integration Transmission Service Agreement with PacifiCorp Energy, to be designated as Third Revised Sheet 8–12 of First Revised Service Agreement 66, Seventh Revised Volume 11 etc.

Filed Date: 03/26/2009.

Accession Number: 20090327–0032.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–895–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits Notice of Amended Rate Schedule No. 118, effective 5/26/09.

Filed Date: 03/26/2009.

Accession Number: 20090327–0031.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–896–000.

Applicants: Ameren Services Company.

Description: Union Electric Company submits an executed Service Agreement for Wholesale Distribution Service with the City of Perry, Missouri.

Filed Date: 03/26/2009.

Accession Number: 20090327–0030.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 2009.

Docket Numbers: ER09–899–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits a Service Agreement for Wholesale Distribution Tariff Service and an Interconnection Agreement with Hercules Municipal Utility etc under ER09–899.

Filed Date: 03/27/2009.

Accession Number: 20090330–0023.

Comment Date: 5 p.m. Eastern Time on Friday, April 17, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–16–000.

Applicants: The Detroit Edison Company.

Description: Supplemental Information of The Detroit Edison Company to their Application under Section 204 of the Federal Power Act.

Filed Date: 03/27/2009.

Accession Number: 20090327–5048.

Comment Date: 5 p.m. Eastern Time on Thursday, April 09, 2009.

Docket Numbers: ES09–23–000.

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Application of Old Dominion Electric Cooperative for Extension of Authorization to Guarantee Obligations and for the Exemption from the Commission's Competitive Bidding Requirement Under Section 34.2.

Filed Date: 03/26/2009.

Accession Number: 20090326–5100.

Comment Date: 5 p.m. Eastern Time on Thursday, April 16, 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7576 Filed 4–3–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–762–000]

Power Resources, Ltd.; Notice of Filing

March 30, 2009.

Take notice that, on March 26, 2009, Power Resources, Ltd. filed an amendment to 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 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7573 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–85–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

March 30, 2009.

Take notice that on March 24, 2009, El Paso Natural Gas Company (El Paso) filed a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to decrease the Maximum Allowable Operating Pressure (MAOP), under El Paso's blanket certificate issued in Docket No. CP82–435–000. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, El Paso requests authorization to decrease the certificated MAOP of a 111-mile segment of its 12¾'' O.D. El Paso-Douglas line (also referred as ''Line No. 1004) located in Cochise County, Arizona and Dona Ana, Luna, Grant, and Hidalgo Counties, New Mexico and to thereafter operate the segment of Line No. 1004 at the lower MAOP. The MAOP decrease will be from 850 psig to 803 psig. This change will not result in any abandonment of service to its customers.

Any questions regarding the application should be directed to Richard Derryberry, Director, Regulatory Affairs Department, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, CO 80944, phone: (719) 520–3782, fax: (719) 667–7534, *e-mail: EPNGregulatoryaffairs@elpaso.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–7572 Filed 4–3–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8789–5]

Delaware; Adequacy Status of the 2008 Reasonable Further Progress Plan for the Delaware Portion of the Philadelphia-Wilmington-Atlantic City 8-Hour Ozone Nonattainment Area Motor Vehicle Emission Budgets; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy; correcting amendment.

SUMMARY: This document corrects an error pertaining to EPA's informational notice announcing the Notice of Adequacy for the 2008 Reasonable Further Progress Plan for the Delaware Portion of the Philadelphia-Wilmington-Atlantic City 8-Hour Ozone Nonattainment Area Motor Vehicle Emission Budgets.

DATES: *Effective Date*: April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335 or by e-mail at *kotsch.martin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' are used, we mean EPA.

On December 19, 2008 (73 FR 77682), we published an information notice announcing the Notice of Adequacy for the 2008 Reasonable Further Progress Plan for the Delaware Portion of the Philadelphia-Wilmington-Atlantic City 8-Hour Ozone Nonattainment Area Motor Vehicle Emission Budgets (MVEBs). In this document, EPA inadvertently printed the incorrect categories of volatile organic compound (VOC) and nitrogen oxide (NO_X) in a table entitled ''Delaware Motor Vehicle Emissions Budgets.'' This action corrects the tables in the informational notice, the categories of VOC and NO_X for the MVEBs for the State of Delaware.

Correction

On page 77682, the table is corrected to read as follows:

TABLE 1—DELAWARE MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment area	2008 Reasonable further progress	
	NO_X (tpd)	VOC (tpd)
New Castle County ...	21.35	10.61
Kent County	9.68	4.14
Sussex County	12.86	7.09

Dated: March 16, 2009.

William T. Wisniewski,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–7681 Filed 4–3–09; 8:45 am]

BILLING CODE

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the April 9, 2009 regular meeting of the Farm Credit Administration Board (Board) has been rescheduled pursuant to a December 11, 2008 Board vote. The regular meeting of the Board will be held Thursday, April 16, 2009, starting at 9 a.m. An agenda for this meeting is set forth below.

Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 16, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

- March 12, 2009

B. *New Business*

- Notice and Request for Comment—Final Revisions to the Interagency Questions and Answers Regarding Flood Insurance

C. *Reports*

- Update on Agricultural Economic Conditions
- Auditors' Report on FCSBA FY2008 Financial Statements

Closed Session *

- Office of Secondary Market Oversight Quarterly Report

Dated: April 1, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–7839 Filed 4–2–09; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 31, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before June 5, 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: Interested parties 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* and/or *Cathy.Williams@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* and/or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0565.

Title: Section 76.944, Commission Review of Franchising Authority Decisions on Rates for the Basic Service Tier and Associated Equipment.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents and Responses: 32 respondents/32 responses.

Estimated Time per Response: 2–30 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Total Annual Burden: 816 hours.

Total Annual Costs: $3,200.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR Section 76.944(b) provides that any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision as computed under § 1.4(b) of this chapter. Appeals shall be served on the franchising authority or other authority that issued the rate decision. Where the state is the appropriate decision making authority, the state shall forward a copy

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

of the appeal to the appropriate local official(s). Oppositions may be filed within 15 days after the appeal is filed, and must be served on the parties appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the parties to the proceeding.

OMB Control Number: 3060–0912.

Title: Sections 76.501, 76.503 and 76.504, Cable Attribution Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 40 respondents/40 responses.

Estimated Time per Response: 1 to 4 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 613(f) of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Total Annual Burden: 100 hours.

Total Annual Costs: None.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 76.501 Notes 2(f)(1) and 2(f)(3); 47 CFR 76.503 Note 2(b)(3); 47 CFR 76.504 Note 1(b)(1) requires limited partners, Registered Limited Liability Partnerships (''RLLPs''), and Limited Liability Companies (''LLCs'') attempting to insulate themselves from attribution to file a certification of ''non-involvement'' with the Commission. LLCs who submit the non-involvement certification are also required to submit a statement certifying that the relevant state statute authorizing LLCs permits an LLC member to insulate itself in the manner required by our criteria.

Sections 76.501 Note 2, 76.503 Note 2, and 76.504 Note 1, also provides that officers and directors of an entity are considered to have a cognizable interest in the entity with which they are associated. If any such entity engages in businesses in addition to its primary media business, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a media entity with an attributable interest in any such subsidiary entity shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the media subsidiary and a statement properly documenting this fact is submitted to the Commission. This statement may be included on the Licensee Qualification Report.

47 CFR Section 76.503 Note 2(b)(1) includes a requirement for limited partners who are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership to certify that fact or be attributed to a limited partnership interest.

47 CFR Section 76.503(g) of the Commission's rules states: that ''Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.''

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–7669 Filed 4–3–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, April 8, 2009

April 1, 2009.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, April 8, 2009, which is scheduled to commence at 10 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. With respect only to item #4 listed below, the Commission is waiving the sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 CFR 1.1203, until 5:30 pm, Friday, April 3, 2009. Thus, presentations with respect to item #4 will be permitted until that time. Also, with respect to item #4, the Commission is waiving the Sunshine period prohibition contained in section 1.1203 of the Commission's rules, 47 CFR 1.1203, to the extent necessary to permit meetings and written filings pursuant to the March 24, 2009, Public Notice on the Recovery Act establishing GN Docket No. 09–40.[1] Thus, presentations with respect to GN Docket No. 09–40, which may touch on topics relevant to item #4, will be permitted throughout the Sunshine period.

Item No.	Bureau	Subject
1	Media	*Title:* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (MB Docket No. 07–269). *Summary:* The Commission will consider a Supplemental Notice of Inquiry soliciting information for the next annual report to Congress on the status of competition in the market for the delivery of video programming.
2	Media	*Title:* Promoting Diversification of Ownership In the Broadcasting Services (MB Docket No. 07–294); 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 06–121); 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (MB Docket No. 02–277; Cross-Ownership of Broadcast Stations and Newspapers (MM Docket No. 01–235); Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (MM Docket No. 01–317); Definition of Radio Markets (MM Docket No. 00–244); Ways to Further Section 257 Mandate and To Build on Earlier Studies (MB Docket No. 04–228).

[1] Public Notice, *Comment Procedures Established Regarding the Commission's Consultative Role in the Broadband Provisions of the Recovery Act*, GN 09–40, DA 09–668 (rel. Mar. 24, 2009).

Item No.	Bureau	Subject
		Summary: The Commission will consider a Report and Order and Fourth Further Notice of Proposed Rule Making concerning improving data collection on minority and female broadcast ownership.
3	Media	*Title:* Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies.
		Summary: The Commission will consider a Notice of Proposed Rulemaking concerning the policies and procedures for allocation and assignment of broadcast frequencies in the commercial AM and FM and non-commercial FM services.
4	Various Bureaus	*Title:* A National Broadband Plan for Our Future.
		Summary: The Commission will consider a Notice of Inquiry seeking comment to inform the Commission's development of a national broadband plan for our country pursuant to section 6001(k) of the American Recovery and Reinvestment Act of 2009.
5	Public Safety & Homeland Security	*Title:* Amendment of Part 90 of the Commission's Rules (WP Docket No. 07–100).
		Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking concerning amendments to Part 90 of the Commission's rules.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio*.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu*.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at *FCC@BCPIWEB.com*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–7842 Filed 4–2–09; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: EDUCATIONAL MEDIA FOUNDATION, Station KZAI, Facility ID 94226, BMPED–20080627ABM, From COOLIDGE, AZ, To SUPERIOR, AZ; FLINN BROADCASTING CORPORATION, Station KWBF–FM, Facility ID 49255, BPH–20090226ABR, From NORTH LITTLE ROCK, AR, To CAMMACK VILLAGE, AR; GREAT SOUTH WIRELESS, LLC, Station WTID, Facility ID 85767, BMPH–20090217AFH, From THOMASTON, AL, To ORRVILLE, AL; KONA COAST RADIO, LLC., Station KMAP, Facility ID 170959, BMPH–20090213GWP, From ARRIBA, CO, To FLEMING, CO; SAIDNEWSFOUNDATION, Station WJKZ, Facility ID 175750, BMPED–20090302AAD, From HANOVER, MI, To HOMER, MI; SCOTT COMMUNICATIONS, INC., Station WALX, Facility ID 950, BPH–20090217AFB, From ORRVILLE, AL, To VALLEY GRANDE, AL; SCOTT COMMUNICATIONS, INC., Station WMRK, Facility ID 947, BP–20090217AFE, From SELMA, AL, To THOMASTON, AL; SCOTT SAVAGE, RECEIVER, Station WFJO, Facility ID 22005, BPH–20090217AEA, From FOLKSTON, GA, To JACKSONVILLE BEACH, FL.

DATES: Comments may be filed through June 5, 2009.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm*. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E9–7521 Filed 4–3–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: April 8, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Docket No. 02–15—Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.
2. Docket No. 06–06—EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc., *et al.*
3. Docket No. 06–09—Parks International Shipping, Inc., Cargo Express International Shipping, Inc., *et al.*
4. Docket No. 07–04—Norland Industries, Inc., Linna Textiles Manufacturing Limited, Medcorp Distributors, Inc., *Malan Garment Limited, et al.* v. *Reliable Logistic, LLC* and Washington International Insurance Company.
5. Docket No. 02–08—*Odyssea Stevedoring of Puerto Rico, Inc.* v. *Puerto Rico Ports Authority*; Docket No. 04–01—*International Shipping Agency, Inc.* v. the *Puerto Rico Ports Authority*; and Docket No. 04–06—*San Antonio Maritime Corp. & Antilles Cement Corp.* v. *Puerto Rico Ports Authority.*
6. FMC Agreement No. 011982–003: The Evergreen Line Joint Service Agreement.

Closed Session

1. FMC Agreement No. 201143: West Coast Marine Terminal Operator Agreement.
2. Staff Briefing Regarding Global Economic Downturn and Potential Impact on Stakeholders.
3. Termination of Escrow Account Establishing Section 3 Public Law 89–777 Coverage with respect to Abercrombie and Kent, Inc.
4. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–7712 Filed 4–2–09; 8:45 am]

BILLING CODE

FEDERAL RESERVE SYSTEM

[Docket No. OP–1354]

Federal Reserve Bank Services Private Sector Adjustment Factor

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and request for public comment.

SUMMARY: The Board requests comment on proposed modifications to its method for calculating the private-sector adjustment factor (PSAF). The PSAF is part of the Board's calculation, as required by the Monetary Control Act of 1980 (MCA), to establish the fees that Federal Reserve Banks (Reserve Banks) charge for certain financial services provided to depository institutions (DIs). Consideration of a new PSAF methodology was prompted by the reduction in clearing balances held by DIs at Reserve Banks following the Board's recent implementation of the payment of interest on required reserve balances and excess balances held at Reserve Banks, as well as by long-term changes in the structure of the market for providing payment services to DIs. The existing PSAF calculation model, which is built upon a correspondent bank framework, is driven primarily by the level of clearing balances held by DIs at Reserve Banks. The expected continued reduction in clearing balances will make the current PSAF calculation methodology less meaningful. Accordingly, the Board requests comment on the prospective need to change its methodology and its proposal to replace the current correspondent bank model for calculating the PSAF with a publicly traded firm model as described in this notice. If approved, use of this new model could be reflected in priced services fees as early as 2010.

DATES: Comments must be submitted on or before May 29, 2009.

ADDRESSES: You may submit comments, identified by Docket No. OP–1354, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.*
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or on paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Gregory L. Evans, Deputy Associate Director (202/452–3945), Brenda L. Richards, Manager (202/452–2753), Jonathan Mueller, Senior Financial Analyst (202/530–6253), or Rebekah Ellsworth, Financial Analyst (202/452–3480); Division of Reserve Bank Operations and Payment Systems. Telecommunications Device for the Deaf (TDD) users may contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Under MCA, the Federal Reserve Banks must charge fees to DIs for certain financial services, known collectively as ''priced services,'' so as to recover, over the long run, all direct and indirect costs actually incurred in providing these services as well as the imputed costs that would have been incurred had the services been provided by a private-sector firm.[1] [2] MCA specifically identifies certain imputed costs that must be recovered via priced services fees, including taxes and return on equity (profit).

To set priced services fees in accordance with the requirements of MCA, the Board not only must estimate all actual direct and indirect costs incurred in providing priced services but also must impute costs that the Reserve Banks do not incur but would incur as private-sector entities. In determining a methodology for imputing these costs, the Board recognizes that there is no perfect private-sector proxy for the Reserve Bank priced services, but seeks a methodology that is theoretically sound and represents a reasonable approximation of the costs the Reserve Banks would incur if operating as private-sector providers. Because of the similarity between the services provided by Reserve Banks and many of the services offered by private-sector correspondent banks, the Board historically has derived these imputed costs, collectively known as the PSAF, and offsetting imputed revenue, known as net income on clearing balances (NICB), using a correspondent bank model. The PSAF and NICB are estimated annually, and the resulting net cost is incorporated each year when

[1] These priced services include the check, automated clearinghouse, Fedwire® Funds, and Fedwire® Securities (for activity not related to Treasury securities) services.

[2] 12 U.S.C. 248a(c)(3).

setting priced services fees and measuring cost recovery.[3]

The Clearing Balance Program

The Reserve Bank clearing balance program was developed in connection with the implementation of MCA's requirement to establish fees for priced services. This program allows DIs to hold at Reserve Banks an agreed-upon level of clearing balances which serve several purposes, including facilitating settlement of transactions, protecting against overnight overdrafts, and paying for priced services through the generation of earnings credits. The Reserve Bank clearing balance program is largely modeled after similar programs offered by private-sector correspondent banks, wherein respondent banks maintain balances with their correspondents for some or all of the purposes listed above.

Under the Reserve Bank clearing balance program, a participating DI agrees to set and maintain a targeted minimum average clearing balance, known as the DI's contractual clearing balance, over a set period. A DI may hold balances in excess of its contractual clearing balance and is charged for deficiencies below the contracted minimum.

A DI accrues credits, known as earnings credits, on its contractual clearing balances (not on excess balances) held at a Reserve Bank at a rate currently equal to 80 percent of the 13-week moving average of the annualized coupon equivalent yield of the three-month Treasury bill. Earnings credits can only be applied toward priced services fees, and unused credits expire if not used within one year.

Calculating the PSAF

The Board's method for calculating the PSAF begins with developing a pro forma priced services balance sheet based on the projected average book value of Reserve Bank assets and liabilities to be used in providing priced services during the coming year.[4] Additional elements on the priced services balance sheet are imputed as if the priced services were provided by a hypothetical private-sector correspondent bank. For example, a private-sector correspondent bank would be able to use the balances that its respondents deposit with it as a funding source for investments. Accordingly, the Board imputes investment income on clearing balances held at Reserve Banks based on an imputed portfolio of interest-bearing assets. Similarly, because private-sector correspondent banks are required to hold some portion of their deposit balances as vault cash or as balances at a Reserve Bank, the Board imputes a reserve requirement as a percentage of clearing balances. The imputed investment of clearing balances and the imputed reserve requirement both appear as assets on the priced services balance sheet.

The liability and equity components of the priced services balance sheet consist of clearing balances, short- and long-term liabilities related to providing priced services, imputed debt (if necessary), and imputed equity. The level of clearing balances on the priced services balance sheet increases or decreases at the discretion of the DIs maintaining those balances and provides a source of long-term financing for priced services assets.[5] Using the correspondent bank model results in imputed debt only when core clearing balances, long-term liabilities, and equity on the priced services balance sheet are not sufficient to fund long-term assets; or when an interest rate sensitivity analysis indicates that a 200 basis point change in interest rates would change the percentage of priced services costs recovered (cost recovery) more than 2 percentage points. To satisfy the FDIC requirement for a ''well-capitalized'' institution, equity is imputed at 5 percent of total assets.[6]

The imputed costs of the PSAF are derived from the priced services balance sheet. A target return on equity (ROE) rate is estimated and applied to the equity on the priced services balance sheet to determine the cost of equity. The ROE rate is estimated using the capital asset pricing model (CAPM), which calculates a firm's required ROE rate as the sum of a risk-free rate of return and a risk premium. In this model, the risk premium is the product of a firm-specific sensitivity factor, known as beta, which expresses the correlation of the firm's returns to the return of the market as a whole, and the expected return of the market in excess of the risk-free rate. In the PSAF calculation, the risk-free rate of return is based on the three-month Treasury bill rate, and the expected market risk premium is the average of the monthly returns of the market as a whole in excess of the risk-free rate over the most recent 40 years.[7] The priced services beta of 1.0 assumes that, over time, priced services returns will be perfectly correlated with those of the overall market.

Given that Federal corporate income tax rates are graduated, State income tax rates vary, and various credits and deductions can apply, the correspondent bank model does not include an actual income tax expense. Instead, the Board targets a pretax ROE that would provide sufficient income for the priced services to fulfill their imputed income tax obligation. The imputed income tax rate used to calculate the pretax ROE is the median of the rates paid over the past five years by the top 50 bank holding companies (BHCs) ranked by deposit balances, adjusted to exclude any investment in tax-free municipal bonds. The PSAF also includes the estimated share of Board expenses that supports the priced services, imputed sales tax, and an imputed FDIC insurance assessment based on current FDIC rates and the level of clearing balances held at Reserve Banks.

Calculating NICB

The correspondent bank model includes imputed revenue, known as NICB, which is calculated each year along with the imputed costs of the PSAF. The NICB calculation assumes that, similar to a correspondent bank, the priced services would invest clearing balances, net of the imputed reserve requirement and balances used to finance priced services assets, in interest-bearing assets. To impute investment income, a rate of return

[3] In 2008, actual direct and indirect costs represented approximately 88 percent of total priced services costs and the PSAF represented the remaining 12 percent. The PSAF constituted an estimated $108.3 million of the overall costs recovered by priced services activities, and was offset by approximately $101.7 million of NICB.

[4] The 2007 priced services balance sheet can be found in the Federal Reserve Board's 2007 Annual Report at *http://www.federalreserve.gov/boarddocs/rptcongress/annual07/sec2/c3.htm#nl12*.

[5] Using clearing balances as a financing source is consistent with private-sector correspondent banks' use of their respondent balances to fund short- and long-term assets. In the correspondent bank model only the portion of clearing balances that has remained stable over time (core clearing balances), historically set at $4 billion, is used to fund long-term assets on the priced services balance sheet.

[6] Equity is imputed based on the FDIC definition of a well-capitalized depository institution for insurance premium purposes. The FDIC requirements for a well-capitalized depository institution are (1) a ratio of total capital to risk-weighted assets of 10 percent or greater, (2) a ratio of Tier 1 capital to risk-weighted assets of 6 percent or greater, and (3) a leverage ratio of Tier 1 capital to total assets of 5 percent or greater. Because the total capital on the priced services balance sheet has no components of Tier 1 or total capital other than equity, requirements 1 and 2 are essentially the same measurement. In addition, because risk-weighted assets have historically been considerably below actual assets on the priced services balance sheet, typically only requirement 3 has been binding for the priced services.

[7] Data on market returns are based on the French data series, which is the standard data series used to estimate the market risk premium (*http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/data_library.html*).

equal to the yield on the three-month Treasury bill plus a constant spread is applied to the level of clearing balances available for investment on the priced services balance sheet. The constant spread is derived annually from a portfolio of investments comparable to the investment holdings of BHCs.[8] The NICB calculation nets this imputed investment income against the actual cost of earnings credits, which represent the cost to the Reserve Banks of holding clearing balances.[9]

Calculating Cost Recovery

The Board incorporates the PSAF and NICB into the projected and actual annual cost recovery calculations for Reserve Bank priced services. Cost recovery measures the percentage of priced services costs, including the PSAF, recovered through priced services fees and NICB. In the fall of each year, the Board projects the PSAF and NICB for the following year using the most recent clearing balance and rate data available (typically July data) during the process of establishing priced services fees. The Board also estimates cost recovery for the coming year using projected direct and indirect costs, revenue, and the net imputed cost generated from the estimated PSAF and NICB.

When calculating actual cost recovery for the priced services at the end of each year, the Board historically has used the estimated PSAF derived during the price-setting process with only minimal adjustments for actual rates or balance levels.[10] [11] The Board adopted this approach because the PSAF largely represents the fixed financing costs associated with the assets on the priced services balance sheet, which is updated annually. This method has proven to be reasonable and transparent without being unduly complex or burdensome. The Board updates NICB, however, to reflect actual interest rates and clearing balance levels throughout the year when calculating actual priced services cost recovery. Actual NICB, therefore, can vary from the projected amount used to determine priced services fees for a given year. For example, while the projected and actual PSAF for 2007 remained substantially unchanged at $132.5 million, actual 2007 NICB decreased from its $139.6 million projection to $133.8 million.

The Interdependence of Clearing Balances, the PSAF, and NICB

Changes in clearing balance levels directly affect the imputed costs and income that factor into priced services fees and cost recovery. Clearing balances not only represent the largest component of the priced services balance sheet but also drive the calculation of nearly all imputed elements included in priced services fees, including the financing costs, the cost of equity, and NICB. For example, clearing balances provide a major source of short- and long-term funding for the assets on the priced services balance sheet, representing 74 percent of total financing in 2007. Clearing balances thus reduce total imputed financing costs by eliminating the need to impute more costly forms of financing, such as debt.[12] Clearing balances, in the form of imputed investments, also represent a significant portion of total priced services assets. Total assets, in turn, determine the level of imputed equity and the resultant imputed cost of that equity. In addition, the level of clearing balances influences the amount of funds available for investment in the imputed portfolio of investments and the cost of earnings credits, both of which are principal factors in the NICB calculation. These three elements—financing costs, the cost of equity, and NICB—are included in the net imputed cost that is recovered through priced services fees. Any change in the level of clearing balances, therefore, has a significant effect on the PSAF, NICB, and cost recovery.

Interest on Balances Held at Reserve Banks

Title II of the Financial Services Regulatory Relief Act of 2006 granted the Reserve Banks authority to pay earnings (interest) on balances maintained by or on behalf of DIs at Reserve Banks. Originally, this authority was to become effective in 2011. Section 128 of the Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008, made the authority effective upon enactment. On October 6, 2008, the Board published an interim final rule amending Regulation D (Reserve Requirements of Depository Institutions). The interim rule directed the Reserve Banks to pay explicit interest on balances held at Reserve Banks to satisfy reserve requirements (required reserve balances) and on balances held in excess of both required reserve balances and contractual clearing balances (excess balances), effective October 9, 2008.[13]

The Board has observed a significant decline in the level of clearing balances held at Reserve Banks following the implementation of interest on required reserve balances and excess balances and anticipates that this trend will continue. The daily average level of clearing balances over the two-week reserve maintenance period ending October 8, 2008 was $7.7 billion. As shown in figure 1, by the reserve maintenance period ending February 11, 2009, the daily average level of clearing balances had fallen to $4.6 billion. Over this period, the rate of interest paid on both required reserve balances and excess balances maintained at Reserve Banks was generally higher than the earnings credit rate paid on clearing balances.[14] The interest rate on required reserve balances and excess balances as of March 2009 is 25 basis points, which is the top of the targeted range for the Federal funds rate and higher than the concurrent earnings credit rate for clearing balances. When the target Federal funds rate exceeds the earnings credit rate (the typical historical

[8] These investments include short-term Treasury securities, government agency securities, commercial paper, long-term corporate bonds, and money market funds. For additional details on the calculation of the constant spread, refer to the notice of approval of modifications to the method for calculating the PSAF, 68 FR 61413–61418 (Oct. 28, 2003).

[9] Because clearing balances are voluntary, set by priced services customers, and held for clearing transactions or offsetting priced services fees, they are directly related to the priced services. The cost associated with holding clearing balances, therefore, is appropriately attributed to the priced services.

[10] Although the largest portion of the PSAF, the target ROE, is fixed, two minor elements of the PSAF calculation are variable. The first adjusts the imputed income tax expense for the difference between the projected and actual priced services net income by applying the imputed effective income tax rate to any difference. The second recalculates the imputed FDIC assessment using actual clearing balance levels and assessment rates.

[11] In light of the uncertainty about the long-term effect that paying interest on required reserve and excess balances held at Reserve Banks will have on the level of clearing balances, the Board will adjust the PSAF used in the actual cost-recovery calculation for 2009 using the actual clearing balance levels maintained throughout 2009.

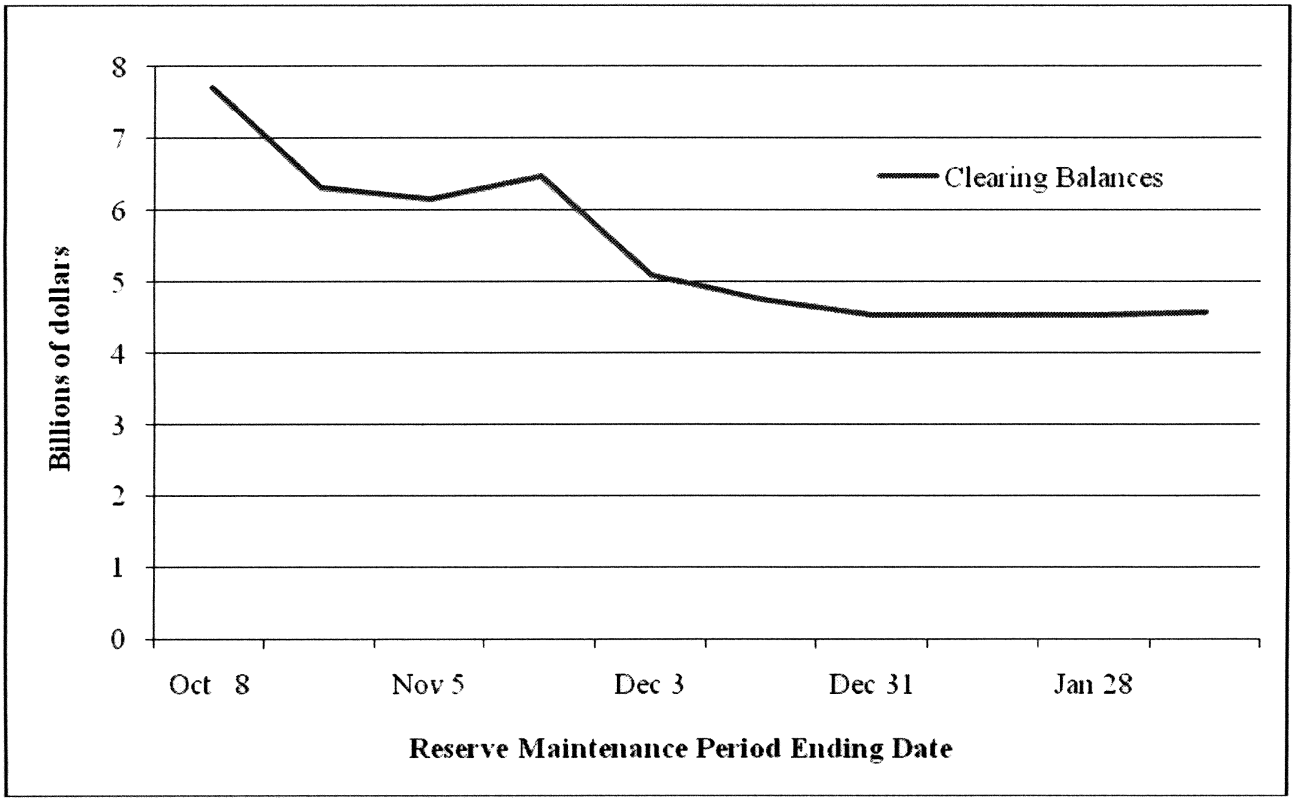
[12] Historically, debt financing rates have been higher than the earnings credit rate, making debt a more costly source of financing for the priced services balance sheet. For the week ended February 11, 2009, the earnings credit rate paid on clearing balances held by DIs at the Reserve Banks was 0.09 percent versus 5.21 percent for the bond rate on Moody's Aaa-rated corporate bonds for the week ended February 13, 2009 (*see http://www.federalreserve.gov/releases/h15/20090105/*).

[13] 73 FR 59482–59486 (Oct. 9, 2008), as amended by 73 FR 65506–65507 (Nov. 4, 2008), 73 FR 67713–67714 (Nov. 17, 2008), and 73 FR 78616 (Dec. 23, 2008).

[14] The recent plateau in clearing balance levels may be due to the small difference (often of less than 15 basis points) between the rates earned on excess balances and clearing balances in the current low interest rate environment. In a more normal rate environment, the absolute value of this difference will increase, giving DIs more incentive to shift from maintaining contractual clearing balances to maintaining interest-earning excess balances.

scenario), and absent a significant preference by DIs for implicit interest on clearing balances over explicit interest on excess balances held at Reserve Banks, DIs will likely continue to reduce clearing balances in favor of increasing excess balances to receive higher, explicit returns.

Figure 1: Clearing Balance Levels



The expected continued decline in clearing balance levels could have significant implications for the imputed costs that factor into the Board's price-setting methodology. If clearing balance levels decline significantly, the priced services balance sheet will shrink dramatically, and the priced services will lose a major source of both funding and income. A continued reduction in clearing balance levels will decrease the similarities between the financial characteristics of the priced services and private-sector correspondent banks. Specifically, with low to zero clearing balance levels, it will be more difficult to draw the analogy between correspondent banks, whose balance sheets include large levels of deposit balances and related accounts, and the Reserve Bank priced services. Similarly, markedly reduced clearing balance levels will call into question the use of the FDIC's regulatory structure for well-capitalized depository institutions as a determinant of equity capital on the priced services balance sheet and will potentially nullify the calculation of an FDIC insurance assessment based on clearing balance levels. All of these factors challenge the continued applicability of a PSAF model based on a correspondent bank framework.

The potential for such circumstances, in conjunction with the ongoing changes in the nature of priced services competitors discussed below, has prompted the Board to consider changes to its approach to imputing the costs that MCA requires to be recovered through priced services fees. If approved, these changes could be effective as early as the 2010 pricing process. In determining the appropriate timing of such changes, the Board will consider trends in the level of clearing balances held at Reserve Banks and the extent to which the nature of the Reserve Banks' competitors, particularly in the check service, shifts away from correspondent banks.

The Board requests comment on the following:

If the explicit interest rate for required reserve balances and excess balances continues to be higher than the implicit rate paid on clearing balances in the form of earnings credits, is it reasonable to assume that DIs will continue to reduce or eliminate their level of contractual clearing balances in favor of holding additional excess balances? If not, why might DIs choose to maintain their clearing balances?

Will DIs raise and lower the level of clearing balances they hold at Reserve Banks depending on whether the earnings credit rate is above or below the rate on excess balances?

Are there any reasons why the Board should maintain its clearing balance program if demand for clearing balances continues to decline significantly?

Trends in the Banking and Payment Systems Industries

As noted above, when implementing the priced services provisions of MCA in the early 1980s, the Board identified private-sector correspondent banks as the most appropriate peer group for the priced services in adopting key elements of the policy. The Board

considered correspondent banks to be a reasonable proxy for private-sector providers of priced services because they are the primary competitors of the Reserve Banks' check service, which historically has comprised more than 80 percent of the cost of Reserve Bank priced services activities. In doing so, the Board recognized that BHCs offer diverse services that extend well beyond the payment services that are provided by the Reserve Banks, and that these services largely drive BHC financial results; however, given that Reserve Banks and BHCs both hold customer balances that facilitate payment services, the Board considered it a reasonable comparison.

Recently, however, the analogy between private-sector correspondent banks and the priced services has become less applicable. The payment systems industry has sharply decreased its use of traditional check services and increased its use of electronic payment services. As a result, user-owned utilities, the Reserve Banks' typical competitors in electronic payment services, have increasingly replaced correspondent banks as the predominant competitors of the Reserve Banks in providing priced services. These user-owned utilities include such entities as the Clearing House Interbank Payment System (CHIPS), which is the primary competitor for Fedwire® funds transfer services, and the Electronic Payments Network (EPN), which is the only private-sector automated clearinghouse (ACH) operator. Both of these entities are part of a larger cooperative, The Clearing House Payments Company, LLC (TCH), which is owned entirely by its principal users. Unlike private-sector correspondent banks, user-owned utilities do not hold overnight balances for their participants. As paper check processing volumes continue to decline and the check service becomes more electronic, utilities will likely increasingly be key competitors of the Reserve Banks in providing priced services. These trends, in conjunction with the potential continued significant decline in clearing balances resulting from the ability of DIs to receive explicit interest on balances held at Reserve Banks, raise questions about the continued appropriateness of the correspondent bank model as the basis for the imputed costs that factor into the Board's pricing methodology.

II. The Proposed PSAF Model

The Publicly Traded Firm Model

The Board seeks to replace the current correspondent bank model with a model that is transparent, consistent with current financial theory and practice, and conceptually sound as a basis for efficient pricing in the market of payment services. To achieve these objectives, and given the difficulty in identifying and obtaining data for an applicable peer group, the Board proposes to replace the correspondent bank model with a ''publicly traded firm model'' for calculating the imputed costs that factor into priced services fees and cost recovery. This model recognizes the shift, in the priced services' financial characteristics and competitors, away from correspondent banks, as well as the difficulties inherent in a user-owned utility model as discussed below, and instead compares the priced services to the entire market of U.S. publicly traded firms.

Under the publicly traded firm model, the asset side of the priced services balance sheet would reflect only the projected portion of actual Reserve Bank assets used to provide priced services; no additional assets would be imputed. Any residual clearing balances maintained by DIs at Reserve Banks would not be included in the priced services balance sheet or in the calculation of the PSAF. Consequently, imputed investments and NICB would be zero by definition, and the priced services would impute additional equity and debt to meet the funding need on the priced services balance sheet. The publicly traded firm model would not include an imputed FDIC assessment, because the priced services' peer group would no longer be limited to private-sector correspondent banks and because, as noted above, any residual clearing balances would not be included in the priced services balance sheet or in the PSAF calculation. The imputed capital structure, debt and equity financing rates, and effective income tax rate would be based on data for the U.S. market as a whole and would be calculated using the various market data sources and time frames discussed below. The time frame selected for each of these imputed elements was chosen to minimize volatility in the PSAF from year to year. A one-year time frame was selected for elements that historically have been more stable; a five-year average was selected when data were more volatile historically or when changes in that element would have a larger impact on the PSAF.[15] When averaging data for individual U.S. firms, the model would use value-weighted rather than equal-weighted averages.[16]

The priced services imputed capital structure would be based on the most recent full-year value-weighted average capital structure (that is, total long-term debt to total long-term debt plus equity) of all U.S. publicly traded firms included in a commercially available financial database. The Board initially proposes using Standard & Poor's Compustat® database as the source for the capital structure and effective income tax rate of all U.S. publicly traded firms. The Standard & Poor's Compustat® database contains information on more than 6,000 U.S. publicly traded firms, which approximate the entirety of the U.S. market. Because of the timing of the price-setting process and the availability of relevant data, there would be a two-year lag in the data used in the PSAF calculation: for example, 2010 priced services fees, set in late 2009, would be based upon full-year 2008 data.[17] Table 1 shows the value-weighted average capital structures for all U.S. publicly traded firms in the Standard & Poor's Compustat® database from 2003 to 2007. In 2007, based on the foregoing, the value-weighted average capital structure was 54 percent.

[15] Although MCA's requirement for cost recovery over the long run allows the Board to set fees to over- or underrecover costs in a given year to minimize price volatility, volatility in imputed costs makes the pricing process more complex. As a result, the Board has typically preferred to adopt PSAF methodologies that provide for stable rather than volatile imputed costs.

[16] Value-weighted averages assign equal weight to each dollar, while equal-weighted averages assign equal weight to each firm. The Board opted to use value-weighted averages to reflect more accurately the financial characteristics of the market as a whole rather than those of the ''average'' firm in the market.

[17] The two-year lag in the data used to calculate certain imputed costs in the PSAF is characteristic of the current model as well and is due in large part to the timing of the price-setting process.

TABLE 1—CAPITAL STRUCTURE (CAPITALIZATION RATIO) OF U.S. PUBLICLY TRADED FIRMS

2003	2004	2005	2006	2007	Five-year average	Standard deviation
55%	53%	53%	52%	54%	53%	1.0%

Source: Standard & Poor's Compustat® data.

Because the PSAF resulting from the publicly traded firm model is not highly sensitive to capital structure and because the value-weighted average capital structure does not vary significantly from year to year, the Board believes that a one-year time frame is appropriate when imputing the priced services capital structure. This conclusion is supported both by financial theory, which states that changes in capital structure should not significantly affect the value of a firm, and by sensitivity analysis as shown in attachment 1.[18]

The imputed effective income tax rate would be the five-year mean of the value-weighted average ratios of current tax expense to total net income for all U.S. publicly traded firms in the financial database. Table 2 shows the annual value-weighted average effective tax rates for all U.S. publicly traded firms in the Standard & Poor's Compustat® database from 2003 to 2007. For that period, the five-year mean of these tax rates was 24 percent. A five-year mean would be used because of the volatility of the annual effective tax rate from year to year and the sensitivity of the PSAF to this input, as shown in attachment 1.

TABLE 2—EFFECTIVE TAX RATE OF U.S. PUBLICLY TRADED FIRMS

2003	2004	2005	2006	2007	Five-year average	Standard deviation
19%	23%	27%	24%	29%	24%	3.4%

Source: Standard & Poor's Compustat® data.

The imputed long-term debt financing rate under the publicly traded firm model would be the five-year mean of an estimated average annual bond yield for the market as a whole. The Board proposes to use a five-year mean when imputing a long-term debt financing rate to be consistent with the treatment of the tax rate (both of these inputs are cost-related) and to reduce year-to-year volatility in the PSAF.[19]

The Board initially proposes calculating the imputed long-term debt rate as the five-year mean of the Aaa and Baa Moody's bond yields published on the Federal Reserve Board's H.15 Statistical Release.[20] The inclusion of only investment-grade debt is based on analysis of data on approximately 1,400 publicly traded firms in the Compustat database for which bond rating data are available.[21] Given that the majority of outstanding debt for this population was investment grade, the Board considered an average investment-grade bond yield to be a reasonable proxy for the imputed priced services long-term debt financing rate. The Board considered two averaging techniques to determine the average investment-grade bond yield, which provided nearly identical results. Of these two approaches, the five-year mean of the Aaa and Baa Moody's bond yields was more simple and transparent.[22] Table 3 shows the annual average yield from 2003 to 2007 using this methodology. For this period, the five-year mean was 6.0 percent.

TABLE 3—AVERAGE OF ANNUAL MOODY'S AAA AND BAA BOND YIELDS

2003	2004	2005	2006	2007	Five-year average	Standard deviation
6.2%	6.0%	5.7%	6.0%	6.0%	6.0%	0.2%

Using an average investment-grade bond yield as the imputed priced services long-term debt financing rate, however, does not take into account the effect of non-investment-grade debt on the average bond yield for the market as a whole. Inclusion of non-investment-grade debt would result in a somewhat higher imputed long-term debt financing rate. Accordingly, the Board could also calculate an average bond yield for U.S. publicly traded firms using five-year average yields for each bond rating, weighted by the relative

[18] F. Modigliani and M.H. Miller (1958), ''The Cost of Capital, Corporation Finance, and the Theory of Investment,'' *American Economic Review*, 48, pp. 261–97. The Modigliani-Miller Theorem states that under some conditions and in an efficient market the value of a firm is unaffected by how that firm is financed.

[19] Although attachment 1 shows low levels of volatility in the average Moody's bond rates from 2003 to 2007, this stability has not been the historic norm. Given the PSAF's sensitivity even to small changes in the debt financing rate, the Board plans to use a five-year average to minimize volatility in the PSAF.

[20] *http://www.federalreserve.gov/releases/H15/data.htm.* Moody's Aaa and Baa bond ratings represent the upper and lower limits of the range of investment-grade bonds.

[21] While the firms in this sample included only approximately 20 percent of publicly traded firms in the database, they represented more than 85 percent of the assets and debt of the complete population of over 6,000 firms. Analysis of data for this sample from 2003 to 2007 showed that 82 percent of outstanding long-term debt (which represents over 70 percent of the outstanding long-term debt for all firms in the database during that period) was investment grade.

[22] Alternatively, the Board could calculate an average investment-grade bond yield using five-year average annual bond yields for each investment grade, weighted by the relative proportion of debt outstanding for each grade in the population of approximately 1,400 firms. For 2003 to 2007, the weighted average bond yield using this technique differed from the five-year mean of the Aaa and Baa Moody's bond yields by 2 basis points.

proportion of debt outstanding in the market at each bond rating.[23]

If short-term assets exceed short-term liabilities on the priced services balance sheet, short-term debt would be imputed at the average of the three-month AA and A2/P2 nonfinancial commercial paper rates as published on the Federal Reserve Board's Commercial Paper Release.[24] This methodology is simple, transparent, consistent with the proposed approach to calculating the long-term debt financing rate, and based on publicly available data.

The Board considered other data sources for each of the imputed elements discussed above. These sources include the Flow of Funds Federal Reserve Board Statistical Release for capital structure, general corporate income tax rates as found on Internal Revenue Service (IRS) Form 1120 for the effective tax rate, and the ratio of ''interest and related expense'' to total debt for all publicly traded U.S. firms in the Standard & Poor's Compustat® database for the long-term debt financing rate.[25] In each case, the Board considered the source set forth in the current proposal to be the superior alternative. The Flow of Funds release does not include data on U.S. publicly traded financial firms and provides only approximate market-value equity data. Use of the general corporate income tax rate published by the IRS would inappropriately exclude the effect of State and local taxes. A long-term debt financing rate calculated from the Standard & Poor's Compustat® database would be artificially high because of the inclusion of ''related expense,'' which includes items such as interest on deposits held at DIs, in the interest expense measure used in the numerator.

Under the publicly traded firm model, the imputed ROE rate would continue to be calculated using the CAPM with a beta of 1.0 and a 40-year average historical market premium. Given the sensitivity of the PSAF to the risk-free rate used in the CAPM, and because short-term Treasury bill rates are generally more sensitive to interest rate changes than longer-term rates, the Board considered replacing the current short-term risk-free rate with a longer-term risk-free rate. As shown in attachment 1, changes in the risk-free rate used in the calculation of the target ROE rate affect the PSAF more than any other imputed element. In 2005, the Board decided to use a three-month Treasury bill rate as the risk-free rate to impute the target ROE because this rate was consistent with that used to calculate NICB and would help minimize volatility in the net imputed cost caused by changes in interest rates.[26] With the elimination of NICB under the proposed publicly traded firm model, however, using a longer-term Treasury rate, such as the 10-year Treasury bond rate, may be an appropriate way to minimize volatility in the calculation of the target ROE rate. A longer-term rate more closely matches the duration of stock market indexes used to estimate a beta, the expected life of the assets on the priced services balance sheet, and the investment horizon of a long-term investor.

Table 4 compares certain components for 2009 derived under the publicly traded firm model with the same components as derived under the baseline case.[27] Using the elements discussed above, the publicly traded firm model returns a PSAF of $55.4 million compared with a baseline PSAF of $62.2 million (NICB of $48.8 million, net imputed cost of $13.4 million).

The baseline net imputed cost reflects clearing balance levels and interest rates as of July 2008. The correspondent bank model is highly sensitive to both of these variables. For example, using the lower clearing balance levels and interest rates from February 2009, projected 2009 NICB is less than half the amount that was projected for pricing purposes, leading to an increase in the 2009 net imputed cost. If clearing balances continue to decline, the variance between the PSAF calculated using the proposed methodology and the net imputed cost using the correspondent bank model will likely be significantly smaller than noted above. In contrast, as interest rates rise, the income generated on each dollar of clearing balances in the NICB calculation of the correspondent bank model will increase. Rising interest rates, however, will widen the spread between the interest rate on excess balances and the earnings credits rate, giving DIs more incentive to shift from maintaining clearing balances to maintaining additional excess balances. This expected reduction in clearing balances will reduce NICB, counteracting the effect of higher per-dollar earnings and likely leading to a net decrease in NICB. Consequently, rising interest rates could cause an overall increase of the net imputed cost of the correspondent bank model throughout the year. This increase could substantially shrink the variance between the PSAF of the proposed model and the net imputed cost of the current model.

TABLE 4—COMPARISON OF CURRENT AND PROPOSED MODEL

	Balance sheet assets (billions)	Financing composition	Financing cost	Tax rate (percent)	Debt rate (percent)	PSAF (millions)	NICB (millions)
Baseline case: correspondent bank model.	$9.2	Equity per FDIC guidelines.	ROE of $46.2 M	32.6	[1]	$62.2	$48.8
Publicly traded firm model.	1.3	54% long-term debt, 46% equity.	$40.3M (ROE of $22.3M; debt cost of $18.0M).	24	6.0	55.4	0

[1] No debt.

[23] The relative proportions of outstanding debt would be based on the most recent five years of Standard & Poor's Compustat® data for which bond rating data are available.

[24] *http://www.federalreserve.gov/releases/cp/*. AA and A2/P2 ratings for commercial paper approximate the same credit ratings as Moody's Aaa and Baa ratings for bonds. Since 2002, the priced services short-term funding need has been met by clearing balances, eliminating the need to impute short-term debt.

[25] Current corporate income tax rates can be found in the 2008 instructions for IRS Form 1120 at *http://www.irs.gov/pub/irs-pdf/i1120.pdf*.

[26] 70 FR 60347 (Oct. 17, 2005). NICB is based on an average three-month Treasury bill rate, while the target ROE CAPM calculation uses a current three-month Treasury bill rate for the risk-free rate.

[27] The baseline PSAF of $62.2 million, projected NICB of $48.8 million, and net imputed cost of $13.4 million are the Board-approved projected 2009 values using the correspondent bank model. 73 FR 65329–65340 (Nov. 3, 2008).

The Board believes that the publicly traded firm model would be an appropriate replacement for the current PSAF model for a variety of reasons. The publicly traded firm model is relatively simple to calculate and understand, easily replicable by the public, and uses objective, publicly-available data for all imputed inputs. Unlike the correspondent bank model, the publicly traded firm model is not linked to the level of clearing balances held at Reserve Banks. This characteristic is important given the uncertainty surrounding future clearing balance levels. Substantially lower clearing balances would not only affect the funding and income of the priced services but also undermine the basis for the use of an FDIC-based regulatory structure for depository institutions as a determinate of the priced services capital structure. A model that is not dependent on clearing balance levels is also appropriate in an environment where clearing balances are not relevant to a growing proportion of the Reserve Banks' competitors in providing priced services. Another advantage of the publicly traded firm model is its independence from a narrowly defined peer group, such as private-sector correspondent banks, that may become less relevant to the priced services over time. Unlike other models considered, the publicly traded firm model does not incorporate data from a limited number of comparable firms but rather from the entire U.S. market of publicly traded firms. This independence decreases the risk of price volatility that could result from changes in the characteristics or financial results of a limited peer group. The publicly traded firm model also is consistent with financial theory regarding capital structure and financing costs and is conceptually sound. In addition, the publicly traded firm model is consistent with the current approach to calculating the ROE using CAPM with a beta of 1.0, which compares the priced services to the market as a whole.

The publicly traded firm model also has a few drawbacks. If some level of clearing balances persists at Reserve Banks over the long term, excluding these priced-services-related balances from the calculation of the PSAF would depart from the Board's past practice of including all actual priced services assets and liabilities in the calculation of the PSAF and would disregard potential imputed income from these balances. A publicly traded firm model also departs from a model based specifically on the banking industry. This change in direction may conflict with the fact that the priced services are provided by Reserve Banks, which are, by definition, banks.

The Board specifically requests comment on the following:

Is using the U.S. market as a whole as a basis for the imputed capital structure, tax rate, and debt financing rates of the priced services reasonable? Is discontinuing the use of a correspondent bank model reasonable?

Are the proposed approaches to imputing the capital structure, effective tax rate, and long- and short-term debt financing rates appropriate?

Is it reasonable to include only investment-grade bond yields in the calculation of the imputed long-term debt financing rate? If not, what approach should the Board take to include other yields or rates in the calculation? What publicly-available data sources are best suited for obtaining data on non-investment-grade debt?

Is it reasonable to limit the calculation of the short-term debt financing rate to include only rated commercial paper even if the long-term debt financing rate calculation were expanded to include non-investment-grade debt, given the expectation that the need for short-term funding on the priced services balance sheet will be relatively small? If not, what approach should the Board take to include other rates in the calculation?

What publicly-available data sources are best suited for determining the effective tax rate, capital structure, and short- and long-term debt financing rates of the U.S. market?

Should the Board consider using a longer-term risk-free rate to calculate the target ROE to decrease the ROE calculation's sensitivity to changes in interest rates?

III. Other PSAF Models Considered

The User-Owned Utility Model

The Reserve Banks' major competitors in the provision of priced services increasingly are user-owned utilities rather than traditional correspondent banks. Accordingly, one approach to revise the methodology for imputing costs might be to model the priced services balance sheet and imputed capital structure, financing rates, tax rate, and other applicable costs on a user-owned utility. Under this methodology, the priced services balance sheet and imputed costs would reflect either the financial characteristics of a peer group of user-owned utilities currently existing in the market or theoretical assumptions about the behavior and characteristics of this type of organization.

A user-owned utility model is conceptually appealing because the Reserve Banks' competitors in the Fedwire® Funds, FedACH®, and, to a lesser extent, check services are increasingly user-owned utilities. Such a model also recognizes that, as clearing balance levels decline, providing priced services to DIs that do not maintain clearing balances could more closely resemble the operation of a user-owned utility than that of a traditional correspondent bank.

Selecting an appropriate peer group for this approach, however, is challenging. User-owned utilities typically provide a diverse array of services using various operational approaches. Although choosing a narrowly defined peer group of user-owned utilities, specifically one consisting of peers that provide services more closely resembling the priced services, could provide a more-comparable peer group, this approach may also introduce greater volatility in the PSAF because of the dependence on data from a small number of firms.

A user-owned utility peer group could present other problems as well. Publicly available financial data on user-owned utilities are often not published. For example, CHIPS and EPN provide services that compete with the priced services provided by Reserve Banks. These two entities, however, are both components of TCH, which does not publicly report its financial statements either by product line or in aggregate. Although data are more readily available to the public from several other user-owned utilities (such as SWIFT and the Depository Trust & Clearing Corporation), the services provided by these firms are less comparable to those provided by the Reserve Banks.

Basing this model on theoretical characteristics of user-owned utilities rather than on the actual data of a specific peer group could also prove challenging. User-owned utilities, by definition, lack incentive for profit maximization because the owners of these utilities are also their primary customers. Consequently, user-owned utilities tend to seek to maximize the benefit afforded to their users by providing low-cost services while remaining financially viable. Although the assumption that this characteristic could result in a lower required rate of return on equity is reasonable, establishing a methodology to calculate that rate using the limited economic literature available on the subject could be difficult. Further, establishing the means to calculate the other requisite imputed elements—capital structure,

debt financing rates, and income taxes—using theoretical assumptions or academic studies could be similarly challenging.

The user-owned utility model exhibits some of the same drawbacks of the publicly traded firm model that the Board is proposing. For example, a user-owned utility model represents the same significant departure from a model based specifically on the banking industry. A user-owned utility model also would not include residual clearing balances, which departs from the Board's past practice of basing the PSAF on actual priced services assets and liabilities.

The Board specifically requests comment on the following:

Given that user-owned utilities reflect a significant portion of the Reserve Banks' competitors in providing priced services, would a user-owned utility model be more appropriate? If yes, are there approaches the Board should consider that would address the identified obstacles?

The Cost-Plus Model

In 2005, while commenting on proposed changes to the PSAF methodology for calculating the ROE, two commenters suggested a cost-plus model as a simple, straightforward method for calculating the PSAF. Accordingly, the Board investigated the possibility of using a cost-plus PSAF model based on priced services operating expenses. A cost-plus PSAF model would add a markup to the priced services operating expenses for the year. The markup would be calculated by applying an internal benchmark or market rate of return to the level of budgeted priced services operating expenses. Regardless of the method used to calculate the markup, residual clearing balances held at Reserve Banks would not be included in the calculation of net imputed cost, and NICB would therefore be zero by definition.

Calculating the markup for a cost-plus model requires a data source from which to develop the internal benchmark or market rate of return to be applied to budgeted operating expenses. In the case of an internal benchmark, the Board considered using an average of historical PSAF values. Such values, however, would not take current data into account and would reflect a correspondent bank model that is increasingly inapplicable given recent trends in the payments industries and the expected continued decline in the level of clearing balances. In addition, a static internal benchmark based on historical PSAF values would fail to reflect ongoing changes in the marketplace.

Alternatively, the Board could base the markup ratio applied to the priced services operating expenses on an external benchmark, such as the average markup over operating expenses for the U.S. market as a whole.[28] Specifically, the Board could calculate the markup as the ratio of pretax income and interest expense to operating expense for all U.S. publicly traded firms. This markup could then be applied to the projected level of priced services operating expense, including imputed operating expenses such as sales tax, to determine the value of the imputed profit, debt financing cost, and income taxes to be factored into priced services fees. Applying a markup over expenses ratio based on value-weighted average data for all publicly traded U.S. firms in the Standard & Poor's Compustat® database to the 2009 budgeted priced services operating expense yields a projected 2009 PSAF of $157.5 million.[29]

Although a cost-plus model is simple, transparent, and replicable by the public, it also has several weaknesses. A cost-plus model based on historical PSAF values is static and assumes continued use of the current correspondent bank model, which is increasingly inapplicable. In addition, basing a cost-plus model on accounting-based values captures only book, not market, values of financing and other costs. Such a model is also not consistent with current finance theory. As with the models discussed previously, a cost-plus model represents a departure from a model based specifically on the banking industry.

The Board specifically requests comment on the following:

Should the Board consider implementing a cost-plus model?

Are there other sources of data that the Board should consider using to calculate an appropriate markup over operating expenses or over another financial characteristic of the priced services?

Are there other approaches that the Board should consider to address the identified obstacles?

Continuation of the Current Correspondent Bank Model

The Board also considered the continued use of the current correspondent bank model to impute costs, with minor modifications. Using this model while also paying interest on required reserve balances and excess balances would result in a significantly smaller priced services balance sheet because of the anticipated decline in clearing balances and the associated imputed investment assets. Equity, which would still be imputed at the FDIC regulatory minimum for a well-capitalized depository institution, would shrink because of the reduction in size of the overall priced services balance sheet.

Residual clearing balances would continue to serve as a funding source for the priced services. If residual balances were not sufficient to meet the funding need, net of equity, on the priced services balance sheet, debt would be imputed. The imputed short- and long-term debt financing rates would be calculated using the same methodologies outlined for the imputed debt financing rates of the publicly traded firm model. Using average market debt financing rates in the correspondent bank model recognizes that as clearing balances fall and debt rises as a percentage of total priced services assets, the priced services balance sheet would look increasingly like that of a publicly traded firm and less like that of a correspondent bank.[30] An average debt financing rate would also use readily-available public data and could be calculated with greater administrative ease. If residual clearing balances exceeded the funding need on the priced services balance sheet, NICB would be imputed.

Table 5 compares certain components for 2009 as derived under a continuation of the current correspondent bank model, with assumed residual clearing balance levels ranging from $0 to $4 billion, to the same components as derived under the baseline case. Using the values listed below, a continuation of the current correspondent bank model would return a net imputed cost between $50.7 million (PSAF of $50.7 million, NICB of $0) and $19.5 million (PSAF of $40.6 million net of $21.1 million in NICB).[31]

[28] The Board discarded the idea of basing the markup ratio on data for more narrowly-defined peer groups because of the challenges of comparability and data availability discussed previously.

[29] The Board could calculate a markup over expenses ratio using two averaging techniques: equal weighting and value weighting. The Board believes value weighting is more appropriate because it would yield less-volatile results and would better capture the characteristics of the market as a whole.

[30] For example, if clearing balances fall to zero, applying the FDIC regulatory structure to determine the capital structure on the priced services balance sheet would result in a capitalization ratio of over 85 percent.

[31] The results presented in Table 5 are based on a risk-free rate as of July 2008 of 1.67 percent. As interest rates increase, both the ROE costs of the

Continued

The increase in net cost is largely the result of the reduction or elimination of NICB caused by the decline in clearing balances levels. This increase is partially offset by a reduction in the cost of equity as a result of the reduced level of total assets and, consequently, of imputed equity on the priced services balance sheet.[32]

TABLE 5—CORRESPONDENT BANK MODEL UNDER DIFFERENT CLEARING BALANCE ASSUMPTIONS

Assumed clearing balance level	Balance sheet assets (billions)	Financing composition	Financing cost	Tax rate percent	Debt rate percent	PSAF (millions)	NICB (millions)	Net imputed cost (millions)
Baseline case: $7.4 B ($4 B in core clearing balances).	$9.2	Equity per FDIC guidelines; remainder clearing balances.	ROE of $46.2 M ...	32.6	([1])	$62.2	$48.8	$13.4
$4 B ($2 B in core clearing balances).	5.0	Equity per FDIC guidelines; remainder clearing balances.	ROE of $25.0 M ...	32.6	.....	40.6	21.1	19.5
No clearing balances.	1.3	Equity per FDIC guidelines; remainder debt.	$35.6 M (ROE of $6.4 M; debt cost of $29.2 M).	32.6	6.0	50.7	0	50.7

[1] No debt.

Continued use of the correspondent bank model for imputing costs would provide several advantages. Among these is its ability to draw upon a well-defined FDIC regulatory structure and a peer group with readily available data when establishing key imputed elements such as capital structure and rates. This model also would afford a means by which possible residual clearing balances held at Reserve Banks could continue to provide a low-cost funding source and potential source of imputed income.

A principal disadvantage of this model is the decreasing similarity between the financial and operational characteristics of the Reserve Bank priced services and traditional correspondent banks if the level of clearing balances held at Reserve Banks continues to fall. Historically, the Board has recognized that the financial characteristics of BHCs are not driven primarily by the payment services that compete with those offered by Reserve Banks, but has considered BHCs an appropriate peer group because they are the primary competitors to the Reserve Banks' check services and because both entities hold customer balances for the purpose of facilitating payments services. If clearing balance levels approach zero and as the check service declines as a percentage of priced services revenue and expenses, comparing priced services to correspondent banks for the purpose of establishing a PSAF model will be increasingly difficult. Dramatically reduced clearing balance levels will also call into question the applicability of an FDIC-based regulatory structure designed for depository institutions as the determinant of the priced services capital structure. Specifically, in an environment of low to zero clearing balance levels, applying the FDIC's regulatory structure could result in a priced services capitalization ratio of more than 85 percent, which seems unreasonable when compared to correspondent banks that are primarily funded by balances rather than long-term debt.

The Board specifically requests comment on the following:

Would continued use of the correspondent bank model to calculate the PSAF be appropriate given the expected reduction in clearing balances and changes in priced services competitors? If so, is the proposed approach for calculating a debt financing rate in the correspondent bank model reasonable?

IV. Competitive Impact

In its March 1990 policy statement ''The Federal Reserve in the Payments System,'' the Board stated that all operational and legal changes considered by the Board that could have a substantial effect on payment system participants are subject to a competitive-impact analysis.[33] Under this policy, the Board evaluates whether a proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Reserve Banks in providing similar services. These effects could be caused by differences in legal authority or constraints between Reserve Banks and private-sector competitors or by a dominant market position that the Reserve Banks might derive from such legal differences. If the proposed change creates such an effect, the Board must further evaluate the changes to determine whether its benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The intent of the PSAF, and of setting priced services fees in general to fully recover the costs (including imputed costs and profits) to provide them, is to facilitate competition between Reserve Banks and private-sector providers of payment services to foster a more efficient payment system. Identifying a meaningful private-sector peer group for the purpose of calculating the PSAF, however, has been difficult given the specific nature of the priced services provided by the Reserve Banks. The correspondent bank model historically has provided a reasonable proxy for Reserve Bank priced services, although the Board recognizes that correspondent bank balance sheets and ROE are typically driven largely by services that are not similar to those provided by the Reserve Banks. As the Reserve Banks' check service becomes a smaller proportion of total priced services revenues and costs, user-owned utilities are increasingly becoming the Reserve Banks' key priced services competitors. Because correspondent banks will no

PSAF and the earnings of the NICB portfolio would increase. The net effect of this increase would depend on the size and character of the priced services balance sheet.

[32] The decrease in total financing costs is offset in part by the cost of financing priced services assets with higher-cost debt instead of low-cost clearing balances.

[33] FRRS 9–1558.

longer represent the primary competitors of Reserve Banks in providing priced services, and because no reliable comparative data are available for the user-owned utilities, the Board believes modeling the PSAF on a publicly traded firm model is appropriate. Accordingly, the Board believes that such a change in the PSAF model, if made, would not have a direct and material adverse effect on the ability of other service providers to compete effectively with Reserve Banks in providing similar services.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 appendix A.1), the Board has reviewed the proposal under the authority delegated to the Board by the Office of Management and Budget. The proposal contains no provisions subject to the Paperwork Reduction Act.

By order of the Board of Governors of the Federal Reserve System, March 30, 2009.

Jennifer J. Johnson,

Secretary of the Board.

BILLING CODE 6210–02–P

Docket No. OP-1354
Attachment 1

Variables[34]

	2005 PSAF	2006 PSAF	2007 PSAF	2008 PSAF	2009 PSAF	Five-Year Average	Standard Deviation σ
Capital Structure (Capitalization Ratio)							
U.S. Publicly Traded Firms	55%	53%	53%	52%	54%	53.4%	1.0%
Effective Income Tax Rate							
U.S. Publicly Traded Firms	19%	23%	27%	24%	29%	24.0%	3.4%
Long-Term Debt Financing Rate							
Moody's Aaa and Baa Average Bond Yield	6.2%	6.0%	5.7%	6.0%	6.0%	6.0%	0.2%
Risk-Free Rate used in CAPM ROE							
Secondary Market 3-Month T-Bill Rate	1.3%	3.2%	5.0%	4.8%	1.6%	3.2%	1.5%

[34] Capital structure, effective income tax rate, and debt financing rate data represent a two-year lag and risk-free rate data represent a one-year lag. For example, the 2009 PSAF uses 2007 capital structure and effective income tax data and a 2008 Treasury bill rate for the risk-free rate.

Publicly Traded Firm Model: PSAF Volatility

($ in Millions)

		- 2σ	- 1σ	Model	+ 1σ	+ 2σ
Capital Structure	(most recent year)	52.0%	53.0%	54.0%	55.0%	56.0%
Standard Deviation σ		-2.0%	-1.0%	-	1.0%	2.0%
PSAF		$55.7	$55.6	$55.4	$55.2	$55.1
PSAF Δ		$0.3	$0.2	-	-$0.2	-$0.3
Effective Income Tax Rate	(5-year average)	17.1%	20.6%	24.0%	27.4%	30.9%
Standard Deviation σ		-6.9%	-3.4%	-	3.4%	6.9%
PSAF		$53.6	$54.6	$55.4	$56.6	$57.8
PSAF Δ		-$1.8	-$0.8	-	$1.2	$2.4
Long-Term Debt Financing Rate	(5-year average)	5.6%	5.8%	6.0%	6.2%	6.4%
Standard Deviation σ		-0.4%	-0.2%	-	0.2%	0.4%
PSAF		$54.3	$54.8	$55.4	$56.0	$56.6
PSAF Δ		-$1.1	-$0.6	-	$0.6	$1.2
Risk-Free Rate used in CAPM ROE	(most recent year)	-	0.1%	1.6%	3.2%	4.7%
Standard Deviation σ		-	-1.5%	-	1.5%	3.1%
PSAF			$50.2	$55.4	$60.7	$63.6
PSAF Δ		-	-$5.2	-	$5.3	$8.2

Attachment 2
Docket No. OP-1354

Priced Services
Comparison of Alternative Models

Balance Sheet			
($ Billions)	**Correspondent Banking Model**		**Publicly Traded Firm**
	$4 Billion in Clearing Balances	**No Clearing Balances**	**LT Funding Debt 54% Equity 46%**
Assets:			
Short-term Assets			
Imputed Reserve Requirement on Clearing Balances	0.4	0.0	0.0
Imputed Investment in Marketable Securities	3.3	0.0	0.0
Items in Process of Collection and Other ST Assets[35]	0.3	0.3	0.3
Total Short-term Assets	4.0	0.3	0.3
Long-term Assets			
Bank Premises	0.3	0.3	0.3
Furniture & Equipment	0.2	0.2	0.2
Pension Asset and Other LT Assets	0.5	0.5	0.5
Total Long-term Assets	1.0	1.0	1.0
Total Assets	$5.0	$1.3	$1.3

Balance Sheet (cont.) **($ Billions)**			
	Corresponding Banking Model		**Publicly Traded Firm**
Liabilities:			
Short-term Liabilities			
Clearing Balances	4.0	0.0	0.0
Short-term Payables and Debt	0.1	0.1	0.1
Deferred Credit[35]	0.2	0.2	0.2
Total Short-term Liabilities	4.3	0.3	0.3
Long-term Liabilities			
Long-term Debt	0.0	0.5	0.3
Other Benefit Liabilities, etc.	0.4	0.4	0.4
Total Long-term Liabilities	0.4	0.9	0.7
Total Liabilities	4.7	1.2	1.0
Equity (including AOCI)	0.3	0.1	0.3
Total Liabilities and Equity	$5.0	$1.3	$1.3
Memo Items			
Equity as a percent of total assets[36]	5%	5%	20%
LT debt as a percent of LT debt plus equity	No Debt	88%	54%

Attachment 2
Docket No. OP-1354

Net Imputed Cost ($ Millions)	Correspondent Banking Model		Publicly Traded Firm	Cost-Plus Model
Costs:				
FDIC assessment, sales tax, and Board expenses	$15.6	$15.1	$15.1	$15.1
(Models with no clearing balances have no FDIC assessment)				
Cost-Plus Model				
All Other Priced Services Costs				657.9
Total Costs				$673.0
Mark Up Percentage				23.4%
Balance Sheet Models				
Equity Cost	25.0	6.4	22.3	
Debt Cost	0.0	29.2	18.0	
Total Financing Cost	$25.0	$35.6	$40.3	
Total PSAF	$40.6	$50.7	$55.4	$157.5
Income:				
Total NICB	$21.1	$0.0	$0.0	$0.0
Net Cost:	$19.5	$50.7	$55.4	$157.5

Data Assumptions				
Risk-free rate for CAPM ROE[37]	1.67%	1.67%	1.67%	
Long-term debt financing rate (Aaa/Baa 2003-2007 avg)	NA	5.99%	5.99%	
Short-term debt financing rate (90 day AA/A2P2 avg, July 2008)	NA	2.66%	2.66%	
Effective income tax rate	32.6%	32.6%	24.0%	
Pretax equity financing rate (ROE)	10.1%	10.1%	8.9%	
NICB portfolio investment rate	1.93%	NA	NA	
Earnings credit rate (based on 13-week rolling average)	1.34%	NA	NA	
Core clearing balances (billions)	$4.0	$0.0	NA	

[35] Items in process of collection and deferred credit amounts are assumed to be equal. Differences can arise when a Reserve Bank presents items for collection to the paying bank prior to providing credit to the depositing bank or when a Reserve Bank credits the depositing bank prior to presenting items for collection to the paying bank.
[36] Unrounded values are used to calculate the percentages.
[37] The risk-free rate is the annualized coupon equivalent yield of three-month Treasury bills in the secondary market.

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BILLING CODE 6210–02–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990—New; 30-day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: Evaluation of the Parents Speak Up National Campaign (PSUNC): National Media Tracking Surveys. OMB No. 0990–NEW—Office of Public Health and Science, Office of Population Affairs, Office of Adolescent Pregnancy Programs.

Abstract: The OS proposes to conduct a national media tracking survey as part of the Parents Speak Up National Campaign. The U.S. Department of Health and Human Services (USDHHS) launched the Parents Speak Up National Campaign (PSUNC) in June 2007. This national public education campaign is designed to encourage parents of pre-teens and teens to talk to their children early and often about waiting to have sex. The campaign includes public service announcements (PSA) and print advertisements that guide parents to the *http://4parents.gov* Web site.

The specific aim of this study is to determine the effectiveness of the PSUNC messages by measuring parents' awareness of, reactions to, and receptivity to specific PSUNC advertising. In partnership with Knowledge Networks, an online panel based on a random-digit-dial sample of the full United States population, a probability baseline sample will be selected of 2,000 parents of children aged 10 to 14.

Key research questions include changes in the following outcomes: Perceived risks from teen sexual activity, perceived susceptibility, attitudes towards teen sexual activity, self-efficacy to talk to their child, outcome efficacy, perceived value of delayed sexual activity, and parent-child communication about sex. Parents will self-administer the questionnaire at home on personal computers.

ESTIMATED ONE-YEAR ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Fall 2009 Media Tracking Survey (un-retained for follow-up).	Parents of children ages 10–14.	1,000	1	24/60	400
Fall 2009 and Spring/Fall 2010 Media Tracking Surveys (retained for follow-up).	Parents of children ages 10–14.	1,000	2	24/60	800
Total		2,000			1,200

Seleda Perryman,
Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–7654 Filed 4–3–09; 8:45 am]
BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, May 27, 2009, and Thursday, May 28, 2009. The meeting will be held from 9 a.m. until 5 p.m. on both days.

ADDRESSES: Department of Health and Human Services; Room 800 Hubert H. Humphrey Building; 200 Independence Avenue, SW.; Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr. P.H.; Deputy Assistant Secretary for Health (Women's Health); Department of Health and Human Services; 200 Independence Avenue, SW.; Hubert Humphrey Building Room 712E; Washington, DC 20201; (202) 690–7650.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) The current state of the knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research communities about chronic fatigue syndrome advances.

The agenda for this meeting is being developed. The agenda will be posted on the CFSAC Web site, *http://www.hhs.gov/advcomcfs*, when it is finalized.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the building where the meeting is scheduled to be held. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Individuals who wish to address the Committee during the public comment session must pre-register by May 22, 2009. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker.

Members of the public who wish to have printed material distributed to CFSAC members for discussion should submit, at a minimum, one copy of the materials to the Executive Secretary CFSAC, prior to close of business on May 22, 2009. Contact information for the Executive Secretary, CFSAC is listed above.

Dated: March 24, 2009.

Wanda K. Jones,

Deputy Assistant Secretary for Health, (Women's Health) and Executive Secretary CFSAC.

[FR Doc. E9–7549 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Biodefense Science Board

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board (NBSB) will be holding a public meeting. The meeting is open to the public.

DATES: The NBSB will hold a public meeting on April 22, 2009 from 1 p.m. to 5 p.m. EDT and on April 23, 2009 from 8:30 a.m. to 12:15 p.m. This agenda is subject to change as priorities dictate.

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202; *Phone*: 703–418–1234.

FOR FURTHER INFORMATION CONTACT: CAPT Leigh A. Sawyer, D.V.M., M.P.H., Executive Director, National Biodefense Science Board, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 330 C Street, SW., Switzer Building Room 5127, Washington, DC 20447; 202–205–3815; fax: 202–205–8508; *e-mail address*: *leigh.sawyer@hhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (42 U.S.C. 247d–7f) and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board. The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

The tentative agenda includes a briefing by the National Biosurveillance Advisory Subcommittee (NBAS) on Enhancing Nationwide Biosurveillance for Human Health; a briefing by the Office of the National Coordinator on Health Information Technology; and a presentation by the National Commission on Children and Disasters. The NBSB will receive updates from the Pandemic Influenza Working Group, the Disaster Medicine Working Group, the Markets and Sustainability Working Group, the Personal Preparedness Working Group, and the Disaster Mental Health Subcommittee. Additional topics will be considered during the public meeting. This agenda is subject to change as priorities dictate.

Availability of Materials: The draft agenda and other materials will be posted on the NBSB Web site at *http://www.hhs.gov/aspr/omsph/nbsb* prior to the meeting. This agenda is subject to change as priorities dictate.

Procedures for Providing Public Input: Any member of the public providing oral comments at the meeting must sign-in at the registration desk and provide his/her name, address, and affiliation. Members of the public may also file written comments with the committee. All written comments must be received prior to April 15, 2009 and should be sent by e-mail to *NBSB@hhs.gov* with ''NBSB Public Comment'' as the subject line or mailed to Leigh Sawyer, 330 C Street, SW., Switzer Building Room 5127, Washington, DC 20447. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. The Public Meeting Conference Call Number is (866) 395–4129. The Conference ID is ASPR. Participants will be asked to provide their name, title, and organization.

Dated: March 30, 2009.

RADM William C. Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9–7550 Filed 4–3–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0652]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 6, 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 0910–0191. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notice of Participation—(OMB Control Number 0910–0191)—Extension

Section 12.45 (21 CFR 12.45), issued under section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371), sets forth the format and procedures for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation, state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, concerning disclosure of data and information by participants (21 CFR 13.25). In accordance with § 12.45(e), the presiding officer may omit a participant's appearance.

The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the pre-hearing conference and commits participation.

The respondents are individuals or households, State or local governments, not-for-profit institutions and businesses, or other for-profit groups and institutions.

In the **Federal Register** of December 29, 2008 (73 FR 79495), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section 502 of the FFD&C Act/ Section 351 of the PHS Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	8	1	8	3	24

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on agency records and experience over the past 3 years.

Dated: March 30, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–7671 Filed 4–3–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0166]

Economically Motivated Adulteration; Public Meeting; Request for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting pertaining to economically motivated adulteration (EMA). The purpose of the meeting is to stimulate and focus a discussion about ways in which the food (including dietary supplements and animal food), drug, medical device, and cosmetic industries, regulatory agencies, and other parties can better predict and prevent economically motivated adulteration with a focus on situations that pose the greatest public health risk. FDA invites interested individuals, organizations, and other stakeholders, including industry representatives, to present information pertaining to predicting and preventing EMA of food (including dietary supplements and animal food), drugs, medical devices, and cosmetics. The agency also requests interested parties to submit comments on this issue to the public docket.

DATES: The public meeting will be held on May 1, 2009, from 9 a.m. to 5 p.m. Submit written or electronic comments by August 1, 2009. See section I of the **SUPPLEMENTARY INFORMATION** section for deadlines regarding the meeting.

ADDRESSES: The public meeting will be held in the Wiley Auditorium, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. 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 the docket at *http://www.regulations.gov*. See section V of this document for additional information on submitting comments.

FOR FURTHER INFORMATION CONTACT:

For registration, requests to make an oral presentation, and submission of written material for the presentation: Deborah Harris, EDJ Associates, Inc., 11300 Rockville Pike, suite 1001, Rockville, MD 20852, 240–221–4326, FAX: 301–945–4295, e-mail: *dharris@edjassociates.com*.

For general questions about the meeting, to request onsite parking for the meeting, or for special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–009), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1731, e-mail: *Juanita.Yates@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. How to Participate in the Meeting

Due to limited space and time, we encourage all persons who wish to attend the meeting, including those requesting an opportunity to make an oral presentation at the meeting, to register in advance. Attendees may register in advance for the meeting by April 23, 2009. Requests for oral presentations should be made by April 16, 2009. Presenters should submit final presentations by April 23, 2009, in order for us to accommodate their request. Requests for special accommodations due to disability should be made by April 23, 2009. Requests for onsite parking may be made until April 27, 2009.

We encourage attendees to register for this meeting electronically at *http://www.fda.gov/oc/meetings/ema.html*. You may also register by mail, fax, e-mail, or telephone by providing registration information (including name, title, firm name, address, telephone number, fax number, and e-mail address) to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Attendees will have an opportunity to provide oral comments. Depending on the number of oral presentations, we

may need to limit the time of each oral presentation (e.g., 5 minutes each). Requests to make an oral presentation, submission of written material for the presentation, requests for special accommodations due to disability, and requests for onsite parking should be directed to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

II. Background on the Meeting

A. Suspected Economically Motivated Adulteration of FDA-Regulated Products

For purposes of this public meeting, FDA proposes a working definition of EMA as the fraudulent, intentional substitution or addition of a substance in a product for the purpose of increasing the apparent value of the product or reducing the cost of its production, i.e., for economic gain. EMA includes dilution of products with increased quantities of an already-present substance (e.g., increasing inactive ingredients of a drug with a resulting reduction in strength of the finished product, or watering down of juice) to the extent that such dilution poses a known or possible health risk to consumers, as well as the addition or substitution of substances in order to mask dilution.

Several recent incidents involving FDA-regulated products are suspected to be examples of EMA. These incidents illustrate the potential for serious public health harm from such adulterated products.

In March 2007, FDA received reports of kidney failure among cats and dogs and a report that cats died during taste tests of certain brands of pet food. In the subsequent investigation, melamine and melamine-related compounds were found in products labeled as wheat gluten and rice protein concentrate that had been imported from China. Wheat gluten and rice protein concentrate are common ingredients in numerous pet food products sold in the United States. Melamine and its related compounds are not approved for use as an ingredient in animal or human food, and FDA believes it was these contaminants that made the cats and dogs sick. At certain exposure levels, the interaction of melamine and melamine-related compounds appears to cause the formation of crystals in the kidneys, resulting in kidney damage. Based on the information that FDA has, it appears that these contaminants were added to the products handled by Chinese suppliers to increase the apparent protein content in those products. Consumers and veterinarians have since reported many more animal illnesses and deaths potentially associated with pet foods made from these products. Over 150 brands of pet food and 1,000 products were voluntarily recalled by a number of companies.

In January 2008, FDA received reports of adverse reactions in pediatric dialysis patients in the U.S. Initial investigations by the Centers for Disease Control and Prevention indicated that the adverse events appeared to be associated with heparin manufactured by Baxter Healthcare Corp. that was administered during the dialysis procedures. In January and February 2008, Baxter Healthcare Corp. voluntarily recalled all of its heparin products. FDA's investigation ultimately identified almost 150 U.S. deaths occurring between January 1, 2007, and May 31, 2008, that appeared to be associated with the use of these heparin products. During the investigation, FDA scientists collaborated with academia and industry and identified a contaminant in the heparin active pharmaceutical ingredient (API) obtained from suppliers in China. The contaminant was a heparin-like molecule whose presence in heparin API was not detected by the United States Pharmacopoeia (USP) release tests for heparin. The contaminant was identified as oversulfated chondroitin sulfate (OSCS). FDA posted two new analytical tests to detect the contaminant OSCS on its Web site in March 2008, and the agency collaborated with USP to revise the test methods and modify the monograph for heparin to test for OSCS. These new tests were used on heparin API imported into the United States and throughout the world. Contaminated heparin API has been found in 11 countries.

In September 2008, FDA issued a Health Information Advisory in response to reports of melamine contaminated milk-based infant formula manufactured in China. Melamine was apparently added to diluted milk in order to increase measured nitrogen levels (indicators of protein content) and thereby inflate the apparent protein content found in the product. FDA issued further advisories to address additional milk-based products. To date, official reports from the Chinese Ministry of Health state that nearly 300,000 Chinese infants were sickened by the contaminated infant formula, and that six infant deaths were likely due to the contamination. There have been no confirmed illnesses or deaths in the United States attributed to melamine in products containing milk or milk-derived ingredients, although some contaminated products were found at ethnic markets selling imported products.

Adulteration of glycerin, an ingredient in cough syrup and other drugs, with diethylene glycol (DEG) has resulted in several mass poisonings around the world in the past two decades. In 1996, contaminated acetaminophen syrup was responsible for the deaths of more than 70 children in Haiti. In 2006, tainted cough syrup resulted in dozens of deaths in Panama. In Nigeria, between 2008 and 2009, more than 50 children died after ingesting contaminated teething syrup. Incidents of DEG contamination in these two decades have not resulted in any reported U.S. deaths or illnesses, but in 2007, foreign-made toothpaste contaminated with DEG was reported in the United States resulting in recalls and restriction on imports of suspect toothpastes. FDA has collaborated with USP to revise the test methods for glycerin and other monographs to test for the presence of DEG.

As the preceding examples illustrate, despite longstanding FDA requirements to assure the safety of regulated products, such as requirements for the use of ingredients of known identity and quality in drugs, economically motivated adulteration remains a public health threat.

B. FDA Science Board Meeting and EMA Workgroup

At the October 31, 2008, meeting of the FDA Science Board, FDA presented a conceptual model of EMA. The model describes circumstances and factors that are likely to lead to EMA, and points to certain types of information that may be useful in trying to prevent EMA. In response to the feedback obtained during the Science Board Meeting, FDA formed an internal working group focused on predicting and addressing EMA (''EMA Workgroup''). At the February 25, 2009, meeting of the Science Board, FDA announced its intent to hold a public meeting on EMA.

III. Purpose of Meeting and Questions for Discussion

The purpose of the public meeting is to raise awareness about the potential for EMA and solicit input and comments on how industry, regulators, and other parties can better predict, prevent, and address EMA. FDA's EMA Workgroup has developed a set of questions to focus discussion on the matter. These questions apply to food (including dietary supplements and animal food), drug, device and cosmetic products and their components/ingredients. The EMA Workgroup requests comment and input on these

questions, as well as any responses to the questions themselves based on information that may already be in the public domain. The EMA Workgroup further requests comment on the utility of the working definition of EMA used here. A transcript of the public meeting will be made available.

Please note that FDA does not wish to publicize sensitive information that could potentially be used by those who wish to commit EMA or other adulteration or that identifies those who may be committing adulteration FDA would like to remind the public that if they have information about these or any other problems they have encountered with FDA products, they may report such information at *http://www.fda.gov/opacom/backgrounders/problem.html*. In addition, if the public has information pertaining to suspected criminal activity with regard to FDA-regulated products (e.g., information about individuals who may be committing EMA or other adulteration), they may contact FDA's Office of Criminal Investigations at *http://www.fda.gov/oci/default.htm* in lieu of responding publicly to this document.

(1) General Questions:
- a. What information should U.S. regulators seek and from what sources to help predict and prevent EMA? What further steps can U.S. regulators take to predict and prevent EMA?
- b. What are members of industry doing to prevent EMA? What further steps can industry take to prevent EMA?
- c. What recent examples of known or suspected EMA domestically and internationally should U.S. regulators study and learn from?
- d. What information do other organizations (including, but not limited to, trade organizations and security service providers) have that would be useful in predicting and preventing EMA? What are members of other organizations doing to prevent EMA?
- e. What are other government regulators within and outside of the United States doing to predict and address EMA?
- f. What indicators (economic-based, chemistry-based, etc.) might be used to detect potential EMA?

(2) Questions pertaining to attributes of products, components/ingredients that may be at risk for EMA:
- a. What are attributes of products or components/ingredients of products that may cause them to be more vulnerable to EMA?
- b. What food products are marketed based on measured content of certain constituents, such as content of certain proteins, certain fats, or certain sugars?

(3) Questions pertaining to changes in the marketing environment: What changes relevant to the risk for EMA have occurred recently in:
- a. The marketing environment of products or components/ingredients?
- b. The sourcing and/or distribution of products?
- c. The prices, output, imports or exports of products or components/ingredients?
- d. The supply of components/ingredients or source materials for products?

(4) Questions about detection methods:
- a. What analytical equipment or methods currently used by industry and regulators to establish the identity or quality of a product or its conformity to specifications may be inadequate to detect evidence of EMA or adulterated products or ingredients?
- b. Are there appropriate analytical methods/equipment that could be used instead of, or in addition to, existing methods or equipment in particular situations?
- c. What rapid methods can be used to detect adulteration of products or ingredients?

(5) What systems are currently being used to track and verify components/ingredients from their source?

(6) Are there particular types of industry structures or supply chains that are especially vulnerable to or secure from potential EMA?

IV. Transcripts

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 (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. 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.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–7843 Filed 4–2–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on May 6, 2009, from 12:30 to 4:30 p.m. at Building 31C, Conference Room 6C, on the NIH campus, 9000 Wisconsin Ave., Bethesda, MD. The meeting will be open to the public, with attendance limited to space available. Non-federal individuals planning to attend the meeting should notify the Contact Person listed on this notice at least 2 days prior to the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The May 6, 2009, DMICC meeting will discuss ''Federally Supported Diabetes-Related National Education Programs.''

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present

oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their 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. Because of time constraints for the meeting, oral comments will be allowed on a first come, first served basis.

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees and property. 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). All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection. Visitors are strongly encouraged to take public transportation to the NIH campus, as there are very few visitor parking spaces available. NIH Building 31C is a 10-minute walk from the Medical Center Station on the Red Line of the Metro.

A registration link and information about the DMICC meeting will be available on the DMICC Web site: *http://www.diabetescommittee.gov.* Members of the public who would like to receive e-mail notification about future DMICC meetings could register on a listserv available on the same Web site.

For further information concerning this meeting, contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, *Telephone:* 301–594–8803, *fax:* 301–402–6271, *E-mail: dmicc@mail.nih.gov.*

Dated: April 1, 2009.

Sanford Garfield, PhD,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. E9–7724 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Clinical Sciences.

Date: June 22–23, 2009.

Time: 8 a.m. to 5 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: Laurie Friedman Donze, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7709 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Loan Repayment Program.

Date: April 28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary, and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7713 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

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.

A portion of 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 discussion 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 Complementary and Alternative Medicine.

Date: June 5, 2009.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 11 a.m. to 4 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, PhD, Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 3:30–4 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on June 1, 2009. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (June 15, 2009) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7714 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee, CMRC 2.

Date: June 2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bonnie B. Dunn, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1074, MSC 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel MMRRC.

Date: June 3, 2009.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bonnie Dunn, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Democracy Blvd., Dem. 1, Room 1074, Msc 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, BioTechnology 1.

Date: June 3–4, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892, 301–435–0965.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research on Integrity in Collaborative Research.

Date: June 10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bonnie Dunn, PhD, Scientific Review Officer, Office of Review, National Center For Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Dem. Blvd., Rm. 1074, Bethesda, MD 20892–4874, (301) 435–0824, *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7719 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel. NIDCD Loan Repayment.

Date: April 28, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD. (Virtual Meeting).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120

Executive Blvd., Bethesda, MD 20892. (301) 496–8683. *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7718 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Training in Clinical Radiation Therapy Physics and Dosimetry.

Date: April 24, 2009.

Time: 2 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 , (Telephone Conference Call).

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0818, *keichelberg@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical and Pediatric Loan Repayment Programs.

Date: April 30–May 1, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Erica L. Brown, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2639, *ebrown@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical and Pediatric Loan Repayment Program.

Date: May 7–8, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Erica L. Brown, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2639, *ebrown@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7721 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Special Emphasis Panel Review of R25 Applications.

Date: May 20, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Institute of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7723 Filed 4–3–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (*Formerly:* Bayshore Clinical Laboratory.)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210. 615–255–2400. (*Formerly:* Aegis Analytical Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (*Formerly:* Forensic Toxicology Laboratory Baptist Medical Center.)

Clendo Reference Laboratory, Avenue, Santa Cruz #58, Bayamon, Puerto Rico 00959. 787–620–9095.

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913. 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

DynaLIFE Dx *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876. (*Formerly:* Dynacare Kasper Medical Laboratories.)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053. 504–361–8989/800–433–3823. (*Formerly:* Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (*Formerly:* Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (*Formerly:* Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (*Formerly:* LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (*Formerly:* LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (*Formerly:* Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics *, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (*Formerly:* Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE. 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (*Formerly:* University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (*Formerly:* Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770–452–1590/800–729–6432. (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (*Formerly:* SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 866–370–6699/818–989–2521. (*Formerly:* SmithKline Beecham Clinical Laboratories.)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915. 517–364–7400. (*Formerly:* St. Lawrence Hospital & Healthcare System.)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop

70 West, Suite 208, Columbia, MO 65203. 573–882–1273.

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166. 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. E9–7379 Filed 4–3–09; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0076]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet in May 2009 in Savannah, GA, to discuss various issues relating to the safety of navigation. The meeting will be open to the public.

DATES: NAVSAC will meet on Wednesday, May 20, 2009, from 8 a.m. to 5 p.m., and Thursday, May 21, 2009, from 8 a.m. to 5 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 5, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before May 5, 2009.

ADDRESSES: NAVSAC will meet at the Hyatt Regency Savannah, Two West Bay Street, Savannah, GA 31401. Send written material and requests to make oral presentations to Mr. John Bobb, the Assistant Designated Federal Officer (ADFO), Commandant (CG–54121), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice may be viewed in our online docket, USCG–2009–0076, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Sollosi, the Designated Federal Officer (DFO) of NAVSAC, telephone 202–372–1545, or e-mail at *mike.m.sollosi@uscg.mil*, or Mr. John Bobb, the ADFO, telephone 202–372–1532, fax 202–372–1929, or e-mail at *john.k.bobb@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–493).

Agenda of Meeting

The agenda for the May 20–21, 2009, NAVSAC meeting is as follows:

(1) Offshore Renewable Energy Installations (OREI) NVIC 02–07 Review.

(2) Unmanned Autonomous Vessels COLREGS Applicability.

(3) Barge Lighting Study.

(4) eNav User Needs Study.

(5) Vessel Traffic System.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the DFO or ADFO no later than May 5, 2009. Written material for distribution at the meeting should reach the Coast Guard no later than May 5, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 20 copies to the DFO or ADFO no later than May 5, 2009.

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, contact the DFO or ADFO as soon as possible.

Dated: March 9, 2009.

Wayne A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. E9–7667 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 12154 B River Road, St. Rose, LA 70087, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on December 4, 2008. The next triennial

inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7627 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Coastal Gulf and International, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Coastal Gulf and International, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Coastal Gulf and International, 13607 River Road, Luling, LA 70070, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Coastal Gulf and International, as commercial gauger and laboratory became effective on December 16, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7638 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 16025–C Jacintoport Blvd., Houston, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on November 10, 2008. The next triennial inspection date will be scheduled for November 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7645 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 4717 Santa Elena, Corpus Christi, TX 78405, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on May 07, 2008. The

next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7616 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 628 Time Saver Lane, Harahan, LA 70123, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on September 25, 2008. The next triennial inspection date will be scheduled for September 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7620 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 2632 Ruby Ave., Gonzalez, LA 70737, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on December 9, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7637 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1145 Fourth Street, Gretna, LA 70053, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on December 3, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and

Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7613 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Laboratory Service, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Laboratory Service, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Laboratory Service, Inc., 11731 Port Road, Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The accreditation and approval of Laboratory Service, Inc., as commercial gauger and laboratory became effective on December 17, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7635 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Accreditation and Approval of NMC Global Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of NMC Global Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, NMC Global Corporation, 1107 Center St., Pasadena, TX 77506, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of NMC Global Corporation, as commercial gauger and laboratory became effective on November 12, 2008. The next triennial inspection date will be scheduled for November 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7615 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Accreditation and Approval of Quality Custom Inspections & Laboratories, LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Quality Custom Inspections & Laboratories, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Quality Custom Inspections & Laboratories, LLC, 402 Pasadena Blvd., Pasadena, TX 77506, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Quality Custom Inspections & Laboratories, LLC, as commercial gauger and laboratory became effective on March 13, 2009. The next triennial inspection date will be scheduled for March 2012.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and

Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 19, 2009.

Donald A. Cousins,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7621 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1809 Magnolia Ave, Port Neches, TX 77651, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on April 29, 2008. The next triennial inspection date will be scheduled for April 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7618 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Accreditation of Saybolt LP, as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Saybolt LP, as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Saybolt LP, 109 Woodland Dr., Laplace, LA 70068, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation of Saybolt LP, as commercial laboratory became effective on December 5, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7623 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Approval of Inspectorate America Corporation, as a Commercial Gauger

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 8367 Paris Ave., Baton Rouge, LA 70814, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on December 8, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7640 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Saybolt LP, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Saybolt LP, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 190 James Drive East, Suite 110, St. Rose, LA 70087, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The approval of Saybolt LP, as commercial gauger became effective on December 5, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7641 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of SGS North America, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of SGS North America, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 6624 Langley Dr., Baton Rouge, LA 70809, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The approval of SGS North America, Inc., as commercial gauger became effective on December 08, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7607 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Approval of the Strawn Group, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of The Strawn Group, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, The Strawn Group, 3855 Villa Ridge, Houston, TX 77068, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The approval of The Strawn Group, as commercial gauger became effective on December 31, 2008. The next triennial inspection date will be scheduled for December 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: March 10, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–7632 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
Romeo Chapa	09928	Houston.
Elite Brokerage Services, Inc	09912	Houston.
Philip C. Ziskrout, Inc	13201	Los Angeles.
Murphy International Corporation	20547	Los Angeles.

Dated: March 25, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–7614 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Ground Fault Circuit Interrupter

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of a ground fault circuit interrupter (''GFCI''). Based upon the facts presented, CBP has concluded in the final determination that Mexico is the country of origin of the GFCI for purposes of U.S. government procurement.

DATES: The final determination was issued on March 26, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within May 6, 2009.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325–0277.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 26, 2009, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the GFCI which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H047362, was issued at the request of Pass & Seymour, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the GFCI, assembled in Mexico from parts made in China, is substantially transformed in Mexico, such that Mexico is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: March 26, 2009.

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

Attachment

March 26, 2009.

MAR–2–05 OT:RR:CTF:VS H047362 EE

CATEGORY: Marking

Daniel B. Berman, Esq., Hancock & Estabrook, LLP, 1500 AXA Tower I, 100 Madison Street, Syracuse, NY 13202.

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin Marking; Ground Fault Circuit Interrupter.

Dear Mr. Berman: This is in response to your correspondence of November 20, 2008, requesting a final determination on behalf of Pass & Seymour, Inc. (''P&S''), pursuant to subpart B of part 177, Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21 *et seq.*). Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of a ground fault circuit interrupter (''GFCI''). We note that P&S is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

You also request a country of origin marking determination.

FACTS: You describe the pertinent facts as follows. The business of P&S includes the design, manufacture, and distribution of GFCIs in the U.S. for residential and commercial use in electrical circuits of less than 1,000 volts. The GFCIs are electrical components, designed for permanent installation in electrical circuits, which are able to detect small imbalances in the circuit's current caused by leakages of current to ground. When leakage is detected, the GFCI opens the electrical circuit, stopping the flow of current. Legrand, the parent company of P&S, produces the components of the GFCI in China through another subsidiary, Rocom Electric Co. Ltd. (''Rocom''). Rocom plans to ship the components to a facility in Mexico where thirty-two of the components will be assembled in a forty-two step process into a Printed Circuit Board subassembly (''PCB''), which will in turn be assembled, with twenty-nine other components, into the GFCI in a forty-three step process. The GFCI will be tested and packaged at the same facility. Upon completion of assembly, testing, and packaging, the GFCI will be imported into the U.S. by P&S for sale and distribution.

The components from China include the following: cover, reset button, test button, light pipe, strap assembly, assembly terminals, contact, separator, springs, latch block top, spark gap blades, assembly screw

terminals, armature, spring assembly, term assemblies, resistors, capacitors, diodes, LEDs, latches, solenoids, wires, back body, miswire cap, screws, and labels. A complete list of the sixty-one components was included with your submission. You have provided six exhibits, which include schematics, photographs, and the step-by-step assembly process of the GFCI in Mexico. Exhibit G shows phase one (the assembly of the PCB), which is comprised of forty-two discreet steps and thirty-two parts, takes approximately twelve minutes. Exhibit D shows phase two (the assembly of the GFCI from components including the PCB), which is comprised of forty-three discrete steps and thirty parts, takes approximately ten minutes. You claim that each step, unless otherwise noted, is completed by skilled workers who undergo an extensive training process.

PCB assembly process:

1. Apply adhesive to PCB (in three-up array).

2–25. Place surface-mount electronic components onto foil-side of PCB: fourteen resistors; nine capacitors; integrated circuit.

26. Cure adhesive in oven.

27–32. Place leaded electronic components onto top-side of PCB: two jumper wires; Medal Oxide Varistor; Diode; Silicon Controlled Rectifier; Light Emitting Diode.

33–34. Assemble bobbin solenoid subassembly—bobbin, latch block, latch, spring and auxiliary contact (two pcs). Fit subassembly into corresponding holes in PCB.

35. Place spring over solenoid plunger and insert into hole in solenoid.

36. Fit toroid subassembly into corresponding holes in PCB.

37. Place leaded resistor through hole in toroid subassembly into PCB.

38. Send PCB subassembly (still in array) through wave solder machine.

39. Visually inspect solder side of PCB after wave solder, touch-up as required.

40. Hand solder in miswire link between resistors R9 and R15.

41. Send assembly through in-circuit test for component verification and measurement.

42. Place array in press and singulate individual PCB subassemblies from array.

GFCI assembly process:

1. Place back body into date code fixture/stamping-press and press button to apply date code on side of back body.

2. Remove back body from date code fixture. Place hot terminal-screw/pressure-plate assembly into back body cradle on line end.

3. Place neutral terminal-screw/pressure-plate assembly into back body cradle on line end.

4. Place PCB subassembly into back body, capturing terminal-screw/pressure-plate subassemblies under line terminals.

5. Place hot terminal-screw/pressure-plate subassembly into back body cradle on load end.

6. Place neutral terminal-screw/pressure-plate subassembly into back body cradle on load end.

7. Place hot load terminal subassembly into back body, over load screw/pressure plate subassembly.

8. Place neutral load terminal subassembly into back body, over load screw/pressure plate assembly.

9. Place two break springs into latch block.

10. Place latch block with springs onto line contacts, aligning leg of latch block over auxiliary switch on PCB.

11. Drop separator over device, aligning test resistor lead through hole in separator. Snap separator onto back body.

12. Place strap subassembly into center channel of separator.

13. Place hot-side load contact into slot in separator.

14. Bend test resistor lead over with finger to test blade slot.

15. Press test blade leg into slot in separator, capturing test resistor lead in slot on bottom leg of test blade.

16. Place neutral-side load contact into slot in separator.

17. Place light pipe into hole/slot in separator.

18. Place reset button/pin/make spring subassembly into hole through strap/separator.

19. Set two shutter subassemblies into pockets in device cover/test button subassembly.

20. Place cover/test-button subassembly on top of device, fitting over reset button subassembly and light pipe.

21. Turn device over. Place four assembly screws in holes at corners of back body.

22. Run assembly screws in and torque down with driver.

23. Place device in automated final tester fixture.

24. Short circuit test.

25. False trip test.

26. Trip level test in forward polarity, full load.

27. Trip level test in reverse polarity, full load.

28. Grounded-neutral test.

29. Test-button test.

30. Dielectric test.

31. Response time test with 500 ohm fault resistor.

32. If device passes all tests, hand solder link across solder bridge on bottom of PCB to activate miswire circuit.

33. Depress reset button on device and place device in automatic miswire-function tester. Push button to initiate test to verify device trips.

34. If device passes, snap plastic cap into back body, covering miswire solder bridge.

35. Remove miswire label from roll and apply across back body and load terminal screws.

36. Remove UL label from roll and apply to neutral side of device, overlapping back body, separator and cover.

37. Place cardboard protector over face of device.

38. Place wallplate subassembly with captive screws over cardboard protector and face of device.

39. Take stack of three pre-folded instruction sheets and fuse box label and place under device.

40. Remove product box label from roll and place on flap of individual box.

41. Assemble individual box, closing flap on one end.

42. Slide device, protector, wallplate and instruction sheets into individual box and close flap.

43. Place individual box into carton for shipping.

ISSUES

1. What is the country of origin of the GFCI for the purpose of U.S. government procurement?

2. What is the country of origin of the GFCI for the purpose of marking?

LAW AND ANALYSIS

Government Procurement

Pursuant to subpart B of part 177, 19 CFR 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define ''U.S.-made end product'' as:

* * * an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. Factors which

may be relevant in this evaluation may include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc.* v. *United States,* 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In a number of rulings (*e.g.,* HQ 735608, dated April 27, 1995 and HQ 559089 dated August 24, 1995), CBP has stated: ''in our experience these inquiries are highly fact and product specific; generalizations are troublesome and potentially misleading. The determination is in this instance 'a mixed question of technology and Customs law, mostly the latter.' '' *Texas Instruments, Inc.* v. *United States,* 681 F.2d 778, 783 (CCPA 1982).

In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences, the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. In HQ 711967, dated March 17, 1980, CBP held that television sets which were assembled in Mexico with printed circuit boards, power transformers, yokes and tuners from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes. The U.S. and Korean parts were substantially transformed by the processing performed in Mexico and all the components lost their individual identities to become integral parts of the new article—a television. In HQ 561734, dated March 22, 2001, CBP held that certain multifunctional machines (consisting of printer, copier, and fax machines) assembled in Japan were a product of that country for the purposes of U.S. government procurement. The multifunctional machines were assembled from 227 parts (108 parts obtained from Japan, 92 from Thailand, 3 from China, and 24 from other countries) and eight subassemblies, each of which was assembled in Japan. In finding that the imported parts were substantially transformed in Japan, CBP stated that the individual parts and components lost their separate identities when they became part of the multi-functional machine. *See also* HQ 561568, dated March 22, 2001.

This case involves sixty-one components manufactured in China which are proposed to be assembled in Mexico in a two phase process, largely by skilled workers using sophisticated equipment. The first phase is the assembly of the PCB and involves a forty-two step process which will take approximately twelve minutes. After a careful consideration of the pertinent facts and authorities, we find that the assembly of the PCB, which consists of inserting all active and passive components into a bare printed circuit board and soldering all components necessary for the completion of the subassembly, is technically complex. Further, the PCB has all the major components necessary for the GFCI to fulfill its function. These components include the active and passive components, the solenoid bobbin assembly with both coils/inductors, hot and neutral ''Line'' terminals, test, trip and reset contacts. Therefore, the PCB imparts the essential character of the GFCI.

In the second phase, the PCB will be assembled with twenty-nine other components, into the GFCI in a forty-three step process which will take approximately ten minutes. Under the described two-phase assembly process, the foreign components lose their individual identities and become an integral part of a new article, the GFCI, possessing a new name, character and use. Based upon the information before us, we find that the components that are used to manufacture the GFCI, including the technically complex PCB assembled in Mexico, are substantially transformed as a result of the assembly operations performed in Mexico, and that the country of origin of the GFCI for government procurement purposes is Mexico.

Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, CBP Regulations (19 CFR 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines the country of origin of an article as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin for country of origin marking purposes; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j), CBP Regulations provides that the ''NAFTA Marking Rules'' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g), CBP Regulations defines a ''good of a NAFTA country'' as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

Part 102, CBP Regulations (19 CFR 102), sets forth the ''NAFTA Marking Rules'' for purposes of determining whether a good is a good of a NAFTA country. Section 102.11, CBP Regulations (19 CFR § 102.11) sets forth the required hierarchy for determining country of origin for marking purposes. Section 102.11(a), CBP Regulations provides that the country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other requirements of these rules are satisfied.

''Foreign Material'' is defined in section 102.1(e), CBP Regulations as ''a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.''

Section 102.11(a)(1) and (2) do not apply to the facts presented in this case because the GFCI, assembled in Mexico from Chinese components, is neither wholly obtained or produced, nor produced exclusively from domestic (i.e., Mexican) materials. Since an analysis of sections 102.11(a)(1) and 102.11(a)(2) will not yield a country of origin determination, we look to section 102.11(a)(3) to determine whether the foreign materials incorporated in the GFCI undergo an applicable change in tariff classification (or other applicable requirement) under section 102.20. The GFCI is classified in subheading 8536.30.80, Harmonized Tariff Schedule of the United States (''HTSUS''). The applicable tariff shift rule found in section 102.20(o) provides as follows:

8536.10–8536.90 A change to subheading 8536.10 through 8536.90 from any other subheading, including another subheading within that group.

In this case, the foreign materials incorporated in the GFCI are classified in subheadings other than subheading 8536.30, HTSUS. Since the components are classified in a different subheading than the GFCI, the requisite tariff shift rule is met. Therefore, pursuant to 19 CFR 102.11(a)(3), the country of origin of the GFCI is Mexico.

With regard to the marking requirements, section 134.43(e), CBP Regulations (19 CFR 134.43(e)), provides, in pertinent part that:

Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the

article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (country of final assembly);

(2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or

(3) Made in, or product of, (country of final assembly).

The GFCI was the result of an assembly operation and was finally assembled in Mexico within the meaning of 19 CFR 134.43(e). Therefore, we find that the GFCI may be marked ''Made in Mexico,'' ''Assembled in Mexico,'' or ''Product of Mexico.''

HOLDINGS

The components that are used to manufacture the GFCI are substantially transformed as a result of the assembly operations performed in Mexico. Therefore, the country of origin of the GFCI for government procurement purposes is Mexico.

Pursuant to 19 U.S.C. 1304, the country of origin of the GFCI for country of origin marking purposes is Mexico.

The GFCI may be marked ''Made in Mexico,'' ''Assembled in Mexico,'' or ''Product of Mexico.''

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. E9–7609 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Tuna—Tariff-Rate Quota; The Tariff-Rate Quota for Calendar Year 2009 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2009.

SUMMARY: Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2009.

EFFECTIVE DATES: The 2009 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Headquarters Quota Branch, Textile/Apparel Policy and Programs Division, Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229, (202) 863–6560.

Background

It has been determined that 18,457,467 kilograms of tuna in air-tight containers may be entered and withdrawn from warehouse for consumption during the Calendar Year 2009, at the rate of 6 percent *ad valorem* under subheading 1604.14.22, HTSUS. Any such tuna which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent *ad valorem* under subheading 1604.14.30 HTSUS.

Dated: April 1, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–7612 Filed 4–3–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5297–N–01]

Notice of Proposed Information Collection: Comment Request; Opinion by Counsel to the Mortgagor (FHA)

AGENCY: Office of the General Counsel, 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: June 5, 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: Millicent Potts, Assistant General Counsel, Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9230, Washington, DC 20410, telephone (202) 708–4090 (this is not a toll free number). Copies of the form documents to be submitted to OMB for review can be obtained from Ms. Potts or from HUD's Web site: *http://www.hud.gov/offices/adm/hudclips/forms/*.

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: Opinion by Counsel to the Mortgagor (FHA).

OMB Control Number, if applicable: 2510–0010.

Description of the need for the information and proposed use: The opinion is required to provide comfort to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions.

Agency form numbers, if applicable: HUD–91725, 91725–instr, 91725–CERT.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: As closings occur in

connection with the aforementioned projects. The estimated number of respondents annually is 800, the estimated number of responses annually per respondent is 1, the number of estimated hours per response is 1, and the total estimated burden hours is 800.

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 27, 2009.

Aaron Santa Anna,

Assistant General Counsel for Regulations Division.

[FR Doc. E9–7547 Filed 4–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–10]

Notice of Proposed Information Collection: Comment Request; Application for HUD/FHA Insured Mortgage ''HOPE for Homeowners''

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: June 5, 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: Margaret Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (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: Application for HUD/FHA Insured Mortgage ''HOPE'' for Homeowners.

OMB Control Number, if applicable: 2502–0579.

Description of the need for the information and proposed use: This information is collected on new mortgages offered by FHA approved mortgagees to mortgagors who are at risk of losing their homes to foreclosure. The new FHA insured mortgages refinance the borrowers existing mortgage at a significant writedown. Under the program the mortgagors share the new equity and future appreciation with FHA.

Agency form numbers, if applicable: HUD92900–H4H, HUD92915–H4H, HUD92916–H4H and HUD92917–H4H.

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 911,715. The number of respondents is 8,000, the number of responses is 1,332,660, the frequency of response is once per loan, and the burden hour per response is 5.60.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 27, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–7554 Filed 4–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–09]

Notice of Proposed Information Collection: Comment Request; Application for Multifamily Project Mortgage Insurance

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:* June 5, 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) 708–3000 (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: Application for Multifamily Project Mortgage Insurance.

OMB Control Number, if Applicable: 2502–0029.

Description of the Need for the Information and Proposed Use: HUD reviews the information collection to determine the acceptability of the mortgagor, sponsor, and other key principles for an application for mortgage insurance.

Agency Form Numbers, if Applicable: HUD–92013, HUD–92013–Supp, HUD–92013–E, HUD–92264, HUD–92264–A, HUD–92264–T, HUD–92273, HUD–92274, HUD–92326, HUD–92329, HUD–92331, HUD–92452, HUD–92485, HUD–92415, HUD–92447, HUD–92010, HUD–91708, FM–1006 are covered under OMB 2502–0029.

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 51,110. The number of respondents is 1,045, the number of responses is 28,315, the frequency of response varies from 1–3 times, and the burden hour per response totals approximately 40.5. The forms are submitted only once during the application for FHA mortgage insurance.

Status of the Proposed Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 27, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–7556 Filed 4–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5296–N–01]

Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 206A of the National Housing Act, HUD has adjusted the basic statutory mortgage limits for multifamily housing programs for calendar year 2009.

EFFECTIVE DATE: January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sealey, Director, Technical Support Division, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 402–2559 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The FHA Downpayment Simplification Act of 2002 (Pub. L. 107–326, approved December 4, 2002) amended the National Housing Act by adding a new section 206A (12 U.S.C. 1712a). Under section 206A, the following are affected:

(1) Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));

(2) Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));

(3) Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));

(4) Section 221(d)(3)(ii)(I) (12 U.S.C. 1715l(d)(3)(ii)(I));

(5) Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));

(6) Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and

(7) Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

The dollar amounts in these sections, which are collectively referred to as the ''Dollar Amounts,'' shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103–325, approved September 23, 1994). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

HUD has been notified of the percentage change in the CPI–U used for the HOEPA adjustment and the effective date of the HOEPA adjustment. The percentage change in the CPI–U is 3.94 percent and the effective date of the HOEPA adjustment is January 1, 2009. The Dollar Amounts have been adjusted correspondingly and have an effective date of January 1, 2009.

The adjusted Dollar Amounts for calendar year 2009 are shown below:

Basic Statutory Mortgage Limits for Calendar Year 2009

Multifamily Loan Program

- Section 207—Multifamily Housing.
- Section 207 pursuant to Section 223(f)—Purchase or Refinance Housing.
- Section 220—Housing in Urban Renewal Areas.

Bedrooms	Non-elevator	Elevator
0	$45,425	52,415
1	50,318	58,705
2	60,102	71,984
3	74,081	90,156
4+	83,867	101,939

- **Section 213—Cooperatives**

Bedrooms	Non-elevator	Elevator
0	$49,228	52,415
1	56,759	59,386
2	68,453	72,212
3	87,620	93,419
4+	97,614	102,546

- **Section 221(d)(3)—Moderate Income Housing**
- **Section 234—Condominium Housing**

Bedrooms	Non-elevator	Elevator
0	$50,232	52,862
1	57,917	60,597
2	69,849	73,686
3	89,409	95,325
4+	99,605	104,638

- **Section 221(d)(4)—Moderate Income Housing**

Bedrooms	Non-elevator	Elevator
0	$45,206	48,832
1	51,315	55,980
2	62,026	68,070
3	77,854	88,060
4+	88,222	96,664

- **Section 231—Housing for the Elderly**

Bedrooms	Non-elevator	Elevator
0	$42,981	48,832
1	48,048	55,980
2	57,376	68,070
3	69,048	88,060
4+	81,177	96,664

- **Section 207—Manufactured Home Parks**

Per Space	$20,855

Dated: March 24, 2009.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–7651 Filed 4–3–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N0020; 81430–1121–8GEN–F3]

Proposed Safe Harbor Agreement for the Deane Dana Friendship Community Regional Park in Los Angeles County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The County of Los Angeles, Department of Parks and Recreation (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an Enhancement of Survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The Service is considering the issuance of a 30-year permit to the Applicant that would authorize take of the federally endangered Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*; ''PVB'') through a Safe Harbor Agreement (SHA). The purpose of this SHA is for the Applicant to restore a minimum of 8 acres of habitat for the PVB through the implementation of a habitat restoration plan at Deane Dana Friendship Community Regional Park (Friendship Park), a known historic location for this species. Friendship Park is owned by the County of Los Angeles. The Applicant seeks to provide for the long-term recovery of PVB in the wild through the restoration of suitable habitat that can accommodate passive or active reintroduction of the site from the U.S. Navy Defense Fuel Support Point, San Pedro (DFSP) or other extant locations that may be present within the historic range of the species. The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this preliminary determination is contained in an Environmental Action Statement.

We request comments from the public on the permit application and the Environmental Action Statement, both of which are available for review. The permit application includes the proposed SHA. The SHA describes the proposed project and the measures that the Applicant would undertake to avoid and minimize take of the covered species.

DATES: Written comments should be received on or before May 6, 2009.

ADDRESSES: Please address written comments to Samantha Marcum, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, California 92011. Comments may also be sent by facsimile to 760–918–0638.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the permit application, copies of our Environmental Action Statement, and/or copies of the full text of the SHA should immediately contact the Service by telephone at (760) 431–9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the documents also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office [see **ADDRESSES**].

Background

Section 9 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The Applicant (Los Angeles County Department of Parks and Recreation) is seeking a permit for take of the Palos Verdes blue butterfly during the life of the permit. This species is referred to as the ''PVB'' in the proposed SHA.

Under a SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. SHAs, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for Federally listed species by assuring property owners that they will not be subjected to increased property use restrictions as a result of their efforts to attract Federally listed species to their property, or to increase the numbers or distribution of Federally listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with the Applicant to develop the proposed SHA for the conservation of the PVB via habitat restoration within 8 acres of the 125-acre Friendship Park in Los Angeles County, California. Friendship Park is located within the cities of Los Angeles and Rancho Palos Verdes on the Palos Verdes Peninsula (Peninsula) in the southern part of Los Angeles County. The park occurs within the U.S. Geological Survey 7.5-minute series San Pedro topographic quadrangle (township 5 south, range 14 west, within the Los Verdes Land Grant Boundary) and comprises approximately 125 acres bordered roughly by Western Avenue on the west and Rue le Charlene and Ninth Street on the north.

This SHA provides for the restoration, enhancement, and management of coastal sage scrub (CSS) habitat containing hostplants suitable for the PVB within Friendship Park. The proposed duration of the SHA is 30 years, and the proposed term of the enhancement of survival permit is 30 years, provided that the Service determines that the actions identified in the SHA were implemented prior to the SHA's expiration. When fully implemented, the SHA and requested enhancement of survival permit will allow the Applicant to return habitat conditions to baseline after the end of the 30-year term of the SHA and permit, if so desired by the Applicant. The SHA and associated restoration plan fully describe the management activities to be undertaken by the Applicant, and the net conservation benefits expected to the PVB. Upon approval of this SHA, and consistent with the Service's Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the Applicant authorizing take of the PVB incidental to the implementation of the management activities specified in the SHA, incidental to other lawful uses of the enrolled property including normal,

routine land management activities, and to return to pre-SHA conditions (baseline). Under the SHA, the Applicant would undertake management activities to benefit the PVB by: planting 934 ocean locoweed (*Astragalus trichopodus var.lonchus*) and 1,400 deerweed (*Lotus scoparius*) plants (PVB hostplants) in a matrix of native CSS plants that will benefit a variety of dependent wildlife species including the PVB; completing restoration of 8 acres of park land into CSS habitat with a diverse native plant community and high structural diversity; controlling invasive weeds; and increasing the connectivity of CSS habitats on the Peninsula within the Enrolled Property.

In order to receive the above assurances regarding incidental take of the PVB, the Applicant must maintain baseline on the Enrolled Property. The Service and Applicant have determined that the measure of baseline for PVB will be the number of ocean locoweed plants that were present within Friendship Park prior to restoration actions. The Palos Verdes blue butterfly does not currently inhabit the Enrolled Property. Therefore, the baseline for the SHA is 194 ocean locoweed plants within 0.055 acres of habitat for the PVB. There were only a few scattered deerweed plants on the property prior to restoration actions, and these plants are not considered part of the baseline condition.

If you wish to comment on the permit application, including the SHA, or the Environmental Action Statement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above. If you provide personal identifying information, you may request at the beginning of your comment that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicants for take of the PVB incidental to otherwise lawful activities in accordance with the terms of the SHA. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: March 31, 2009.

Jim A. Bartel,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. E9–7608 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[LLUT070 L13200000 EL0000 24 1A00]

Notice of Availability of the Draft Environmental Impact Statement for the Leasing and Underground Mining of the Greens Hollow Coal Lease Tract, Sanpete and Sevier Counties, UT

AGENCY: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for the Leasing and Underground Mining of the Greens Hollow Coal Lease Tract, Sanpete and Sevier Counties, Utah and by this Notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Leasing and Underground Mining of the Greens Hollow Coal Lease Tract, Sanpete and Sevier Counties, Utah DEIS within 45 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 14 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments by any of the following methods:

E-mail:

UT_PR_Comments2@BLM.gov.

Fax: (435) 636–3657.

Mail: Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501, Attn: Greens Hollow Coal Lease Tract DEIS.

Copies of the Leasing and Underground Mining of the Greens Hollow Coal Lease Tract, Sanpete and Sevier Counties, Utah are available at the Price Field Office at the above address; the Manti-La Sal National Forest—Supervisor's Office, 599 West Price River Drive, Price, Utah 84501, and the Fishlake National Forest, 115 East 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: Steve Rigby, Project Manager, Price BLM Field Office at (435) 636–3604.

SUPPLEMENTARY INFORMATION: The DEIS evaluates a proposal by Ark Land Company, a subsidiary of Arch Coal, Inc., to lease and conduct underground mining of Federal coal within the 6,334 acre project area. The development plan proposal also includes two ventilation shafts, one surface mine ventilation fan and associated operational infrastructure, a new surface 69 kV powerline, and access road upgrade.

To address potential effects on the multiple resources which make up the affected environment, the BLM and the U.S. Department of Agriculture Forest Service, in coordination with cooperating agencies, have developed three alternatives in the DEIS. The alternatives include a No Action Alternative, the Proposed Action, and a third Alternative, which modifies components of the Proposed Action. The alternatives incorporate best management practices for underground coal mining and other measures necessary to adequately address impacts to geology, water resources, cultural resources, recreational opportunities, wildlife, vegetation, Threatened and Endangered Species, socioeconomics, visual resources, air quality, and other relevant issues.

Selma Sierra,

Utah State Director, BLM.

William LeVere,

Acting Deputy Regional Forester.

[FR Doc. E9–7827 Filed 4–2–09; 4:15 pm]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L19200000.ET0000; NMNM 117830]

Correction to Public Land Order No. 7724; Withdrawal of Public Land for Customs and Border Protection; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Correction to Public Land Order.

SUMMARY: This notice contains a correction to the Public Land Order No. 7724 published in the **Federal Register** [74 FR No. 1, page 118] on Friday, January 2, 2009, under the **ADDRESSES**.

ADDRESSES: The heading, the U.S. Department of Homeland Security, Customs and Border Protection should read: the U.S. Department of Homeland Security, Customs and Border Protection, 3300 J Street, Lordsburg, New Mexico 88045.

FOR FURTHER INFORMATION CONTACT: Lori Allen, at the Bureau of Land Management, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico or at (575) 525–4454.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. E9–7700 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–320–08–1220–PN–1000–241A; 8340]

Extension of a Temporary Off-Highway Vehicle Restriction, Bureau of Land Management, Colorado River District, Yuma Field Office, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to inform the public that the Bureau of Land Management (BLM) intends to extend an existing restriction on all forms of motorized travel within 122.02 acres of public land until September 30, 2010. The public lands affected by this temporary restriction are located in the proximity of Walters Camp in Imperial County, California at lots 1, 18, and 19, SE¼SW¼, and Tract 38, section 6, Township 11 South, Range 22 East, San Bernardino Meridian. Employees of the BLM and any other local, state, and Federal wildlife management, law enforcement, and fire protection personnel are exempt from this restriction while operating within the scope of their official duties. Access by additional parties may be allowed, but must be approved in advance in writing by the BLM Yuma Field Manager.

The BLM has issued and is extending this restriction by the authority provided in 43 CFR 8341.2(a), 8364.1, and pursuant to the authority of the Federal Land Policy and Management Act of October 21, 1976, as amended (90 Stat. 2763; 43 U.S.C. 1732). The BLM is extending this restriction to minimize damage to soil, watershed, vegetation, and cultural resources of the public lands. Violations of this restriction are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months as authorized by Title 18, U.S.C., Sections 3571 and 3581.

DATES: The restriction will remain in effect until September 30, 2010.

FOR FURTHER INFORMATION CONTACT: James T. Shoaff, Yuma Field Manager; BLM Yuma Field Office; 2555 East Gila Ridge Road; Yuma, AZ 85365; *yfoweb_az@blm.gov*; (928) 317–3200.

SUPPLEMENTARY INFORMATION: This temporary off-highway vehicle restriction was originally established by the BLM Yuma Field Office on August 9, 2006. The original restriction was established to provide the BLM with the opportunity to inventory and assess the natural and cultural resource values on these 122.02 acres that were transferred to the BLM Yuma Field Office's jurisdiction from the U.S. Fish and Wildlife Service under Public Law 109–127, An Act to revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California (109th Congress, 12/07/2005).

The Ehrenberg-Cibola Travel Management Plan will evaluate and designate off-highway vehicle areas and trails in the vicinity of this restriction in compliance with the BLM's Comprehensive Travel and Transportation Management policies and according to BLM Resource Management Planning guidance in 43 CFR 1610 and 8342. Extending the original restriction through the completion of the Ehrenberg-Cibola Travel Management Plan will safeguard existing resource values from motorized travel, and will provide all interested stakeholders with additional opportunities to submit input on future off-highway vehicle designations in the area, as required by 43 CFR 8342.2(a).

James T. Shoaff,

Yuma Field Manager.

[FR Doc. E9–7697 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000; HAG 9–0138]

Notice of Meeting, John Day/Snake Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day/Snake Resource Advisory Council (JDSRAC) will meet as indicated below:

DATES: The meeting will begin at 7 p.m. (Pacific Daylight Time) on April 14, 2009.

ADDRESSES: The Council will meet by teleconference. For a copy of material to be discussed or the conference call number, please contact the Vale District; information below.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Officer, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218.

SUPPLEMENTARY INFORMATION: The JDSRAC will conduct a public meeting by teleconference to discuss and come to consensus on contents of a letter to be sent to the Wallowa-Whitman Forest Supervisor on the Wallowa-Whitman National Forest Draft EIS for Invasive Plants Treatment Project. The meeting is open for the public to call in. Public comment is scheduled from 7:45 p.m. to 8 p.m. (Pacific Daylight Time) April 14, 2009. For a copy of the information distributed to the Council members or the call in number for the teleconference, please contact Mark Wilkening.

Dated: March 31, 2009.

David R. Henderson,

District Manager, Vale District Office.

[FR Doc. E9–7656 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L10200000–MJ0000–LLORL00000; HAG 09–0133]

Notice of Meeting, Southeast Oregon Resource Advisory Council (Oregon)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southeast Oregon Resource Advisory Council (SEORAC) will meet as indicated below:

DATES: The meeting on May 7, 2009, will begin at 10 a.m. and on May 8, 2009, at 8 a.m.

ADDRESSES: The May 7 Council meeting will be at the Christmas Valley Lodge Restaurant and Lounge, 87285 Christmas Valley Highway, Christmas Valley, Oregon. On May 8 the Council meets at BLM's Lakeview District Office, 1301 South G Street, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Scott Stoffel, Public Affairs Specialist, 1301 South G Street, Lakeview, OR 97630, (541) 947–6237.

SUPPLEMENTARY INFORMATION: The SEORAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues for public lands in the Lakeview, Burns and Vale BLM Districts and the Fremont-Winema and Malheur National Forests. Planned agenda topics include: vegetation treatment methods used by the BLM's Lakeview District at two sites in north Lake County; the Fremont-Winema National Forests' Travel Management Plan and Draft Environmental Impact Statement for Invasive Plant Treatment; BLM and Forest Service sagebrush habitat treatment monitoring efforts, strategies for combating Medusahead, and American Recovery and Investment Act projects; local sage-grouse conservation efforts; resource management plan settlement negotiations for the BLM's Vale District and Lakeview Districts; the EaglePicher diatomite mine expansion; the status of the Oregon Explorer grant; and proposed amendments to The Wild Free-Roaming Horses and Burros Act of 1971. Other agenda items include: manager updates on current land management issues, reports from active subgroups, a decision about participating on Oregon's Sage-Grouse Team, discussion of forming a Wild Horse and Burro subgroup, developing agenda items for the next meeting, and any other matters that may reasonably come before the SEORAC.

The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 1 p.m. on May 8, 2009. Those who verbally address the SEORAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of five minutes. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available. If reasonable accommodation is required, please contact the BLM's Lakeview District at (541) 947–2177 as soon as possible.

Dated: March 27, 2009.

Carol A. Benkosky,

District Manager, Lakeview District Office.

[FR Doc. E9–7611 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L16100000.DO0000 LLCOS05000 L.X.SS.048C0000]

Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest Colorado RAC has scheduled meetings for May 29, 2009; August 28, 2009; and November 6, 2009.

ADDRESSES: The Southwest Colorado RAC meetings will be held May 29, 2009, in Dolores, CO, at the Anasazi Heritage Center, 27501 Highway 184, Dolores, CO 81323; August 28, 2009, in Silverton, CO, meeting location to be announced; and November 6, 2009, in Delta, CO at the Bill Heddles Recreation Center, 530 Gunnison River Drive, Delta, CO 81416. Field trips will be conducted to appropriate sites the day before each scheduled meeting.

All Southwest Colorado RAC meetings will begin at 9 a.m. and adjourn at approximately 4 p.m., with public comment periods regarding matters on the agenda at 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, 50629 Hwy. 6&24, Glenwood Springs, CO, telephone 970–947–2832.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion during Southwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, antlershed hunting in Gunnison Basin, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: March 17, 2009.

Barbara Sharrow,

Southwest Colorado District Manager, Lead Designated Federal Officer for the Southwest Colorado RAC.

[FR Doc. E9–7606 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 13113]

Opening of National Forest System Land; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Public Land Order No. 7662 partially revoked Public Land Order No. 5047. This order opens the previously withdrawn land to mining.

DATES: *Effective Date:* May 6, 2009.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, BLM Utah State Office, 440 West 200 South, Suite 500, Salt

Lake City, Utah 84101–1345, 801–539–4132.

SUPPLEMENTARY INFORMATION:

1. Public Land Order No. 7662 (71 FR 26108 (2006)) partially revoked Public Land Order No. 5047. The United States Forest Service has decided that the previously withdrawn land, described below, can be opened to the United States mining laws:

Sawtooth National Forest

Salt Lake Meridian

T. 14 N., R. 13 W.,

Sec. 8, E½SE¼SE¼;
Sec. 9, S½S½ and S½NE¼SE¼.

The area described contains 200 acres in Box Elder County.

2. At 10 a.m. on May 6, 2009, the land described in Paragraph 1 above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

(Authority: 43 CFR 2091.6)

Dated: February 13, 2009.

Selma Sierra,

State Director.

[FR Doc. E9–7687 Filed 4–3–09; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–674]

In the Matter of Certain Light Emitting Diode Chips, Laser Diode Chips and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 2, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Gertrude Neumark Rothschild of Hartsdale, New York. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light emitting diode chips, laser diode chips and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,252,499. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue exclusion orders and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 31, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain light emitting diode chips, laser diode chips or products containing same that infringe one or more of claims 10, 12, 13, and 16 of U.S. Patent No. 5,252,499, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Gertrude Neumark Rothschild, 153 Old Colony Road, Hartsdale, New York 10530–3609.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Chi Mei Lighting Technology Corp., No. 12, Fonglin Road, Xinshi Township, Tainan County 744, Taiwan;
Tekcore Co., Ltd., No. 18, Tzi Chiang 3 Road, Nan Tou, Taiwan 540;
Toyolite Technologies Corp., 6F–2, No. 8 Ruiguang Road, NeiHu, Taipei, Taiwan;
Tyntek Corporation, No. 16, Industry E. 4th Road, Hsinchu Science Park, Hsinchu, Taiwan;
Visual Photonics Epitaxy Co., Ltd., No. 16, King Yeh 1st Road, Ping-Jen Industrial Zone, Ping-Jen City, 324 Taoyuan, Taiwan;
Xiamen Sanan Optoelectronics Technology Co., Ltd., No. 1721–1725 Luling Road, Xiamen, Fujian, China 361009.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against a respondent.

By order of the Commission.

Issued: March 31, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–7544 Filed 4–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Diesel Aftertreatment Accelerated Aging Cycles—Heavy-Duty

Correction

In notice document E9–4026 appearing on page 8813, in the issue of Thursday, February 26, 2009, make the following correction:

On page 8813, in the first column, in the second paragraph, in the sixth line, ''MTtJ'' should read ''MTU''.

[FR Doc. Z8–4026 Filed 4–3–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1496]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting via conference call of the Public Safety Officer Medal of Valor Review Board to introduce the Board's renewed Charter, review and vote on the new Bylaws, and to discuss upcoming activities and relevant issues. The meeting/conference call date and time is listed below.

DATES: April 20, 11 a.m. to 12 p.m. EST.

ADDRESSES: This meeting will take place in the form of a conference call.

FOR FURTHER INFORMATION CONTACT: Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, by telephone at (202) 514–1369, toll free (866) 859–2687, or by e-mail at *gregory.joy@usdoj.gov*.

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

The purpose of this meeting/conference call is to introduce the Board's renewed Charter, review and vote on the new Bylaws, and to discuss upcoming activities and relevant Board issues related thereto.

This meeting/conference call is open to the public at the offices of the Bureau of Justice Assistance. For security purposes, members of the public who wish to participate must register at least seven (7) days in advance of the meeting/conference call by contacting Mr. Joy. All interested participants will be required to meet at the Bureau of Justice Assistance, Office of Justice Programs; 810 7th Street, NW., Washington, DC and will be required to sign in at the front desk. **Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting/conference call will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least seven (7) days in advance of the meeting. Please submit any comments or written statements for consideration by the Review Board in writing at least seven (7) days in advance of the meeting date.

James H. Burch, II,

Acting Director, Bureau of Justice Assistance.

[FR Doc. E9–7657 Filed 4–3–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: The Norval Morris Project

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for a 12-month period to begin in May, 2009. Work under this agreement will continue NIC's Norval Morris Project. Dr. Morris was instrumental in creating NIC over 30 years ago and remained a guiding influence as a charter member of the NIC Advisory Board until the day he passed away in February 2004. Shortly after his death, the NIC Advisory Board created the Norval Morris project to honor his many contributions to the field and carry on the sprit of his work.

Dr. Morris believed that a major shortcoming in correctional policy and practice was that the field did not make effective use of the available research and evaluation. Among his keenest interests was the issue of effective dissemination. He used research findings to inform the field and promote greater collaboration. At its heart, the Norval Morris Project is about developing models and executing strategies for expediting the circulation of research-based innovations, knowledge, and ideas by addressing specific topics of vital concern to the field of corrections.

DATES: Applications must be received by 4 p.m. (EDT) on Friday, May 8, 2009. Selection of the successful applicant and notification of review results to all applicants: May 30, 2009.

ADDRESSES: Mailed applications must be sent to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307–3106, extension 0 for pickup. Faxed or e-mailed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC Web site at

http://www.nicic.gov/cooperativeagreements.

All technical or programmatic questions concerning this announcement should be directed to Christopher A. Innes, PhD, Chief, Research and Evaluation Division, National Institute of Corrections. He can be reached by calling 1–800–995–6423 ext 0098 or by e-mail at *cinnes@bop.gov*.

SUPPLEMENTARY INFORMATION:

Project Goals: The recipient of the award under this cooperative agreement will; (1) Organize the second meeting of the Project's Keystone Group to be held in the fall of 2009. All expenses for the meeting, expected to last two and a half days for up to 20 people, will be provided out of the funding awarded under this agreement; (2) Organize up to three additional meetings for the topic teams or other subject matter experts. All expenses for these meetings, expected to last one and a half days for up to 10 people, will be provided out of the funding awarded under this agreement; (3) Provide ongoing support for the Keystone Group and Topic Teams, including overall coordination among and between the teams, research support, continuing outreach for the project, and assistance to NIC in marketing the project's products; (4) Provide support for the NIC-Norval Morris Project Web site and forums, including preparing materials for posting, providing technical support for users, and advising NIC on the use of these and other technologies to support or expand the reach of the project; (5) Produce working papers, literature searches and reviews, collect and distribute supporting materials concerning the current two topics, and perform exploratory research into future topics the project may want to adopt.

Background: Through cooperative agreements since 2006, NIC has designed a structure to carry out the Norval Morris Project. The project brings together people both inside and outside the corrections field to develop interdisciplinary approaches and draw on professional networks that cut across academic, private sector and public sector boundaries. Such an expansive vision requires a steering group to ''kick start'' the search for innovations. Because this group's responsibility is essential for creating and maintaining the project's overarching vision, it is called the Keystone Group.

The first Keystone Group meeting took place in September 2008. It involved 19 thought leaders—half of them corrections practitioners—plus NIC senior and project staff. The retreat itself was designed to be emergent, without preset limits on the group's scope of work, design, or strategy. The Keystone Group's function is to identify emerging topics and knowledge which could be imported into the corrections field, advise the project on how best to translate this knowledge to inform correctional practice, and assist the project in disseminating the results to the field in innovative ways.

During the Keystone Group's meeting, two provocative questions were developed. They were; ''How can we transform correctional leadership and the workforce in ways that empower staff to reduce recidivism and promote prevention?'' and; ''How can we safely and systematically reduce the correctional population by half in eight years?''

The next step of the process, which began immediately after the Keystone Group meeting, was to begin to assemble Topic Teams. Structured similarly to the Keystone Group, the Topic Teams function as stand alone working groups and focus on each of the topic areas the Keystone Group identified. An ''invitation'' to participate was sent to a broad audience, seeking people interested in participating in a Topic Team. The teams are continuing to develop, refine and expand on the topics. As implied by the ambitious scope of the questions above, the topic areas are intended to be far-reaching in their change implications, representing, in the broadest sense, the knowledge strategies that will drive future innovations in the field.

For more information on the Norval Morris Project, visit *http://www.nicic.gov/Norval.* For additional resources, go to: *http://www.nicic.gov*.

Required Expertise: Successful applicants should be able to demonstrate that they have the organizational capacity to carry out all five goals of the project, including experience in organizing meetings and providing ongoing support for complex, multi-year projects, extensive experience in correctional policy and practice, and a strong background in research. Preference will also be given to applicants with a record of working with interdisciplinary teams in a variety of fields beyond corrections.

Application Requirements: Applications should be concisely written, typed double spaced and reference the ''NIC Opportunity Number'' and Title provided in this announcement. Please limit the program narrative text to 25 double spaced pages, exclusive of resumes and summaries of experience (do not submit full curriculum vitae). *The application package must include:* A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.*, July 1 through June 30), a program narrative responding to the requirements in this announcement, a description of the qualifications of the applicant(s), an outline explaining projected costs, and the following forms: OMB Standard Form 424, Application for Federal Assistance, OMB Standard Form 424A, Budget Information—Non Construction Programs, OMB Standard Form 424B, Assurances—Non Construction Programs (these forms are available at *http://www.grants.gov)* and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*).

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicants' best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

This project will be a collaborative venture with the NIC Research and Evaluation Division.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows, 1. Programmatic (40%). Are all of the five tasks adequately discussed? Is there a clear statement of how each of the tasks will be accomplished, including the staffing, resources, and strategies to be employed? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project? 2. Organizational (35%). Do the skills, knowledge, and expertise of the organization and the proposed project staff demonstrate a high level of competency to carry out the tasks? Does

the applicant organization have the necessary experience and organizational capacity to carry out all five goals of the project? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the 12-month time frame? 3. Project Management/Administration (25%). Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to insure effective coordination? Is the proposed budget realistic, provide sufficient cost detail/narrative, and represent good value relative to the anticipated results?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.ccr.gov.* A CCR Handbook and work sheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 09PEI25. This number should appear as a reference line in the cover letter, where the opportunity number is requested on the Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602 Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Correction.

[FR Doc. E9–7699 Filed 4–3–09; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 31, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting 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 Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/*Fax:* 202–395–6974 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Labor Market Information (LMI) Cooperative Agreement.

OMB Control Number: 1220–0079.

Affected Public: State Workforce Agencies in the 50 State Governments, the District of Columbia, Puerto Rico, Virgin Islands, and Guam.

Total Estimated Number of Respondents: 54.

Total Estimated Annual Burden Hours: 788.

Total Estimated Annual Costs Burden: $0.

Description: The LMI Cooperative Agreement (CA) includes all information needed by the State Workforce Agencies to apply for funds to assist them in operating one or more of the five LMI programs operated by the Bureau of Labor Statistics, and, once awarded, report on the status of obligation and expenditure of funds, as well as close out the Cooperative Agreement. For additional information, see related notice published at Vol. 74 FR 464 on January 6, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–7617 Filed 4–3–09; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the Advisory Committee for International Science and Engineering, #25104 have determined that renewing the committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

The effective date for renewal will be April 17, 2009. For more information contact Susanne Bolton at (703) 292–7488.

Dated: March 30, 2009.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E9–7548 Filed 4–3–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2009–0039]

Crystal River Unit 3 Nuclear Generating Plant; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Florida Power Corporation (FPC) has submitted an application for renewal of Facility Operating License No. DPR–72 for an additional 20 years of operation at the Crystal River Unit 3 Nuclear Generating Plant (CR–3). CR–3 is located approximately 35 miles southwest of Ocala, Florida.

The operating license for CR–3 expires on December 3, 2016. The application for renewal, dated December 16, 2008, was submitted pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on February 4, 2009 (74 FR 6060). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on March 9, 2009. The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, FPC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the ER is ML090080053. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*. The ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/crystal-river.html*. In addition, the ER is available for public inspection near the CR–3 at the public library: Coastal Region Library, 8619 W. Crystal St., Crystal River, FL 34428–4468.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) related to the review of the application for renewal of the CR–3 operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies are encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Florida Power Corporation.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the CR–3 license renewal supplement to the GEIS. The scoping meetings will be held at the Plantation Inn, 9301 W Fort Island Trail, Crystal River, FL 34429, on April 16, 2009. There will be two sessions to accommodate interested parties. The first session will convene at 2 p.m. and will continue until 5 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Elaine Keegan, by telephone at 1–800–368–5642, extension 8517 or by e-mail at *elaine.keegan@nrc.gov* no later than April 9, 2009. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Elaine Keegan will need to

be contacted no later than April 9, 2009, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the CR–3 license renewal review to: Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop TWB 5B–01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To be considered in the scoping process, written comments should be postmarked by May 15, 2009. Electronic comments may be sent by e-mail to the NRC at *crystalrivereis@nrc.gov*, and should be sent no later than May 15, 2009, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application is also included in this **Federal Register**. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Elaine Keegan at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 31st day of March, 2009.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–7653 Filed 4–3–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–123; NRC–2009–0139]

Missouri University of Science and Technology Research Reactor; Notice of Issuance of Renewed Facility License No. R–79

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued renewed Facility License No. R–79, held by the Board of Curators of the University of Missouri (the licensee), which authorizes continued operation of the Missouri University of Science and Technology Research Reactor (MSTR), located on the Missouri University of Science and Technology (MST) campus at Rolla City, Phelps County, MO. The MSTR is a pool-type, light-water-moderated-and-cooled research reactor licensed to operate at a steady-state thermal power level of 200 kilowatts thermal. Renewed Facility License No. R–79 will expire at midnight 20 years from its date of issuance.

The renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in Title 10, Chapter 1, ''Nuclear Regulatory Commission,'' of the Code of Federal Regulations (10 CFR Chapter 1), and sets forth those findings in the renewed license. The NRC afforded an opportunity for hearing in the Notice of Opportunity for Hearing published in the **Federal Register** on December 31, 2007, at 72 FR 74350. The NRC received no request for a hearing or petition for leave to intervene following this notice.

The NRC staff prepared a safety evaluation report for the renewal of Facility License No. R–79 and concluded, based on that evaluation, that the licensee can continue to operate the facility without endangering the health and safety of the public. The NRC staff also prepared an environmental assessment for license renewal, noticed in the **Federal Register** on March 30, 2009 (7X FR 14163), and concluded, based on that assessment, that renewal of the license will not have a significant impact on the quality of the human environment.

The NRC maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. For details with respect to the application for renewal, see the licensee's letter dated August 30, 2004 (ADAMS Accession No. ML042820116), as supplemented by letters dated November 16, 2007 (ADAMS Accession No. ML073240523), November 27, 2007 (ADAMS Accession No. ML073320467), December 26, 2007 (ADAMS Accession No. ML080070088), January 17, 2008 (ADAMS Accession No. ML080240307), March 6, 2008 (ADAMS Accession No. ML080930439), June 26, 2008 (ADAMS Accession No. ML081820410), September 16, 2008 (ADAMS Accession No. ML082630565), and November 7, 2008 (ADAMS Accession No. ML083190529). The NRC requested additional information on November 16, 2007 (ADAMS Accession No. ML072340514), May 12, 2008 (ADAMS Accession No. ML081270024), and September 8, 2008 (ADAMS Accession No. ML082460561). For details with respect to the issuance of the renewed facility license, see renewed Facility License No. R–79 (ADAMS Accession No. ML090140511) including the related safety evaluation report dated March 30, 2009, the related technical specifications dated March 24, 2009 (ADAMS Accession No. ML090140520), and the related environmental assessment dated March 20, 2009 (ADAMS Accession No. ML080290156). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available records are accessible electronically from the ADAMS Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, MD, this 30th day of March, 2009.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Chief, Research and Test Reactors Branch A, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–7648 Filed 4–3–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28683; 812–13602]

First American Strategy Funds, Inc., et al.; Notice of Application

March 31, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: First American Strategy Funds, Inc. (''FASF''), First American Investment Funds, Inc. (''FAIF''), FAF Advisors, Inc. (''FAF Advisors''), and Quasar Distributors, LLC (''Quasar'').

FILING DATES: The application was filed on November 12, 2008, and amended on March 20, 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 27, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Kathleen L. Prudhomme, FAF Advisors, Inc., BC–MN–H04N, 800 Nicollet Mall, 4th Floor, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. FASF is organized as a Minnesota corporation and FAIF as a Maryland corporation and each is registered under the Act as an open-end management investment company. FAF Advisors is a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and currently serves as investment adviser to the series of FASF and FAIF. Quasar is a Delaware limited liability company registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act''), that serves as the distributor for FASF and FAIF and all of their series.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof (i) that is advised by FAF Advisors or an entity controlling, controlled by, under common control with FAF Advisors (each, an ''Advisor'') that is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act and (ii) that invests in other registered open-end management investment companies in reliance on section 12(d)(1)(G) of the Act, and (iii) that is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (together with FASF, FAIF and their series, the ''Funds of Funds'') to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of directors will review the advisory fees charged by the Fund of Funds' investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued

[1] Applicants also request that the order exempt any entity controlling, controlled by or under common control with FAF Advisors or Quasar that now or in the future acts as principal underwriter with respect to the transactions described in the application. Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7591 Filed 4–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Aegis Consumer Funding Group, Inc., APS Holding Corp., Childrobics, Inc., Churchill Technology, Inc., Complete Management, Inc., Dakota Mining Corp., Digital Communications Technology Corp., Global Intellicom, Inc., Horn Silver Mines, Inc., TCC Industries, Inc., and Tenney Engineering, Inc.; Order of Suspension of Trading

April 2, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aegis Consumer Funding Group, Inc. because it has not filed any periodic reports since the period ended March 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of APS Holding Corp. because it has not filed any periodic reports since the period ended July 25, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Childrobics, Inc. because it has not filed any periodic reports since the period ended March 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Churchill Technology, Inc. because it has not filed any periodic reports since the period ended June 30, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Complete Management, Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dakota Mining Corp. because it has not filed any periodic reports since the period ended September 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Digital Communications Technology Corp. because it has not filed any periodic reports since the period ended March 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Intellicom, Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Horn Silver Mines, Inc. because it has not filed any periodic reports since the period ended June 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of TCC Industries, Inc. because it has not filed any periodic reports since the period ended September 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tenney Engineering, Inc. because it has not filed any periodic reports since the period ended June 30, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 2, 2009, through 11:59 p.m. EDT on April 16, 2009.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E9–7816 Filed 4–2–09; 4:15 pm]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of FCS Laboratories, Inc., Federal Resources Corp., Filene's Basement Corp. (n/k/a FBC Distribution Corp.), and Film & Music Entertainment, Inc.; Order of Suspension of Trading

April 2, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FCS Laboratories, Inc. because it has not filed any periodic reports since the period ended June 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Federal

Resources Corp. because it has not filed any periodic reports since the period ended December 31, 1993.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Filene's Basement Corp. (n/k/a FBC Distribution Corp.) because it has not filed any periodic reports since the period ended October 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Film & Music Entertainment, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 2, 2009, through 11:59 p.m. EDT on April 16, 2009.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7817 Filed 4–2–09; 4:15 pm]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59667; File No. SR–CBOE–2009–022]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposal To List and Trade S&P 500 Dividend Index Options

March 31, 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 25, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its rules to provide for the listing and trading of options that overlie the S&P 500 Dividend Index, which will be cash-settled and will have European-style exercise. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 the proposed rule change is to permit the Exchange to list and trade cash-settled options that overlie the S&P 500 Dividend Index, which will be cash-settled and will have European-style exercise.

Index Design

The S&P 500 Dividend Index, which is currently being calculated, represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified quarterly accrual period. Each day Standard & Poor's calculates the aggregate daily dividend totals for the S&P 500 Index component securities, which are summed over any given calendar quarter and are the basis of the S&P 500 Dividend Index. On any given day, the index dividend is calculated as the total dividend value for all constituents of the S&P 500 Index divided by the S&P 500 Index divisor. The total dividend value is calculated as the sum of dividends per share multiplied by the shares outstanding for all constituents of the S&P 500 Index that are trading ''ex-dividend'' on that day.

Each accrual period will run from the business day after the third Friday of a quarterly expiration month (March, June, September or December) through the third Friday of the next quarterly expiration month. An example of a quarterly accrual period is one that will run from Monday, March 23, 2009 through Friday, June 19, 2009. The S&P 500 Dividend Index is expressed in S&P 500 Index points and is reset to zero at the end of each quarterly accrual period.

The S&P 500 Dividend Index is currently calculated by Standard & Poor's and is disseminated by Standard and Poor's once per day.[3] The S&P 500 Dividend Index is reported in absolute numbers (*e.g.*, 3, 5, 7), and the Exchange proposes to trade option contracts on the S&P 500 Dividend Index level with an applied scaling factor of 10. To illustrate, where the S&P 500 Dividend Index is 3, the underlying will have an index value of 30 (3×10). Once daily, CBOE will disseminate the underlying S&P 500 Dividend Index value with the applied scaling factor of 10 through the Options Price Reporting Authority (''OPRA'') and/or one or more major market data vendors.

Options Trading

The exercise-settlement value for S&P 500 Dividend Index options will be the S&P 500 Dividend Index that is calculated by Standard & Poor's with an applied scaling factor that will be set by the Exchange at listing. The underlying S&P Dividend Index will be quoted in decimals and one point will be equal to $100.[4] The minimum tick size for options trading at or below 3.00 be 0.05 point ($5.00) and for all other series, 0.10 ($10.00). Exhibit 3 presents proposed contract specifications for S&P 500 Dividend Index options.

The Exchange is proposing to list series at 1 point ($1.00) or greater strike price intervals if the strike price is equal to or less than 200 scaled index points on S&P 500 Dividend Index options.[5] Because the S&P 500 Dividend Index will fluctuate around a limited index value range, the Exchange believes that a granular strike price increment will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

Initially, the Exchange will list in-, at- and out-of-the-money strike prices and may open for trading up to five series above and five series below the price of the related S&P 500 Dividend Index futures contract. The Exchange is

[3] The daily values can be accessed on Bloomberg under the symbol: SPXDIV <Index>.

[4] The contract multiplier will be $100.

[5] When the strike price exceeds 200 scaled index points, strike price intervals will be no less than 2.5 points.

proposing to use the forward index level rather than the current index for setting strikes because the current index level is reset to zero at the end of each quarterly accrual period. The Exchange believes that the related S&P 500 Dividend Index futures price is a good proxy for the forward index level.

As for additional series, either in response to customer demand or as the price of the related S&P 500 Dividend Index futures contract moves from the initial exercise prices of options and LEAPs series that have been opened for trading, the Exchange may open for trading up to an additional twenty series. The Exchange will not be permitted to open for trading series with 1 point ($1.00) intervals within 0.50 of an existing 2.5 point ($2.50) strike price with the same expiration month. The Exchange will not be permitted to list LEAPS on S&P 500 Dividend Index options at intervals less than 1 point.

The Exchange also proposes to add new Interpretation and Policy .13 to Rule 5.5, *Series of Option Contracts Open for Trading*, which will be an internal cross reference stating that the intervals between strike prices for S&P 500 Dividend Index option series will be determined in accordance with proposed new Interpretation and Policy .01(h) to Rule 24.9.

Exercise and Settlement

The proposed options will expire on the Saturday following the third Friday of the expiring month. Trading in the expiring contract month will normally cease at 3:15 p.m. Chicago time on the last day of trading (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). When the last trading day is moved because of an Exchange holiday (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday.

Exercise will result in delivery of cash on the business day following expiration. S&P 500 Dividend Index options will be A.M.-settled. The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier ($100).

If the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value will be determined in accordance with the rules and bylaws of the OCC.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in S&P 500 Dividend Index options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities (*i.e.*, S&P 500 Index component securities).

Position Limits

The Exchange is not proposing to establish any position limits for S&P 500 Dividend Index options. Because the S&P 500 Dividend Index represents the accumulated ''ex-dividend'' amounts of all S&P 500 Index component securities, the Exchange believes that the position and exercise limits for these new products should be the same as those for other broad-based index options, *e.g.*, SPX, for which there are no position limits. S&P 500 Dividend Index options will be subject to the same reporting and other requirements triggered for other options dealt in on the Exchange.[6]

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to S&P 500 Dividend Index options.

S&P 500 Dividend Index options will be margined as ''broad-based index'' options, and under CBOE rules, especially, Rule 12.3(c)(5)(A), the margin requirement for a short put or call shall be 100% of the current market value of the contract plus up to 15% of the aggregate contract value. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange hereby designates S&P 500 Dividend Index options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System).

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of S&P 500 Dividend Index options.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options that settle to an index that represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified quarterly accrual period.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 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 Number SR–CBOE–2009–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[6] *See* Rule 4.13, *Reports Related to Position Limits.*

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for 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 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–2009–022 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7663 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59643; File No. SR–MSRB–2009–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Pilot Phase of Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access system (EMMA®)

March 27, 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 25, 2009, the Municipal Securities Rulemaking Board (''MSRB'') 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 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 has filed with the Commission a proposed rule change to establish a pilot phase (the ''continuing disclosure pilot'') of the continuing disclosure service of the MSRB's Electronic Municipal Market Access system (''EMMA''). The continuing disclosure pilot would receive electronic submissions of, and would make publicly available on the Internet, continuing disclosure documents and related information voluntarily submitted by issuers, obligated persons and their agents. The MSRB has requested approval of the continuing disclosure pilot to commence operation on May 11, 2009, or such later date as may be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than 30 days after Commission approval of the proposed rule change. In addition, the MSRB has requested approval of the continuing disclosure pilot for a period ending on July 1, 2009.[3]

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB'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 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 proposed rule change would establish a pilot phase of the continuing disclosure service of EMMA to provide, pending the commencement of operation of the permanent EMMA continuing disclosure service on July 1, 2009, for the voluntary electronic submission to the MSRB of continuing disclosure documents and related information by issuers, obligated persons and their agents and to provide for the free public access to such documents through the EMMA portal.[4]

Under Exchange Act Rule 15c2–12(b)(5), an underwriter for a primary offering of municipal securities subject to the rule currently is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final official statement, or a designated agent, has undertaken in writing to provide certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2–12 adopted by the Commission. *See* Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2–12).

[4] The EMMA portal began operation on March 31, 2008 as a pilot facility and is accessible at *http://emma.msrb.org*. *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System historical and real-time transaction price data) (the ''EMMA portal pilot filing'').

items of information to the marketplace.[5] The items to be provided include: (A) Annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of certain events, if material; and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking. The written agreement shall identify each obligated person or other person for whom information is to be provided, either by name or by an objective criteria for selecting such person, and also shall specify (i) the type of information to be included in the annual financial information, (ii) the accounting principles pursuant to which financial statements will be prepared and whether such financial statements will be audited, and (iii) the date on which the annual financial information will be provided.

The pilot phase of the EMMA continuing disclosure service would accept voluntary submissions of continuing disclosure documents, including but not limited to items to be provided pursuant to Exchange Act Rule 15c2–12. Submissions of continuing disclosure documents to the pilot phase of the EMMA continuing disclosure service would be made solely in electronic format by issuers, obligated persons and their agents through a secured, password-protected, Web-based interface with EMMA. Such submissions would be made as portable document format (PDF) files, accompanied by related indexing information, through the submission processes established with respect to the EMMA continuing disclosure service; provided that such processes may become available for use by voluntary submitters on a phased-in basis. No paper submissions would be accepted. Documents submitted by issuers, obligated persons and their agents would be made available to the public on the EMMA portal. The specific features of the EMMA portal established with respect to the EMMA continuing disclosure service may become available for use by public users of the EMMA Web site on a phased-in basis during the pilot phase. The MSRB also may make available test versions of the computer-to-computer submission processes and data stream subscription services established with respect to the EMMA continuing disclosure service on a phased-in basis during the pilot phase. There would be no charge for the making of submissions during the pilot phase or for accessing such documents on the EMMA portal.

The MSRB would view electronic submissions of continuing disclosure documents during the pilot phase of the EMMA continuing disclosure service as having been submitted to the MSRB for purposes of any existing continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2–12.[6] The MSRB takes no position with regard to whether a submission made to the pilot phase of the EMMA continuing disclosure service that is made publicly available through the EMMA portal would satisfy any other provisions of existing continuing disclosure undertakings.

The MSRB would undertake to make the submission and EMMA portal access services available during the pilot phase on the same terms as established for the EMMA continuing disclosure service but would reserve the right to operate any feature on a more limited basis as necessary or appropriate, in the sole discretion of the MSRB, during the pilot phase. The pilot phase would be expected to operate for a limited period of time as the MSRB transitions to the permanent EMMA continuing disclosure service anticipated to commence operation on July 1, 2009. The pilot phase would terminate automatically at such time as the permanent EMMA continuing disclosure service becomes operational.

The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[7] 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 EMMA continuing disclosure service, including the pilot phase thereof, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The pilot phase would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009.

The EMMA continuing disclosure service, including the pilot phase thereof, would help make information useful for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the

[5] Under Rule 15c2–12(b)(5)(i), annual filings are to be sent to all existing nationally recognized municipal securities information repositories (''NRMSIRs'') and any applicable state information depositories (''SIDs''), while material event notices may be sent to all existing NRMSIRs or to the MSRB, as well as to any applicable SIDs.

[6] The MSRB currently operates CDINet to process and disseminate notices of material events submitted to the MSRB. The MSRB urges, but does not require, submitters currently using CDINet to instead make any future submissions to the pilot phase of the EMMA continuing disclosure service, solely in electronic format, upon the launch of the pilot phase until such time as all submissions must be made to the permanent EMMA continuing disclosure service. The MSRB intends to file in the near future a proposed rule change with the Commission to discontinue CDINet as of the commencement of operations of the permanent EMMA continuing disclosure service on July 1, 2009.

[7] 15 U.S.C. 78o–4(b)(2)(C).

securities without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities.

Furthermore, the EMMA continuing disclosure service should reduce the effort necessary for issuers and obligated persons to comply with their continuing disclosure undertakings by making submissions to a single venue [8] using an electronic submission process, which should result in lower costs to issuers and savings to their citizens. Similarly, a single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information—previously available in most cases only through paid subscription services or on a per-document fee basis—should reduce transaction costs for dealers and investors.

All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The pilot phase of the EMMA continuing disclosure service would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009. As the MSRB has previously stated in its filing with the Commission in connection with the permanent EMMA continuing disclosure service (the ''permanent EMMA continuing disclosure filing''),[9] although the MSRB recognizes that the EMMA continuing disclosure service might require private enterprises to modify some aspects of the way they undertake their current business activities, the MSRB believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities that would be provided through the EMMA continuing disclosure service, including the pilot phase thereof, would justify any potentially negative impact on existing enterprises from the operation of EMMA.

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 on the proposed rule change. However, in connection with the permanent EMMA continuing disclosure filing, the Commission received comments relating to, among other things, the effective date of the filing and a desire for a transition to the permanent EMMA continuing disclosure filing.[10] In the permanent EMMA continuing disclosure filing, the MSRB had originally proposed an effective date of January 1, 2009. In response, one commentator requested that the Commission establish a transition period before making electronic filings on EMMA mandatory as a result of the submissions needing to be submitted as PDF-word searchable files.[11] Another commentator noted a need to address smaller issuers who may need additional time to familiarize themselves with an electronic system.[12] A third commentator noted that ''municipal issuers and obligated persons may be confused as to where they should file continuing disclosure documents during the period of transition from the current system to the EMMA system'' and suggested that these concerns ''could be addressed during a short transition period.'' [13]

As a result, the MSRB amended the permanent EMMA continuing disclosure filing to request that the Commission delay the implementation of the permanent EMMA continuing disclosure service to July 1, 2009.[14] The MSRB noted that the delayed effectiveness would provide the MSRB with the opportunity to implement a pilot phase of the EMMA continuing disclosure service to allow voluntary submissions to be made prior to the effectiveness of the permanent EMMA continuing disclosure service. During this pilot period, submitters would be able to familiarize themselves with the submission process and receive assistance to establish user accounts.

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 Number SR–MSRB–2009–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[8] Some states may require issuers and/or obligated persons to submit disclosure information to state information depositories or other venues pursuant to state law.

[9] *See* Securities Exchange Act Release No. 58256 (July 30, 2008) 73 FR 46161 (August 7, 2008) (File No. SR–MSRB–2008–05) (proposing the establishment of the continuing disclosure service of EMMA). *See also* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009).

[10] Comment letters to the Commission on the permanent EMMA continuing disclosure filing are available at *http://www.sec.gov/comments/sr-msrb-2008-05/msrb200805.shtml*.

[11] *See* Letter from Susan A. Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, to Ms. Harmon, dated September 22, 2008.

[12] *See* Letter from William A. Holby, President, National Association of Bond Lawyers, to Ms. Harmon, dated September 22, 2008.

[13] *See* Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, Vanguard, to Ms. Harmon, dated September 24, 2008.

[14] *See* SR–MSRB–2008–05, Amendment No. 1 (November 5, 2008).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2009–03. 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–2009–03 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7583 Filed 4–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59652; File No. SR–NASDAQ–2009–027)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Program for NASDAQ Last Sale Data Feeds and To Reduce the Monthly Cap on Fees

March 30, 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 25, 2009, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the pilot that created the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''). The purpose of this proposal is to extend the existing pilot program for three months and to reduce the cap on applicable fees as set forth below.[3]

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on websites operated by Google, Interactive Data, and Dow Jones, among others. The text of the proposed rule change is available at NASDAQ, the Commission's Public Reference Room, and *http://nasdaq.complinet.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III 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

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a four-month pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the internet and television at no cost to millions of internet users and television viewers.

NASDAQ now proposes a three-month extension of that pilot program and to reduce the capped fee to $50,000 per month from $150,000 per month.

The NLS pilot created two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ Data Product,'' a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the NASDAQ Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq will file a proposed rule change within thirty days seeking permanenet [sic] approval oft [sic] the Nasdaq Last Sale pilot.

and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product: Firms that were unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms chose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established cap of $100,000 per month for NASDAQ Last Sale for NASDAQ and $50,000 per month for NASDAQ Last Sale for NYSE/Amex, for a total of up to $150,000 per month. The purpose of this proposal is to reduce the cap to $50,000 per month total for the NASDAQ Last Sale for NASDAQ and for NASDAQ Last Sale for NYSE/Amex. This reduces the fee cap by $100,000 per month for vendors that purchased both data feeds in quantities sufficient to hit the fee cap. This fee reduction is necessary for Nasdaq to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

Finally, as with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single $1500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general and with Section 6(b)(4) of the Act,[5] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether, proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization (''SRO'') markets, as well as broker-dealers (''BDs'') and aggregators such as the DirectEdge electronic communications network (''ECN''). Each SRO market competes to produce transaction reports via trade executions, and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f–3(b)(4) [sic].

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users. Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including ''Project BOAT,'' a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

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. To the contrary, the NASDAQ Last Sale Products respond to and enhance competition that already exists in the market.

On May 28, 2008, the internet portal Yahoo! announced that it would offer its Web site viewers real-time last sale data provided by BATS Trading. NASDAQ's last sale data products would compete directly with the BATS product disseminated via Yahoo!. Since that time, BATS has attracted additional purchasers of its last sale product that is free of charge or, at least, has not been the subject of a proposed rule change. [sic]

In addition, as set forth above, the market for last sale data is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products. Moreover, the New York Stock Exchange distributes competing last sale data products and has reduced the price of its product. Under the deregulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml*.

III. 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–2009–027 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–2009–027. 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 official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–027 and should be submitted on or before April 27, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, it is consistent with Section 6(b)(4) of the Act,[8] 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,[9] 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,[10] 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,[11] 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.[12]

The Commission approved the fee for the NASDAQ Last Sale Data Feeds for a pilot period which runs until March 31, 2009.[13] The Commission notes that the Exchange proposes to extend the pilot program for three months. The Commission did not receive any comments on the previous extensions of the pilot program.[14] In addition, the Exchange proposes to reduce the fee cap applicable to the NASDAQ Last Sale Data Feeds from $100,000 per month for NASDAQ Last Sale for NASDAQ and $50,000 per month for NASDAQ Last Sale for NYSE/Amex to $50,000 per month total for both feeds.

On December 2, 2008, the Commission issued an approval order (''Order'') that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products, such as the NASDAQ Last Sale Data Feeds.[15] The Commission believes that Nasdaq's proposal to temporarily extend the pilot program is consistent with the Act for the reasons noted in the Order.[16] The Commission believes that approving NASDAQ's proposal to temporarily extend the pilot program that imposes a fee for the NASDAQ Last Sale Data Feeds for an additional three months and to reduce the cap applicable to the NASDAQ Last Sale Data Feeds will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information. The Commission notes that price competition provided by other market data products were considered by the Exchange in determining to reduce the fee cap for the NASDAQ Last Sale Data Feeds. In addition, extending the pilot program for an additional three months will allow NASDAQ, consistent with its representation,[17] to file within 30 days, the public to comment on, and the Commission to analyze consistent with the Order and in light of Section 19(b) of the Act, a proposal to permanently approve the fee for NASDAQ Last Sale Data Feeds.[18]

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in the NASDAQ Last Sale Data Feeds. In addition, the Commission notes that the proposal should benefit vendors that make real-time pricing information available by potentially reducing their monthly fees. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[19] to approve the proposed rule change on an accelerated basis to extend the operation of the pilot until June 30, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2009–027) is hereby approved on an accelerated basis until June 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7586 Filed 4–3–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–59653; File No. SR–NYSE–2009–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Extend the Pilot Period for the NYSE Realtime Reference Prices Pilot Program

March 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[7] 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).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 242.603(a).

[12] NASDAQ is an exclusive processor of its last sale data 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 data on an exclusive basis on its own behalf.

[13] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR–NASDAQ–2008–086); and 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR–NASDAQ–2008–103).

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[16] *See supra* note 13.

[17] *See supra* note 3.

[18] The Exchange has represented that it will file a proposed rule change within thirty days of filing of this proposal seeking permanent approval of the NASDAQ Last Sale Data Feeds pilot program. *See supra* note 3.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2009, the New York Stock Exchange LLC (''NYSE'' 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. On March 27, 2009, NYSE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal, as modified by Amendment No. 1, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to extend the expiration date of its pilot program for the NYSE Realtime Reference Prices service until June 30, 2009. There is no new rule text.

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 III 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

In File No. SR–NYSE–2007–04, the Exchange established a pilot program that allows the Exchange to test the viability of a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''NYSE Realtime Reference Prices'') and to establish a flat monthly fee for that service. The Commission approved that pilot program on June 16, 2008.[3]

The Exchange intends for the NYSE Realtime Reference Prices service to accomplish three goals:

1. To provide a low-cost service that will make real-time prices widely available to millions of casual investors;

2. To provide vendors with a real-time substitute for delayed prices; and

3. To relieve vendors of administrative burdens.

This pilot program is similar to pilot programs that the Nasdaq Stock Market, Inc.[4] and NYSE Arca, Inc[5] have established.

The pilot program allows internet service providers, traditional market data vendors, and others to make available NYSE Realtime Reference Prices on a real-time basis.[6] The NYSE Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. It includes only prices, and not the size of each trade and not bid/asked quotations.

It features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Exchange established November 1, 2008 as the end date for the pilot program. The Exchange then extended that end date to December 31, 2008[7] and then extended it to March 31 2009.[8] The Exchange now seeks to extend that end date to June 30, 2009.[9] Prior to the end of the pilot period, the Exchange will assess its experience with the product and either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or it will announce publicly that it does not seek to extend the pilot program beyond the program's termination date.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[10] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[11] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the pilot program benefits investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices service. Extending the pilot program will extend those benefits while the Exchange assesses the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this 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

The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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–2009–34 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–2009–34. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR–NYSE–2007–04).

[4] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 57973 (June 16, 2008), 73 FR 35430 (June 23, 2008) (SR–NASDAQ–2008–050).

[5] *See* Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR–NYSEArca–2008–96).

[6] The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

[7] *See* Securities Exchange Act Release No. 58893 (October 31, 2008), 73 FR 66093 (November 6, 2008) (SR–NYSE–2008–113).

[8] *See* Securities Exchange Act Release No. 59185 (December 30, 2008), 74 FR 749 (January 7, 2009) (SR–NYSE–2008–141).

[9] NYSE will file a proposed rule change within thirty days of this Partial Amendment No. 1 seeking to make the NYSE Realtime Reference Price service a permanent service rather than a pilot program.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

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 official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–34 and should be submitted on or before April 27, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, it is consistent with Section 6(b)(4) of the Act,[13] 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,[14] 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,[15] 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,[16] 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.[17]

The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until March 31, 2009.[18] The Commission notes that the Exchange proposes to extend the pilot program for three months. The Exchange proposes no other changes to the existing pilot program. In addition, the Commission notes that it did not receive any comments on the previous extensions of the pilot program.[19]

On December 2, 2008, the Commission issued an approval order (''Order'') that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products, such as NYSE Realtime Reference Prices.[20] The Commission believes that NYSE's proposal to temporarily extend the pilot program is consistent with the Act for the reasons noted in the Order.[21] The Commission believes that approving NYSE's proposal to temporarily extend the pilot program that imposes a fee for NYSE Realtime Reference Prices for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information. In addition, extending the pilot program for an additional three months will allow the public to comment on, and the Commission to analyze consistent with the Order and in light of Section 19(b) of the Act, a proposal to permanently approve the fee for NYSE Realtime Reference Prices.[22]

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in NYSE Realtime Reference Prices. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[23] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis to extend the operation of the pilot until June 30, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2009–34), as modified by Amendment No. 1, is hereby approved on an accelerated basis until June 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7587 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 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).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

[16] 17 CFR 242.603(a).

[17] NYSE is an exclusive processor of its last sale data 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 data on an exclusive basis on its own behalf.

[18] *See supra* notes 3, 7, and 8. NYSE reduced the flat monthly fee for NYSE Realtime Reference Prices from $100,000 per month to $70,000 per month. *See* Securities Exchange Act Release No. 58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (SR–NYSE–2008–79).

[19] *See supra* notes 7 and 8.

[20] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[21] *See supra* notes 3, 7, and 8.

[22] The Exchange has represented that it will file a proposed rule change within thirty days of filing Amendment No. 1 to the proposal seeking to make the NYSE Realtime Reference Price service a permanent service rather than a pilot program. *See supra* note 9.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59659; File No. SR–NYSE–2009–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending to September 1, 2009, the Operative Date of New York Stock Exchange Rule 2 Requirement That NYSE-Only Member Organizations Apply for and be Approved as a Member of the Financial Industry Regulatory Authority, Inc.

March 31, 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 25, 2009, the New York Stock Exchange, LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend to September 1, 2009, the operative date of New York Stock Exchange (''NYSE'' or the ''Exchange'') Rule 2 requirement that NYSE-only member organizations apply for and be approved as a member of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend to September 1, 2009, the grace period for NYSE-only member organizations to apply for and be approved as a FINRA member, as required by NYSE Rule 2.

In connection with the consolidation of NASD and NYSE Regulation member firm regulation operations into FINRA, which closed on July 30, 2007, the Exchange amended NYSE Rule 2 to require NYSE member organizations to also be FINRA members.[3] In connection with those rule changes, the Commission approved a 60-day grace period within which NYSE-only member organizations must apply for and be approved for FINRA membership. In that rule filing, NYSE-only member organizations were defined as those member organizations that were not NASD members as of the date of the closing of the FINRA transaction. This grace period began on October 12, 2007, the date of Commission approval of the Exchange's rule filing. In furtherance of the consolidation, FINRA adopted NASD IM–1013–1 to enable eligible NYSE member organizations to become FINRA members though an expedited process (the ''FINRA Waive-in application process'').[4]

At the close of the 60-day grace period, all but two of the former NYSE-only member organizations had applied for and been approved as FINRA members. On December 12, 2007, the Exchange filed for an extension of the grace period to June 30, 2008 for those two firms.[5] On June 30, 2008, the Exchange filed for another extension of the grace period to December 31, 2008.[6] On December 22, 2009, the Exchange filed for an additional extension to March 27, 2009.[7] In that filing, the Exchange noted that those two firms had unique member qualification issues and were ineligible to participate in the FINRA Waive-in application process. As of December 19, 2008, one of those two firms has been approved as a FINRA member. With respect to the other firm, because the Exchange is working on a rule filing to amend Rule 2 to permit a broker dealer to be an NYSE member organization without a FINRA membership, the Exchange believes that the grace period should be further extended so that the remaining firm does not have to re-apply for Exchange membership if the proposed change to Rule 2 is approved. Accordingly, the NYSE proposes to extend the grace period to September 1, 2009 for the firm that was an NYSE member organization as of July 30, 2007, but not a FINRA member.[8]

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,[9] in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is being filed for immediate effectiveness pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(3)[11] promulgated thereunder. The proposed rule change goes solely to the administration of the self-regulatory organization in that it is not a substantive change to NYSE Rule 2 and simply extends a pre-existing grace period.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56654 (Oct. 12, 2007), 72 FR 59129 (Oct. 18, 2007) (SR–NYSE–2007–67).

[4] *See* Securities Exchange Act Release No. 56653 (Oct. 12, 2007), 72 FR 59127 (Oct. 18, 2007) (SR–NASD–2007–56.

[5] *See* Securities Exchange Act Release No. 56953 (Dec. 12, 2007), 72 FR 71990 (Dec. 19, 2007) (SR–NYSE–2007–115).

[6] *See* Securities Exchange Act Release No. 58096 (July 3, 2008), 73 FR 39764 (July 10, 2008) (SR–NYSE–2008–54).

[7] *See* Securities Exchange Act Release No. 59143 (Dec. 22, 2008), 73 FR 80491 (Dec. 31, 2008) (SR–NYSE–2008–135).

[8] The proposed September 1, 2009 date conforms to the grace period available under NYSE Rule 300.10T for eligible NYSE Amex US LLC (''NYSE Amex'') member organizations that are seeking to be waived in as an NYSE member organization pursuant to NYSE Rule 2.10. Pursuant to Rule 300.10T, such NYSE Amex member organizations have six months from March 2, 2009, which is the date that the 86 Trinity Permits expired, to comply with Exchange rules, including the Rule 2(b) requirement pertaining to FINRA membership.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(3).

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–2009–36 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–2009–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–36 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7662 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59656; File No. SR–NYSEALTR–2009–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Alternext US LLC, as Modified by Amendment No. 1, Changing Certain NYSE Amex Equities Rules To Conform Them With Changes to Corresponding Rules Submitted in a Companion Filing by the New York Stock Exchange LLC

March 30, 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 9, 2009, NYSE Alternext US LLC (n/k/a NYSE Amex LLC) (''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, formerly the American Stock Exchange LLC and NYSE Alternext US LLC,[4] proposes changes to certain NYSE Amex Equities Rules, retroactively effective to December 15, 2008, to conform them with changes to corresponding rules submitted in a companion filing by the New York Stock Exchange LLC (''NYSE'').[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to change certain NYSE Amex Equities Rules to conform them with amendments to corresponding NYSE Rules submitted in a companion filing by the NYSE.

Background

As described more fully in a rule filing,[6] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Amex US LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.[7] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[8]

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to SR–NYSEALTR–2009–26 replaces the original filing in its entirety.

[4] On March 3, 2009, the Exchange formally submitted a filing with the Commission changing its name to NYSE Amex LLC. *See* SR–NYSEALTR–2009–24.

[5] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[6] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger).

[7] 15 U.S.C. 78f.

[8] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008)

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.[9] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Proposed Conforming Amendments to NYSE Amex Equities Rules

As noted above, the Exchange proposes to change certain NYSE Amex Equities Rules to conform them with changes to corresponding NYSE Rules submitted in a companion filing by the NYSE.[10] The NYSE is filing the proposed rule changes, retroactively effective to December 15, 2008, to harmonize its Rules with changes to corresponding rules recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission or submitted for immediate effectiveness.[11] Unless specifically noted, and subject to such technical changes as are necessary to apply the Rules to the Exchange, NYSE Amex is proposing to adopt the NYSE's proposed rule changes in the form that they have been approved for filing by the Commission. The NYSE's proposed rule changes and the Exchange's proposed conforming rule changes are described below.[12]

The Exchange further proposes that these rule changes be retroactively effective to December 15, 2008, the same as the effective date of the NYSE's proposed rule changes and FINRA's rule changes on which this filing and the NYSE's filing are based.

FINRA Rule Filing SR–FINRA–2008–027 [13]

In this filing, FINRA adopted NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA Rules 3220 and 2070, respectively. FINRA Rule 3220 prohibits members or associated persons from giving gifts or gratuities in excess of $100 per year to an agent or employee of another person where it relates to the business of the employer of the recipient. FINRA Rule 2070 addresses conflicts of interest involving FINRA employees.

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 407(a) and 407.10 (Transactions—Employees of Members, Member Organizations and the Exchange) and 350 (Compensation or Gratuities to Employees of Others), and Rule Interpretations 350/01 (Application) and /02 (Conflicts of Interest).[14] FINRA also deleted FINRA Incorporated NYSE Rule Interpretation 350/03 (Entertainment), which deals with business entertainment expenses, since it is addressed in a separate rule filing.[15]

Accordingly, to harmonize the NYSE Rules with the approved FINRA rule changes, the NYSE proposes to (i) delete NYSE Rule 350 and Rule Interpretations 350/01–/03, and (ii) adopt proposed NYSE Rules 2070 and 3220, which are nearly identical to FINRA Rules 2070 and 3220, to replace the deleted NYSE Rules. The NYSE believes that proposed NYSE Rules 2070 and 3220, together with other existing and/or proposed NYSE Rules, address the specific provisions of NYSE Rule 350 and the related Rule Interpretations.[16]

Specifically, NYSE Rule 350(a) addresses the giving of gifts or gratuities by members, member organizations and their employees to other members, member organizations, their employees or the employees of non-members engaged in certain businesses. NYSE Rules 350(a) and (b) address the employment or compensation of others by members, member organizations and their employees, including Floor-based employees of other members or member organizations. Under NYSE Rule 350(b), payment in excess of $200 for employment or compensation of a Floor employee of another member or member organization requires the employee to become registered with such member or member organization.

The NYSE believes that proposed new NYSE Rule 3220 replaces NYSE Rule 350(a) because it addresses the giving of gifts or gratuities to, and the employment or compensation for services of, the employees of others, both members and non-members. Proposed NYSE Rule 3220(a) harmonizes with FINRA Rule 3220(a) because it prohibits the giving of gifts or gratuities in excess of $100 per year to ''any person, principal, proprietor, employee, agent or representative of another person'' where that gift is related to the business of the recipient's employer.[17]

Proposed NYSE Rule 3220(b) replaces NYSE Rule 350(b) because it addresses situations requiring dual employment and prior written consent when

(SR–Amex–2008–63) (approving the Equities Relocation).

[9] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Amex Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62–NYSE Amex Equities to track changes to corresponding NYSE Rule 62).

[10] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[11] *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057). *See also* FINRA *Regulatory Notice* 08–57, October 16, 2008. FINRA filed the rule changes as part of its effort to develop a new consolidated rulebook for its members (the ''Consolidated FINRA Rulebook'').

[12] In its filing, the NYSE proposes to change certain NYSE Rule Interpretations. The Exchange has not adopted a corresponding version of the NYSE Rule Interpretations and so those proposed rule changes are not applicable to the Exchange and are not included in this filing.

[13] *See* Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008).

[14] FINRA also noted that certain provisions of FINRA Incorporated NYSE Rules 350 and 350.10 and Rule Interpretation 350/02 related to operations/Floor employees of the NYSE are not applicable to FINRA and could be deleted. *See* Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008). NYSE Amex believes that the substance of these provisions is adequately addressed in existing NYSE Amex Equities Rules and the proposed NYSE Amex Equities Rules 2070 and 3220.

[15] *See* Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (SR–NASD–2006–44), as subsequently amended, January 2, 2008. The NYSE has proposed the adoption of a new NYSE Rule 350A that is substantively duplicative of the rule proposed in SR–NASD–2006–044. *See* Securities Exchange Act Release No. 55766 (May 15, 2007), 72 FR 28534 (May 21, 2007) (SR–NYSE–2006–06). These filings have not been approved by the Commission as of the date of this filing. Upon approval, the Exchange will adopt a corresponding NYSE Amex Equities Rule. The Commission notes that NYSE Amex must file a proposed rule change under Section 19(b) of the Act to adopt such corresponding NYSE Amex Equities Rule.

[16] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[17] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

compensation provided to another employee exceeds a specified amount. NYSE Rule 350(b) requires dual employment for any payments over $200 to Floor employees whereas proposed NYSE Rule 3220(b) requires dual employment for any payment made to any employee for employment or services over the $100 limit prescribed by NYSE Rule 3220(a), including Floor employees of a member organization.[18]

Because under proposed NYSE Rule 3220(a) any employee, including Floor employees, receiving more than $100 for services from another member organization must be dually employed with that member organization, the requirement under NYSE Rule 350(b) that a Floor employee receiving more than $200 in compensation be dually registered is no longer necessary. Under NYSE Rules 35 and 35.50, which require that all member and member organization Floor employees must be registered with the NYSE on Form U–4, any Floor employee that is dually employed must be registered with each member organization for whom he or she works. Accordingly, because the new dual employment requirement under proposed NYSE Rule 3220(b) triggers the NYSE Rule 35 dual registration requirements, it is not necessary to specify dual registration in proposed NYSE Rule 3220. Upon adoption of NYSE Rule 3220 the NYSE and the Exchange intend to issue guidance to their members and member organizations reminding them that any person who is dually employed by two or more members or member organizations must be registered with each such member or member organization pursuant to NSYE and NYSE Amex Equities Rule 35.[19]

NYSE Rules 350(a) and 350.10 also specifically address, inter alia, the giving of gifts or gratuities to, or the employment or compensation of, employees of the NYSE by members, member organizations and their employees. In particular, NYSE Rule 350.10 specifies, inter alia, the procedures for seeking NYSE's consent for the employment or compensation of NYSE employees and describes the types of dual-employment arrangements generally acceptable to the NYSE and those that are not acceptable.

The NYSE believes that proposed NYSE Rules 3220 and 2070 specifically address the provisions of NYSE Rule 350(a) and 350.10 dealing expressly with NYSE employees. To begin with, proposed NYSE Rule 3220 concerns the giving of gifts or gratuities to, or the employment or compensation of, any employee of another, which would include employees of the NYSE. In addition, proposed NYSE Rule 2070(c) specifically provides that, notwithstanding the more general prescriptions of NYSE Rule 3220(a), members and member organizations are prohibited from giving anything of value to an NYSE employee responsible for any regulatory matter involving such member or member organization. The NYSE did not include the standards or procedures for dual-employment arrangements for its employees contained in NYSE Rule 350.10 into the proposed NYSE Rules 2070 and 3220 because those rules bind only NYSE members and member organizations and not its employees. The NYSE does believe, however, that proposed NYSE Rules 2070 and 3220 governing member conduct, together with the NYSE's internal policies and procedures governing the acceptance of gifts and gratuities and dual employment arrangements by its employees, provide sufficient protection against any improper relationships between its employees and its members.[20]

In its filing, the NYSE also noted that NYSE Rule Interpretations 350/01–/03 are addressed by proposed NYSE Rules 2010, 2020 and 3220, as well as existing NYSE Rules 476(a)(1) and (a)(5).[21] The NYSE also noted that, upon adoption of new NYSE Rule 3220, it would issue an Information Memorandum to its members and member organizations, including dual FINRA and NYSE members and members organizations as well as NYSE-only members and member organizations, informing them of their obligations under the new Rule incorporating the FINRA interpretations under its Rule 3220 concerning business entertainment expenses. The Exchange would issue joint guidance to its members and member organizations, including both dual FINRA and NYSE Amex members and member organizations as well as NYSE Amex-only members and member organizations, concurrently with the NYSE.[22]

As proposed, new NYSE Rules 2070 and 3220 are virtually identical to FINRA Rules 2070 and 3220, previously approved by the Commission. With respect to proposed NYSE Rule 2070, the NYSE proposes minor changes to the approved FINRA version of that Rule to conform it to the Exchange, including changing the title of the Rule to ''Transactions Involving Exchange Employees,'' adding the term ''member organization,'' and adding language that requires member organizations to provide statements to the NYSE, rather than FINRA, for accounts held by NYSE employees. In addition, the NYSE proposes to add language to NYSE 2070(c) to include listing applications and delisting proceedings, and to remove the reference to dispute-resolution proceedings.[23] With respect to proposed NYSE Rule 3220, to conform that Rule to NYSE definitions, the NYSE proposes adding the term ''member organization.'' [24]

Finally, although FINRA has deleted language from FINRA Incorporated NYSE Rule 407, because the NYSE uses its corresponding NYSE Rule to, *inter alia*, monitor accounts held by NYSE employees, the NYSE will retain NYSE Rule 407 without change.[25]

[18] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[19] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[20] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. The Exchange, which is the NYSE's corporate affiliate, has the same policies and procedures governing the acceptance of gifts and gratuities and dual employment arrangements by its employees.

[21] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. In its filing, the NYSE proposes to replace current NYSE Rule 401(a), concerning good business practices, with proposed NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, approved by the Commission. The Exchange proposes, infra, the adoption of NYSE Amex Equities Rules 2010 and 2020 in the form proposed by the NYSE, subject to such changes as are necessary to apply them to the Exchange.

[22] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. Specifically, FINRA's interpretative guidance concerning business entertainment expenses includes a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretative letter and other interpretive guidance concerning business entertainment expenses are currently available at FINRA's Web site at *http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm*.

[23] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. Unlike FINRA, both the NYSE and the Exchange still review listing applications and conduct delisting proceedings and believe it is appropriate to include these matters in proposed NYSE and NYSE Amex Equities Rule 2070(c). In addition, since neither the NYSE nor the Exchange no longer engages in dispute-resolution proceedings (i.e. arbitrations), they do not need such a designation in either proposed NYSE or NYSE Amex Equities Rule 2070.

[24] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[25] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. Even though FINRA amended FINRA Incorporated NYSE Rule 407 when it adopted FINRA Rule 2070, those two rules are not inconsistent. NYSE Rule 407(a) provides, *inter alia*, that a member or member organization must obtain prior written consent before opening an account or executing a trade for an NYSE employee. FINRA Rule 2070(a) and proposed NYSE Rule 2070(a) simply require that, once a member or member organization has actual notice of an account held by a FINRA or NYSE employee, it must provide duplicate account statements to the NYSE. In addition, NYSE Rule 407.10 prescribes procedures for how NYSE employees may open accounts that are not addressed by FINRA Rule 2070 or proposed

The Exchange proposes to correspondingly delete Rule 350–NYSE Amex Equities and adopt Rules 2070– and 3220–NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply them to the Exchange. Similarly, the Exchange will retain Rule 407–NYSE Amex Equities without change to monitor accounts held by Exchange employees.

FINRA Rule Filing SR–FINRA–2008–028 [26]

Here, FINRA adopted, *inter alia*, NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) as FINRA Rules 2010 and 2020, respectively. FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. This Rule is used to protect market participants from dishonest and unfair practices even where those practices do not violate a specific law, rule or regulation. FINRA Rule 2020 is a general antifraud provision that is used to address a range of conduct, including market manipulation, excessive trading, insider trading and fraudulent misrepresentation. In a separate filing, FINRA also adopted FINRA Rule 6140 (Other Trading Practices), which replaces NASD Rule 5120 and governs a number of prohibited trading practices, including manipulation and disseminating false and misleading information about a security.[27]

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 401(a) (Business Conduct) and 435(1), (3) and (4) (Miscellaneous Prohibitions) and Rule Interpretation 401/01 (Trading Against Firm Recommendations).[28] In addition, FINRA deleted NYSE Rule Interpretation 401/02 (Private Sales), which requires members to monitor personnel that market securities through private offerings, for being substantively duplicative of NYSE Rules 407(b) and 407.11.[29] FINRA also deleted FINRA Incorporated NYSE Rule 435 provisions (6) and (7) as being obsolete and/or substantively duplicative of Federal Reserve Board Regulation T.

Accordingly, to harmonize NYSE Rules with the approved FINRA Rules, the NYSE similarly proposes to delete (i) NYSE Rule 401(a) and Rule Interpretations 401/01 and/02, (ii) NYSE Rule 476(a)(6),[30] and (iii) NYSE Rules 435(1), (3), (4), (6) and (7). To replace NYSE Rules 401(a) and 476(a)(6) and Rule Interpretation 401/01, the NYSE proposes to adopt NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, except for adding the term ''member organization.'' To replace NYSE Rules 435(1), (3), and (4), the NYSE proposes to adopt NYSE Rule 6140, which is substantially identical to FINRA Rule 6140, except for adding the term ''member organization.'' For the same reasons proposed by FINRA, the NYSE proposes deleting NYSE Rule Interpretation 401/02 as being substantively duplicative of NYSE Rules 407(b) and 407.11, and deleting NYSE Rules 435(6) and (7) as being obsolete and/or substantively duplicative of Reserve Board Regulation T.[31]

The Exchange proposes to correspondingly delete Rules 401(a)– and 435(1), (3), (4), (6) and (7)–NYSE Amex Equities and Non-NYSE Amex Equities Rule 476(a)(6).[32] The Exchange further proposes to adopt Rules 2010–, 2020– and 6140–NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply them to the Exchange.

FINRA Rule Filing SR–FINRA–2008–029 [33]

In this filing, FINRA deleted, *inter alia*, FINRA Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs—Disclosure and Monitoring), 440F (Public Short Sale Transactions Effected on the Exchange), 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) and 477 (Retention of Jurisdiction—Failure to Cooperate) as being duplicative of other NASD, FINRA or SEC rules or regulations or as being specific to the NYSE marketplace.

For the same reasons set forth in the approved FINRA filing, the NYSE proposes to delete NYSE Rule 405A. As FINRA noted, the prescriptions of Rule 405A are addressed under the Investment Advisers Act of 1940 and also, to the extent fee-based programs continue to exist in brokerage accounts, in NASD Notice to Members 03–68, which applies NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) to such accounts.[34] The NYSE is proposing to adopt NYSE Rule 2010, which is substantially the same as FINRA 2010, and so, to the extent fee-based programs continue to exist in brokerage accounts they would be addressed under the proposed Rule.[35]

With respect to NYSE Rules 440F and 440G, as FINRA noted these Rules are NYSE specific—they require member organizations to file with the NYSE certain information about short sale and proprietary transactions executed at the

NYSE Rule 2070. Thus, the NYSE can retain NYSE Rule 407 in its original form as well as adopt NYSE Rule 2070 without any regulatory conflict for its members and member organizations. Similarly, the Exchange will retain Rule 407–NYSE Amex Equities.

[26] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026,–028, –029).

[27] FINRA Rule 6140 was adopted in SR–FINRA–2008–021. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[28] In addition to being covered more generally by FINRA Rules 2010 and 2020, provisions (1), (3) and (4) of FINRA Incorporated NYSE Rule 435 are also substantially the same as FINRA Rule 6140. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[29] FINRA has stated that these particular NASD and NYSE Rules are proposed for inclusion in the so-called ''supervision rules'' that are to be adopted at some later date as part of the Consolidated FINRA Rulebook. *See* FINRA *Regulatory Notice* 08–24.

[30] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. Although it is not addressed by FINRA in its filing because it is not a FINRA Incorporated NYSE Rule subject to FINRA's regulatory responsibility under the Agreement, NYSE Rule 476(a)(6) prescribes that NYSE members and member organizations and their employees may not engage in conduct ''inconsistent with just and equitable principles of trade[.]'' The NYSE thus includes this provision for deletion since ''just and equitable principles of trade'' are addressed in proposed NYSE Rule 2010. The Exchange correspondingly proposes to delete Non-NYSE Amex Equities Rule 476(a)(6).

[31] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[32] For a definition of ''Non-NYSE Amex Equities Rules,'' *see* legacy Amex Rule 0 and Rule 0—NYSE Amex Equities.

[33] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[34] NASD Rule 2110 was adopted by FINRA as FINRA Rule 2010 in SR–FINRA–2008–028. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[35] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended. Neither NYSE nor the Exchange is adopting NASD Notice 03–68 as it is not a formally adopted rule. It is important to note that all of the Exchange's members and member organizations that have public customers are also members of, and have their member firm conduct regulated by, FINRA. Thus, to the extent FINRA Rule 2010 and new Rule 2010—NYSE Amex Equities apply to conduct involving non-managed fee-based account programs, which concerns member firm conduct, such application will be administered by FINRA. Upon adoption of new Rule 2010—NYSE Amex Equities, the Exchange intends to issue guidance to its members and member organizations informing them of their obligations for such programs under the new Rule and FINRA rules.

NYSE. These Rules date to a time when trading at the NYSE was not as automated as it is today. Today, the NYSE is able to track short sale and proprietary trades through its ''OCS'' and ''PTP'' systems and run surveillances based on that information. Because the NYSE can derive that information from its trading systems, the NYSE no longer needs member organizations to file separately that information. The NYSE therefore believes that these Rules can be deleted in their entirety.[36]

Finally, although FINRA has deleted FINRA Incorporated NYSE Rule 477, because the NYSE uses that Rule for disciplinary purposes specific to the organization, the NYSE will retain NYSE Rule 477 without change. Because FINRA has deleted FINRA Incorporated NYSE Rule 477, NYSE Rule 477 will lose its status as a Common Rule and FINRA will no longer retain any regulatory responsibility for this Rule.[37]

The Exchange proposes to correspondingly delete Rules 405A–, 440F– and 440G– NYSE Amex Equities. Similarly, the Exchange will retain Non-NYSE Amex Equities Rule 477 without change for disciplinary purposes specific to NYSE Amex.

FINRA Rule Filing SR–FINRA–2008–030 [38]

In this filing, FINRA adopted NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM–3013 (Annual Compliance and Supervision Certification) as FINRA Rule 3130. FINRA Rule 3130 requires each member firm to designate one or more principals to serve as Chief Compliance Officer and also requires that the Chief Executive Officer certify annually that the firm has established and maintained procedures and processes reasonably designed to ensure compliance with all applicable FINRA Rules and federal laws and regulations.

Because they are substantively duplicative of the FINRA Rule, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 342.30(d) and (e) (Annual Report and Certification) and Rule Interpretations 311(b)(5)/04 (Formation and Approval of Member Organizations—Officers—Other Dual or Multi-Designations) and/05 (Co-Designation of Principle Executive Officers) and 342.30(d)/01 (Annual Reports and Certification—Designation of Chief Compliance Officer) and (e)/01 (Annual Certification).

To harmonize NYSE Rules with the approved FINRA Rules, the NYSE proposes to (i) delete NYSE Rules 342.30(d) and (e) and Rule Interpretations 311(b)(5)/04 and/05 and 342.30(d)/01 and (e)/01, and (ii) replace them with proposed NYSE Rule 3130, which is substantially similar to FINRA Rule 3130. As proposed, NYSE Rule 3130 adopts the same language as FINRA Rule 3130, except for changing the term ''member'' to ''member organization''. Therefore, as proposed, NYSE Rule 3130 would require NYSE member organizations to complete their annual certifications at the same time they complete their certifications for FINRA.[39]

The Exchange proposes to correspondingly delete Rules 342.30(d) and (e)—NYSE Amex Equities and adopt Rule 3130—NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR–FINRA–2008–033 [40]

Here, FINRA adopted NASD Rule 3360 (Short-Interest Reporting) and FINRA Incorporated NYSE Rules 421(1) (Periodic Reports) and 421.10 (Short Positions) as new FINRA Rule 4560 and deleted these provisions from the Common Rules. FINRA Rule 4560 adopted rule text to consolidate the NASD and NYSE short-interest reporting requirements, including requiring members to follow certain reporting requirements for short positions in over-the-counter (''OTC'') and exchange-listed securities for all customer and proprietary accounts.

Accordingly, the NYSE proposes to (i) delete NYSE Rules 421(1) and 421.10, and (ii) adopt proposed NYSE Rule 4560 to replace the deleted NYSE Rules. Proposed NYSE Rule 4560 is substantially identical to FINRA Rule 4560. To conform NYSE Rule 4560 to the NYSE, the NYSE proposes to remove the references to ''OTC Equity Securities'' in the rule, including provision (b)(3), and change the term ''member'' to ''member organization.'' Because FINRA processes short-interest reporting on behalf of multiple exchanges, including the NYSE, proposed NYSE Rule 4560 will retain the requirement that member organizations report to FINRA.[41]

The Exchange proposes to correspondingly delete Rules 421(1) and 421.10—NYSE Amex Equities and adopt Rule 4560—NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR–FINRA–2008–039 [42]

In this filing, FINRA adopted, *inter alia*, provisions of NASD Rules 2710(b)(10) and (11) (Corporate Financing Rule—Underwriting Terms and Arrangements) and FINRA Incorporated NYSE Rule 392(a) (Notification Requirements for Offerings of Listed Securities) as consolidated FINRA Rule 5190. FINRA Rule 5190 contains the Regulation M-related notice requirements for members participating in securities offerings. FINRA also deleted FINRA Incorporated NYSE Rule 392(b) as specific to the NYSE marketplace.

The NYSE continues to have regulatory responsibility with respect to Regulation M and relies on reports filed by member organizations pursuant to NYSE Rule 392 to conduct certain surveillances. Accordingly, the NYSE continues to need an NYSE-specific rule requiring firms to report this information to the NYSE. However, in an effort to harmonize the reporting obligations across the NYSE and FINRA as much as possible, the NYSE proposes to delete NYSE Rule 392 and adopt proposed NYSE Rule 5190.

Proposed NYSE Rule 5190 is substantially identical to FINRA Rule 5190, except for replacing the term ''member'' with the term ''member organization'', changing the references to ''OTC Equity Securities'' and ''securities'' in the Rule to ''listed securities'' in order to apply the Rule to the NYSE, and adding language to paragraphs (b) and (e) of the Rule concerning stabilizing bids in order to ensure that the requirements of NYSE Rule 392(b) are fully imported into new NYSE Rule 5190. The substantive reporting requirements of NYSE Rule 392 are essentially being reorganized and renumbered into new NYSE Rule 5190 to help eliminate confusion and regulatory duplication for its member organizations. Member organizations

[36] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[37] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[38] *See* Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030).

[39] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[40] *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033).

[41] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[42] *See* Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039).

will therefore continue to file these reports with the NYSE.[43]

The Exchange proposes to correspondingly delete Rule 392—NYSE Amex Equities and adopt Rule 5190—NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR–FINRA–2008–057[44]

In accordance with FINRA 2008–057, the NYSE incorporated changes to proposed NYSE Rule 5190. As noted above, the Exchange proposes to adopt corresponding Rule 5190– NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[45] in general, and further the objectives of Section 6(b)(5) of the Act,[46] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)[47] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes are necessary and appropriate to conform the NYSE Amex Equities Rules with changes made to the corresponding NYSE Rules on which they are based. The Exchange also believes that the proposed rule changes will provide greater harmonization among NYSE Rules, NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. To the extent the Exchange has proposed changes that differ from the NYSE version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules. The Exchange therefore believes that the proposed rule changes support the objectives of the Act by providing greater regulatory clarity and relieving unnecessary regulatory burdens.

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 such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEALTR–2009–26 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–NYSEALTR–2009–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEALTR–2009–26 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7590 Filed 4–3–09; 8:45 am]

BILLING CODE 8011–01–P

[43] *See* SR–NYSE–2009–25 (formally submitted on March 9, 2009), as amended.

[44] *See* Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057).

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] 15 U.S.C. 78k–1(a)(1).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59650; File No. SR–NYSEArca–2009–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Adopt a Policy With Respect to the Treatment of Aberrant Trades

March 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

thereunder,[3] notice is hereby given that, on March 18, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes to adopt, with retroactive effect to January 1, 2008, a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market.

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

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security. NYSE Arca seeks to address such instances of ''aberrant'' trades by adopting a policy that is substantially similar to a policy of the New York Stock Exchange (the ''NYSE Policy'').[4] On February 9, 2009, NYSE Arca also filed a proposed rule change, which it designated as eligible for immediate effectiveness pursuant to Rule 19b–4(f)(6)[5] under the ExchangeAct,[6] to adopt a policy relating to NYSE Arca's treatment of trade reports that it determines to be inconsistent with the prevailing market.[7] The policy proposed in this instant rule change is identical to the policy set forth in SR–NYSEArca–2009–09, except that the instant proposal is retroactive to January 1, 2008. This retroactive application is identical to the retroactivity provision in the NYSE Policy.

The Consolidated Tape Association (''CTA'') offers each Participant in the CTA Plan the discretion to append an indicator (an ''Aberrant Report Indicator'') to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

During the course of surveillance by the Exchange or as a result of notification by another market, listed company or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange proposes to adopt as policies that it:

- May determine to append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- Shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

NYSE Arca believes that retroactive application of its aberrant trade policy is warranted because of the significant market volatility and trade reporting issues that all market centers experienced during 2008. Therefore, NYSE Arca believes that it should be permitted to act retroactively to append the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security commencing as of January 1, 2008.

The Exchange will urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will also contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock and will remind the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange shall endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In addition, the Exchange proposes that its policy shall be to consult with the listing exchange (if the Exchange is not the listing exchange) and with other

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59064 (December 5, 2008), 73 FR 76082 (December 15, 2008) (SR–NYSE–2008–91).

[5] 17 CFR 240.19b–4(f)(6)

[6] 15 U.S.C. 78a *et seq.*

[7] *See* Securities Exchange Act Release No. 59453 (February 25, 2009), 74 FR 9463 (March 4, 2009) (SR–NYSEArca–2009–09).

markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that Exchange policy shall be to follow the following general guidelines: The Exchange will determine whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (i.e., 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the ''Reference Price'' by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold
Between $0 and $15.00	Seven Percent.
Between $15.01 and $50.00	Five Percent.
In excess of $50.00	Three Percent.

The ''Reference Price'' refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

NYSE Arca advises that it proposes to use the Aberrant Report Indicator in accordance with the guidelines set forth above and that it may apply the Aberrant Trade Report on a retroactive basis commencing January 1, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[9] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) Urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) informing the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock; and (iii) reminding the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–24 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2009–24. 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 official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSEArca–2009–24 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7584 Filed 4–3–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59651; File No. SR–NYSEArca–2009–22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Grail American Beacon Large Cap Value ETF

March 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 13, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): The Grail American Beacon Large Cap Value ETF. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyx.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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[3] (''Shares'') under NYSE Arca Equities Rule 8.600: The Grail American Beacon Large Cap Value ETF (''Fund'').[4] The Shares will be offered by Grail Advisors ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] Grail Advisors, LLC (the ''Manager''), a majority owned subsidiary of Grail Partners, LLC, acts as the Fund's investment manager. The Fund is subadvised by American Beacon Advisors, Inc. (''ABA''). The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the Fund. ALPS Distributors, Inc. (the ''Distributor'') serves as the distributor for the Fund.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3[6] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[7] In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .07 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Grail Advisors, LLC is affiliated with a broker-dealer, Grail Securities, LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.[8]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively managed funds of the WisdomTree Trust).

[5] The Trust is registered under the 1940 Act. On January 14, 2009, the Trust filed with the Commission pre-effective amendment 1 to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–148082 and 811–22154) (''Registration Statement''). The description of the operation of the Trust herein is based on the Registration Statement.

[6] 17 CFR 240.10A–3.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the investment adviser is subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, ''fire wall'' procedures as well as procedures designed to prevent the misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[8] The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Fund, and its related personnel, are subject to Investment

ABA, the Fund's primary sub-adviser, is not affiliated with a broker-dealer. Any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.[9]

Description of the Fund

According to the Registration Statement, the Fund's investment objective is long-term capital appreciation and current income. Ordinarily, at least 80% of the Fund's net assets (plus the amount of any borrowings for investment purposes) are primarily invested in equity securities of large market capitalization U.S. companies. These companies generally have market capitalizations similar to the market capitalizations of the companies in the Russell 1000 ® Index at the time of investment. The Russell 1000 Index measures the performance of the 1,000 largest U.S. companies based on total market capitalization. The Fund's investments may include common stocks, preferred stocks, securities convertible into U.S. common stocks, U.S. dollar-denominated American Depositary Receipts, and U.S. dollar-denominated foreign stocks traded on U.S. exchanges. The Fund will not purchase or sell securities in markets outside the U.S.

According to the Registration Statement, the Fund's investment sub-advisers will select stocks that, in their opinion, have most or all of the following characteristics (relative to the Russell 1000 ® Index): Above-average earnings growth potential; below-average price to earnings ratio; below-average price to book value ratio; and above-average dividend yields.

The Fund's investment sub-advisers will determine the earnings growth prospects of companies based upon a combination of internal and external research using fundamental analysis and considering changing economic trends. The decision to sell a stock is typically based on the belief that the company is no longer considered undervalued or shows deteriorating fundamentals, or that better investment opportunities exist in other stocks.

The Fund's assets are allocated among one or more investment sub-advisers by the Manager and/or ABA. With respect to any assets allocated to it, each investment sub-adviser has discretion to purchase and sell securities in accordance with the Fund's objectives, policies, restrictions, and more specific policies provided by the Manager and ABA.

According to the Registration Statement, in addition to the investment strategies described in the prospectus for the Fund, the Fund may invest up to 20% of its total assets in debt securities that are investment grade at the time of purchase, including obligations of the U.S. Government, its agencies and instrumentalities, corporate debt securities, mortgage-backed securities, asset-backed securities, master-demand notes, Yankee dollar and Eurodollar bank certificates of deposit, time deposits, bankers' acceptances, commercial paper and other notes, inflation-indexed securities, and other debt securities. Additionally, the Fund may use options and futures for various purposes, including for hedging and investment purposes. The Fund may also purchase or otherwise receive warrants or rights, or convertible and non-convertible preferred and preference stocks. Further the Fund may also invest in over-the-counter options. To the extent consistent with applicable law, the Fund may invest in futures contracts on, among other things, financial instruments (such as a U.S. government security or other fixed income security), individual equity securities (''single stock futures''), securities indices, interest rates, currencies, inflation indices, and commodities or commodities indices. The Fund's purchase and sale of index futures is limited to contracts and exchanges approved by the U.S. Commodity Futures Trading Commission. The Fund may also engage in transactions involving the use of interest rate futures; use options on futures contracts, interest rate caps, floors, and collars; and directly or indirectly use various different types of swaps, such as swaps on securities and securities indices, interest rate swaps, currency swaps, credit default swaps, commodity swaps, inflation swaps, and other types of available swap agreements. Further, the Fund may enter into repurchase agreements with banks and broker-dealers. The Fund may temporarily invest a portion of its assets in cash or cash items pending other investments or to maintain liquid assets required in connection with some of the Fund's investments. The Fund may also invest in pooled real estate investment vehicles. Furthermore, the Fund may invest up to 15% of its net assets in illiquid securities. For this purpose, ''illiquid securities'' are securities that a Fund may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities. Finally, the Fund may invest in the securities of other investment companies to the extent permitted by law.[10]

Under adverse market conditions, the Fund may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents, including investment grade short-term obligations. Investment grade obligations include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations rating that security (such as Standard & Poor's Ratings Services or Moody's Investors Service, Inc.) or rated in one of the four highest rating categories by one rating organization if

Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (''CCO'') or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. Telephone conversation between Michael Cavalier, Chief Counsel, NYSE Euronext, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated March 26, 2009.

[9] Telephone conversation between Michael Cavalier, Chief Counsel, NYSE Euronext, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated March 26, 2009.

[10] Telephone conversation between Michael Cavalier, Chief Counsel, NYSE Euronext, and Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated March 27, 2009. *See also* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated March 26, 2009 (confirming that all of the types of investments and financial instruments referenced in the foregoing paragraph would be included in the 20% portion of the Fund's net assets).

it is the only organization rating that security.

Creations and redemptions of Shares occur in large specified blocks of Shares referred to as ''Creation Units''. The Creation Unit size for the Fund is 50,000 Shares.

Availability of Information.

The Fund's Web site (*http://www.grailadvisors.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[11] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in proposed Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[12] The Registration Statement provides that ''the Fund's portfolio holdings are publicly disseminated each day the Fund is open for business through their Internet Web site. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, is publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation (''NSCC''). The basket represents one Creation Unit of the Fund.'' The Web site information will be publicly available at no charge.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[13] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG.[14] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with

[11] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[12] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T + 1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[13] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[14] For a list of the current members of ISG, see *http://www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG.

trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [15] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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.

[15] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

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–2009–22 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–2009–22. 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 NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–22 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7585 Filed 4–3–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59654; File No. SR–BX–2009–008]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Allowing Entry of Orders Into the PIP at a Price Matching the National Best Bid or Offer

March 30, 2009.

I. Introduction

On February 9, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow Exchange Options Participants to enter orders into the Price Improvement Period (''PIP'') at a price that matches

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the national best bid or offer (''NBBO''). The proposed rule change was published for comment in the **Federal Register** on February 23, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange's PIP currently allows Options Participants to enter two-sided orders for execution at a price that improves upon the NBBO.[4] The customer side of the order (''PIP Order'') is submitted to the PIP with a matching guaranteed contra order (the ''Primary Improvement Order''), equal to the full size of the PIP Order. Under the current rules of the Boston Options Exchange Group, LLC (''BOX''), the Primary Improvement Order must represent a higher bid (lower offer) than that of the NBBO at the time of the commencement of the PIP. The PIP Order is then exposed to all Options Participants to give them an opportunity to participate in the trade at the proposed cross price or better.

The Exchange proposes to modify its rules to permit an Options Participant to enter a Primary Improvement Order into the PIP at a price that is equal to the NBBO at the time of the commencement of the PIP. In addition, the Exchange proposes that, at the commencement of the PIP, all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than [5] the Primary Improvement Order price (*i.e.*, the PIP start price), except any proprietary quote or order from the Options Participant who submitted the Primary Improvement Order,[6] will be immediately executed against the PIP Order in price/time priority.[7] At the conclusion of the PIP, the PIP Order will be matched against the best prevailing quote(s) or order(s) on BOX in accordance with the current PIP rule, except the Exchange proposes that any pre-PIP Broadcast proprietary quote or order from the Options Participant who submitted the Primary Improvement Order will not be executed against the PIP Order.[8]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.[10]

The Commission believes that the proposed rule change will continue to provide customers with an opportunity for price improvement over the NBBO.[11] The Commission notes that once a Primary Improvement Order is submitted into the PIP auction, the Primary Improvement Order may not be cancelled.[12] Therefore, the PIP Order submitted to the PIP auction will be guaranteed an execution price of at least the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO. Further, BOX's current rules provide for broad participation in a PIP auction,[13] which should provide the opportunity for a meaningful, competitive auction. Moreover, the Commission believes that the proposal may encourage increased participation in the PIP by BOX members willing to trade with the PIP Order at the NBBO but not better than the NBBO. Increased participation would decrease the proportion of a PIP Order that would be internalized by the submitting Options Participant.

The Commission also notes that the proposal will maintain the priority of pre-existing orders on the BOX Book by providing that all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than the Primary Improvement Order price will be immediately executed against the PIP Order in price/time priority (except any proprietary quote or order from the Options Participant that submitted the Primary Improvement Order). Further, the Commission notes that by precluding these proprietary orders and quotes from immediately executing against the PIP Order, the proposal is consistent with BOX rules that provide that an Options Participant may not execute as principal an order it represents as agent unless the agency order is given an opportunity to first interact with other trading interest.[14]

Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–BX–2009–008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7588 Filed 4–3–09; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 59407 (February 13, 2009), 74 FR 8132.

[4] *See* BOX Rules Chapter V, Section 18(e).

[5] BOX has clarified that there are two types of quotes/orders that could have a price better than the PIP start price: (1) An Auto Auction Order (''AAO''); and (2) an order that is in the process of being filtered by the BOX Trading Host pursuant to BOX Rules Chapter V, Section 16. Electronic mail from Wayne Pestone, Chief Legal Officer, Boston Options Exchange, dated March 30, 2009.

[6] These proprietary quotes or orders will continue to be available for execution with all other types of quotes and orders as currently permissible under BOX Rules.

[7] *See* proposed BOX Rules Chapter V, Section 18(e)(i). Orders on the BOX Book will include AAO Limit Orders on the BOX Book. The AAO will immediately execute against the PIP Order at the AAO Limit Order Price (*i.e.* the displayed price at the minimum trading increment).

[8] *See* proposed BOX Rules Chapter V, Section 18(e)(iii).

[9] 15 U.S.C. 78f(b)(5).

[10] 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).

[11] The Commission notes that it also recently approved an ISE proposed rule change that permits ISE members to enter an order into the PIM at a price that is equal to the NBBO when the ISE's best bid or offer is inferior to the NBBO. *See* Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (SR–ISE–2008–29).

[12] *See* BOX Rules Chapter V, Section 18(e)(ii).

[13] *See* BOX Rules, Chapter V, Section 18(e)(i). Specifically, BOX's PIP permits market-makers to submit competing orders for their own account and all non-market-maker members (referred to as ''Order Flow Providers'') to submit competing orders for their own account or for the account of public customers or non-market-maker broker-dealers.

[14] *See* BOX Rules, Chapter V, Section 17.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59663; File No. SR–NASDAQ–2009–018]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions and Restructuring of the NASDAQ Listing Rules

March 31, 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 12, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq included in its proposed rule change Exhibit 5A, which is the text of the proposed rule change; Exhibit 5B, which is a copy of the current 4000 Series rules as they currently exist which are being proposed for amendment in Exhibit 5A; and Exhibit 5C, which is a table that shows the location of the old rules to where they now reside in the new rule text.[3] 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

Nasdaq proposes a rule change to reorganize the rules relating to the qualification, listing, and delisting of companies listed, or applying to list on Nasdaq (''Companies''). Nasdaq is proposing to house these rules, which are currently found in the 4000 Series of the Marketplace Rules, into a clearer and more intuitive structure under a new 5000 Series. In addition, Nasdaq has taken this opportunity to eliminate redundancies and clarify the language used for the rule text. The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room. The new rules shall become operative on April 13, 2009.

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. The text of these statements may be examined at the places specified in Item IV below, and is 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

Nasdaq proposes to reorganize the rules applicable to the qualification, listing, and delisting of Companies on Nasdaq (the ''Listing Rules''), which are found in the Rule 4000 Series of the Nasdaq manual (the ''4000 Series''), in an effort to make the rules more transparent and clear.[4] As these rules have evolved over the last thirty years, they have become very complex and can be difficult to navigate, especially for those who are unfamiliar with their structure. Nasdaq believes that there are opportunities to reduce redundancies and greatly improve the overall organization of the Listing Rules. As such, Nasdaq proposes to remove the listing rules from the 4000 Series and restate them in a simpler, more transparent and reader-friendly format in the proposed Rule 5000 Series (the ''5000 Series''), which is presently unused.

Nasdaq represents that it is not making any substantive changes to the Listing Rules in this proposal. Rather, as described in greater detail below, Nasdaq proposes to: (1) Reorganize and recast much of the old 4000 Series into a more logical structure; (2) apply plain English principles where needed; (3) add descriptive titles and introductory language; (4) define terms for consistency; (5) delete obsolete or incongruent rules; and (6) add or amend rule text where appropriate to remove ambiguity, to clarify existing practices, and to resolve ongoing questions from the public. To assist with understanding the changes made to the Listing Rules, Nasdaq created a table that maps the location of every existing Listing Rule in the 4000 Series to its place in the proposed new 5000 Series. The table provides both the old rule number and rule text, together with the revised rule text and new rule citation to the rule's location in the proposed 5000 Series. In addition, the table provides a brief description of the changes made to the old rule. Nasdaq also notes in the table rules that have been left in the 4000 Series,[5] rules that have been deleted altogether, and any newly-created rules added to the proposed 5000 Series (such as a new defined term). Nasdaq believes that, when the table is read in conjunction with this filing, readers will have a clear understanding of the changes made to the 4000 Series.

Organization

The current 4000 Series contains the initial and continued listing standards for all three Nasdaq market tiers: The Nasdaq Global Select Market, The Nasdaq Global Market, and The Nasdaq Capital Market. In addition to listing standards, the 4000 Series also contains rules relating to trading of, and market making in, Nasdaq securities, as found in the 4100, 4600 and 4700 Series. The rules relating to the listing of securities are found in the 4200, 4300, 4400, 4500, and 4800 Series. Specifically, the 4200 Series sets forth general definitions; the 4300 Series sets forth qualitative listing standards for all Nasdaq market tiers, as well as initial and continued listing requirements for the Capital Market; the 4400 Series contains the initial listing requirements for the Global Select Market and Global Market, and the continued listing requirements for the Global Market, including requirements for listing other securities, such as Index Warrants and SEEDS; the 4500 Series contains all the fees required to be paid for listing on Nasdaq; and finally, the 4800 Series contains the requirements and procedures regarding Nasdaq's appellate process for a Company denied initial or continued listing.

Each of Nasdaq's three market tiers has its own specific listing standards that are progressively more stringent than the tier below. Today, the listing rules are all derived from the rules applicable to the Capital Market, so readers must have a working knowledge of the Capital Market rules to understand the listing requirements of the other tiers. The need to reference back to the Capital Market rules when reading the Global Market or Global Select Market rules is often confusing, and is made particularly difficult given that the rules applicable to the Capital Market and the other tiers are located far from each other in the current rules.

Nasdaq proposes to organize the new Listing Rules by placing all quantitative tier-specific initial and continued listing standards within individual rule sections. Thus, the requirements for the Nasdaq Global Select Market will be contained in the proposed 5300 Series, the requirements for the Nasdaq Global Market will be contained in the proposed 5400 Series, and the requirements for the Nasdaq Capital Market will be contained in the proposed 5500 Series. Nasdaq is also proposing to create a new 5000 Series that contains general definitions applicable to Companies, a new 5100 Series that contains a description of Nasdaq's discretionary authority, and a new 5200 Series that contains qualitative requirements relating to all Companies seeking to list or already listed on Nasdaq. Nasdaq is proposing to create a new 5600 Series that contains a stand-alone rule set dedicated to the

[3] Exhibits 5A, 5B, and 5C are available on the Commission's Web site (*http://www.sec.gov/*).

[4] The Listing Rules are divided into different sections within the 4000 Series, with each section numbered as a 100th of 4000 (*e.g.*, 4100 ''General'', 4200 ''Definitions,'' etc.). Nasdaq also refers to these sections as Series when making reference to all rules that fall under the section. For example, Rule 4310 would be said to reside in the 4300 Series. Nasdaq uses the same convention for referring to sections of the proposed 5000 Series.

[5] Nasdaq determined to leave certain rules that do not relate to the listing of Company securities in the 4000 Series.

corporate governance requirements for all Nasdaq-listed Companies. Last, Nasdaq is proposing a new 5700 Series that contains the requirements for listing other securities, a new 5800 Series that contains the requirements and processes relating to a Company that fails to meet a listing standard, and a new 5900 Series that contains the fees required to be paid for listing on Nasdaq.

Within the proposed 5300, 5400 and 5500 Series, which, as noted, are each dedicated to a particular market, Nasdaq has organized all applicable quantitative initial and continued listing standards. Each of these three Series uses a numbering convention whereby the rules applicable to initial listing range from 01 to 49 and the continued listing rule numbers range from 50 to 99. For example, all initial listing rules applicable to the Nasdaq Global Market are housed in Rules 5405 through 5415, while the Global Market continued listing rules are housed in Rules 5450 through 5460. Nasdaq believes that both new readers and those familiar with the current rule structure will find the information they seek much more quickly under the new rule structure.

Nasdaq has also divided the quantitative listing standards in the old rules into two subcategories in the new rules: listing requirements and listing standards. Under the new rules, listing requirements are quantitative metrics, all of which a company must meet for initial or continued listing on a particular tier. Listing standards consist of bundles of quantitative metrics; however, unlike listing requirements, a company must meet at least one listing standard to become listed or to continue listing. For example, the three Entry Standards found in current Rule 4420(a)–(c) contain certain repetitive quantitative requirements relating to bid price, publicly held shares, and round lot shareholders. Nasdaq took these common quantitative metrics and placed them in new Rule 5405(a) as initial listing requirements. For each bundle of quantitative requirements that remained under each old entry standard, Nasdaq created individual listing standards. It should be noted that, under old Entry Standard 3 found in Rule 4420(c), Nasdaq was able to create two new listing standards in the proposed new 5000 Series, Rules 5405(b)(3) and (4).[6] Under the old rule, Entry Standard 3 contained an alternative quantitative listing requirement of either a market value of listed securities of $75 million or total assets and total revenue of $75 million each.[7] Nasdaq believes that the two metrics are better understood as separate, stand-alone listing standards. The remaining Entry Standard 3 quantitative metrics are either captured under the new listing requirements or duplicated in each of the newly-created listing standards. Like all changes proposed by Nasdaq in this filing, this new structure is not a substantive change and in no way changes the application of the listing standards under the existing rules.

As noted, Nasdaq has created a stand-alone section in the proposed 5000 Series for rules that apply to all tiers of securities,[8] which includes an overview of the application process,[9] prerequisites for applying to list,[10] and other obligations and requirements for listing.[11] In addition, Nasdaq has created a stand-alone section for listing standards applicable to ''other securities,'' which includes listing requirements for Exchange Traded Funds, Index-Linked Securities, Selected Equity-linked Debt Securities, Trust Issued Receipts, and Index Warrants, as well as generic standards.[12] Nasdaq's corporate governance standards are also contained in a single, stand-alone section.[13]

Also included in the proposed 5000 Series are the rules relating to fees currently found in the 4500 Series. Nasdaq proposes moving the 4500 Series to the new 5900 Series with only minor non-substantive changes that do not affect the fees charged by Nasdaq. Nasdaq proposes, however, moving Rule 4550, which relates to written interpretations of Nasdaq rules, to the proposed 5600 Series. Nasdaq believes that it is more appropriate to move Rule 4550 to the proposed 5600 Series, which relates to corporate governance requirements, since the vast majority of interpretations are requested for corporate governance rules. Nasdaq has, however, provided a cross-reference to proposed new Rule 5600, which houses Rule 4550, in the introductory paragraph to the proposed 5900 Series.

Nasdaq has sought to clarify the process that applies to companies that fail to meet Nasdaq's listing standards, which is currently found in the 4800 Series. Although the 4800 Series rules are roughly organized chronologically, progressing from the initial identification of a deficiency through the Nasdaq hearings and appeals processes, Nasdaq believes that the individual sections could be reorganized into a more intuitive structure. With respect to the initial identification of deficiencies, Nasdaq has attempted to make clear both what steps Nasdaq will take with respect to particular deficiencies, and what obligations and options deficient companies may have. Nasdaq has also reorganized the rule text relating to the hearings and appellate processes, so that in each section the reader will find all information related to the process for each level of review.

Nasdaq also identified instances of unnecessary duplication of rule text found in individual Series of the current rules as well. For example, Rules 4310 and 4320 set forth certain listing requirements applicable to domestic, Canadian, non-Canadian foreign securities, and American Depository Receipts. Rule 4310 sets forth the listing requirements for domestic and Canadian securities, whereas Rule 4320 sets forth the listing requirements for non-Canadian foreign securities and American Depository Receipts. Although stand alone rules, there is much duplication of rule text between the two rules. Accordingly, Nasdaq is proposing to combine these rules and any other such duplicative rule text, where possible, throughout the proposed 5000 Series. In combining these two rules, Nasdaq has retained the domestic and Canadian continued listing market maker requirement that allows one market maker entering a stabilizing bid to count toward the total number of market makers required by the rules. Nasdaq notes that the proposed new Capital Market continued listing rules makes it permissive for non-Canadian foreign securities to count a market maker entering a stabilizing bid toward the required number of market makers, which was not explicitly stated in the old rules.

Nasdaq determined to leave certain rules that do not relate to the listing of Company securities in the 4000 Series. For example, Rules 4100 through 4120 relate to the trading of listed Company securities on the market. Nasdaq believes these rules are more appropriately left in a stand-alone section, apart from the proposed 5000 Series, which addresses the listing and

[6] The new listing standards are titled ''Market Value Standard'' and ''Total Assets/Total Revenue Standard.''

[7] Rule 4420(c)(6) requires that ''The issuer has: (A) A market value of listed securities of $75 million (currently traded issuers must meet this requirement and the bid price requirement under Rule 4420(c)(3) for 90 consecutive trading days prior to applying for listing); or (B) total assets and total revenue of $75 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.''

[8] 5200 Series.

[9] Rule 5205.

[10] Rule 5210.

[11] Rules 5215–5290.

[12] 5700 Series.

[13] 5600 Series.

delisting of Company securities. Likewise, Nasdaq determined to leave certain definitions found in the 4200 Series that do not relate to listed Companies. Nasdaq also determined to leave Rule 4370 in the 4000 Series. Rule 4370 concerns additional requirements for the listing of Nasdaq or Nasdaq affiliate securities on Nasdaq. Because the rule is specific to Nasdaq and does not apply to Companies generally, Nasdaq determined it would be confusing and add little value if placed in the proposed 5000 Series.

Plain English

Nasdaq's primary goal in reworking the Listing Rules was to make them more clear and transparent. As noted above, the 4000 Series evolved over many years and were drafted by multiple individuals. As a consequence, the 4000 Series was not written with a consistent voice. Nasdaq has taken this opportunity to, where needed, make plain English changes to the 4000 Series and re-write certain rule text with a consistent voice to clarify provisions that have historically caused confusion, while ensuring not to change the meaning of the reworked rules. In some cases, this meant eliminating redundant language throughout the proposed rule text. In other instances, Nasdaq replaced inconsistently used terms with a single term used throughout the new rules.

Descriptive Titles and Introductory Language

Nasdaq renamed many existing rules, using more descriptive titles that provide a better cue as to what follows. Nasdaq has also added descriptive introductory language to many sections of the proposed new 5000 Series, which Nasdaq believes provides readers with a logical roadmap to what follows in each section. For example, Nasdaq has added a new introduction to the Listing Rules titled ''5000 Series: The Qualification, Listing, and Delisting of Companies'' under which is provided a description of what readers will find under each section of the proposed 5000 Series. Likewise, Nasdaq added descriptive introductory language to the beginning of the proposed 5000, 5400, 5600, and 5700 Series, and added to the proposed 5500 and 5800 Series rewritten introductory language taken from the 4300 and 4800 Series, respectively.

Defined Terms

Nasdaq has created, modified, or deleted several definitions in the process of incorporating the 4000 Series into the proposed new 5000 Series. In certain cases, such as the new definition of ''Bid Price,'' Nasdaq sought to add certainty to a term that had been used in the Listing Rules, but not defined historically. Nasdaq's new definition clarifies that the term ''Bid Price'' is the closing bid price, which Nasdaq has always used as the metric for determining bid price. A common and recurring inquiry by investors and companies alike, Nasdaq believes that the clarifying language will help to answer a common question. In other cases, Nasdaq modified a term or its definition to make it more accurate or precise. As another example, under the old rules the Adjudicatory Body responsible for reviewing decisions of the Listing Qualifications Department was named the Listing Qualifications Panel, notwithstanding that it was in no way associated with the Listing Qualifications Department. When read together with Rule 4815, which generally prohibits *ex parte* communications between the Listing Qualifications Department and the Listing Qualifications Panel, Nasdaq thought it appropriate to rename the Listing Qualifications Panel the Hearings Panel so that there is no confusion surrounding the independence of the adjudicator.

Nasdaq is proposing to create a new defined term, ''Company,'' as found in new Rule 5000(a)(6). Both the terms ''company'' and ''issuer'' are used synonymously throughout the current 4000 Series, however, neither term is defined. In the proposed new definition, Nasdaq is defining a Company as the issuer of a security listed or applying to list on Nasdaq. Nasdaq is also making it clear that, for purposes of the 5000 Series, the term Company includes an issuer that is not incorporated, such as a limited partnership. Nasdaq notes that the inclusion of issuers that are not incorporated is consistent with Nasdaq's current rules, as such issuers are able to list on Nasdaq pursuant to specific listing rules.

In a similar regard, Nasdaq is proposing to define a new term, ''Shareholder.'' In the current 4000 Series, there is no single defined term that represents the owner of a security that is listed or that is in the listing application process. Nasdaq is proposing in new Rule 5000(a)(37) to define Shareholder as a record or beneficial owner of a security listed or applying to list. Nasdaq is including in the definition of Shareholder limited partners and owners of depository receipts or units. The inclusive definition of Shareholder does not change in the proposed 5000 Series how the rules applicable to such owners are applied currently under the 4000 Series.

Nasdaq has created new terms ''Publicly Held Shares'' and ''Public Holders'' in proposed Rules 5000(a)(33) and (a)(34).[14] The new definition of Publicly Held Shares is derived from Rules 4310(c)(7)(C) and 4420(e). Rule 4310(c)(7)(C) is a Capital Market rule, which states that shares held directly or indirectly by any officer or director of the Company and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding are not considered to be publicly held. Rule 4420(e) is a Global Market rule that provides, among other things, that the method for calculating beneficial ownership when determining publicly held shares shall be made in accordance with Rule 13d–3 under the Act.[15] Nasdaq has historically used the methodology found in Rule 13d–3 under the Act[16] when determining beneficial ownership for purposes of calculating publicly held shares, regardless of market. By also excluding shares that are indirectly held by officers and directors, the proposed rules would also provide transparency to Nasdaq's view that immediate family members of an Executive Officer, director, or 10 percent holder are also not Public Holders, and the shares they hold are not Publicly Held Shares, to the extent those shares are considered beneficially owned by the Executive Officer, director or 10 percent holder pursuant to Rule 16a–1(a)(2) under the Act.[17]

Nasdaq has also created a new definition of ''filed with Nasdaq'' in proposed Rule 5000(a)(15). The new definition is derived from Rules 4310(c)(14) and 4320(e)(12), which provide that Companies do not have to submit paper copies of filings to Nasdaq if these filings have been filed with the Commission via the EDGAR System. Nasdaq uses the term throughout the 4000 Series and proposed 5000 Series. Nasdaq believes the addition of the new definition will help inform readers of how to satisfy the requirement in the various contexts that it is used in the rules.

[14] The Commission notes that the proposed rule text for new Rule 5000(a)(33) in Exhibit 5A is correct. However, in Exhibit 5C, on page 569, the column in the table setting forth the new rule text does not have the correct definition for ''Publicly Held Shares.'' Specifically, the definition for Publicly Held Shares should read ''* * * means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d–3 under the Act.''

[15] 17 CFR 240.13d–3.

[16] *Id.*

[17] 17 CFR 240.16a–1(a)(2).

Nasdaq is proposing to define a new term, ''Other Regulatory Authority'' in Rule 5000(a)(31). The new term includes regulators other than the Commission with which certain Companies must file documentation. In particular, certain Companies are regulated by a bank or savings authority identified in Section 12(i) under the Act,[18] and others may be subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to Section 12(b) under the Act.[19] Nasdaq is proposing to add the new defined term to certain sections of 5000 Series concerning filing obligations to make clear that filing requirements are applicable to Companies that are required to file with the Commission or with an Other Regulatory Authority.[20]

Nasdaq is proposing to define the term ''Public Reprimand Letter'' in new Rule 5805(j), which means a letter issued by Staff or an Adjudicatory Body in cases where the Company has violated a Nasdaq corporate governance or notification listing standard (other than one required by Rule 10A–3 of the Act[21]) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. Although not a defined term under the 4000 Series, the term ''public reprimand letter'' occurs throughout the Listing Rules and was generally described by Rule 4801(k)(2), which provides one of two alternate definitions of the term ''Staff Determination,'' and also under Rule 4811(e)(3), which describes an Adjudicatory Body's authority to issue Decisions that are public reprimand letters. In the proposed definition in new Rule 5805(j), Nasdaq combines the concept in the old rules that a public reprimand letter may be issued by the Staff or an Adjudicatory Body into the definition of the new defined term.

Deleted Rules

Nasdaq has found that certain Listing Rules have historically caused confusion. In the majority of cases, such rules required minor clarifying changes or the application of plain English principles. In other cases, however, the confusion was due to a rule that ran contrary to other Listing Rules. For example, Nasdaq proposes deleting the first sentence to Rule 4802(b), which stated, ''An issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series at any time during the pendency of a proceeding under the Rule 4800 Series.'' Pursuant to Rule 4804, Nasdaq informs a Company of its determination to limit or prohibit the initial or continued listing of a Company's securities by way of a staff determination letter. Pursuant to Rule 4805, a company may request a hearing within seven calendar days. Once a Company makes a timely appeal, any responses to additional staff deficiency letters must be made within the seven-calendar day timeframe. Nasdaq receives questions surrounding the conflicting meanings of these rules frequently. Nasdaq chose to eliminate the first sentence to Rule 4802(b), because, although a Company may submit a written request for an exception at any time in the hearings process, only a timely submission made pursuant to Rule 4805 is considered. As such, the sentence had little meaning when read together with the other rules.

In the current 4000 Series, Nasdaq's limited partnership rules incorporated the text from FINRA Rule 2810. As a consequence, much of the language provided in Nasdaq's limited partnership rules mirror those of the FINRA rule, and required Nasdaq to define several terms used by FINRA. In the proposed new Rule 5210(h), Nasdaq has adopted the approach taken by the American Stock Exchange with respect to limited partnership rules and mirrored Amex Rule 126, which incorporates by reference FINRA Rule 2810. Accordingly, it was not necessary to include in the proposed new 5000 Series certain defined terms, which were provided in the old Listing Rules, due to the inclusion of the FINRA Rule 2810 text. In addition, by referencing FINRA Rule 2810, Nasdaq was able to delete a substantial amount of text from Rule 4430 that mirrored the FINRA rule. This resulted in a much more streamlined presentation of the limited partnerships rules.

Nasdaq identified two rules that, by design, have limited periods of applicability and whose periods have since expired. First, when Nasdaq created the Global Select Market, it adopted a series of new rules applicable exclusively to the new market segment. One such rule, IM 4425 described the initial process that Nasdaq used to determine which Companies would be assigned to the new market segment in conjunction with its launch. As such, the rule has no relevance to Companies going forward and accordingly Nasdaq has deleted it from the proposed new 5000 Series.

Similarly, in conjunction with Nasdaq's registration as a national securities exchange Nasdaq adopted Rule 4305, which described the process for transitioning securities to the new Nasdaq exchange from the Nasdaq market. In particular, the rule made clear that securities listed on the old market's Global Market or Capital Market will be listed on the respective Global Market or Capital Market of the new Nasdaq exchange. The rule also clarified that all notices and deficiencies existing at the time of the transfer to the Nasdaq exchange would continue to be recognized as proper notices and deficiencies. Nasdaq notes that Rule 4305 is no longer relevant to Companies given that any notices or deficiencies received by Companies while listed on the old Nasdaq market have since been resolved, either by such Companies regaining compliance with listing standards or by exhausting any available appellate remedy. Accordingly, Rule 4305 no longer serves a purpose and has not been included in the proposed new 5000 Series.

Added or Amended Rule Text

Nasdaq also proposes to amend rule text to clarify the current application of existing rules. For example, Rule 4310(c) provides a list of criteria that a Company or its security must meet in order to list on Nasdaq. Rule 4310(c)(11) requires, among other things, that Companies shall not currently be suspended from trading by the Commission pursuant to Section 12(k) under the Act.[22] Companies must also be current in filing required reports when listing on Nasdaq, and remain current while listed on Nasdaq pursuant to Rules 4310(c)(14) and 4320(e)(12). Nasdaq has combined these requirements in proposed new Rule 5210(e), which also clarifies that suspensions by appropriate regulatory authorities of a Company's country of domicile are covered by the rule.

Rules 4310(c)(14) and 4320(e)(12) require Companies applying to list on Nasdaq to provide three copies of all reports and other documents filed or required to be filed with the Commission. Companies that file using the Commission's EDGAR System are exempted from this requirement. Rule 4310(c)(14) further requires Companies

[18] 15 U.S.C. 78l(i).

[19] 15 U.S.C. 78l(b).

[20] The Commission notes that the proposed rule text for new Rule 5205(b) in Exhibit 5A is correct. However in Exhibit 5C, on page 398, the column in the table setting forth the new rule text does not use the new defined term Other Regulatory Authority, and should read ''A Company's compliance with the initial listing criteria will be determined on the basis of the Company's most recent information filed with the Commission or Other Regulatory Authority and information provided to Nasdaq. The Company shall certify, at or before the time of listing, that all applicable listing criteria have been satisfied.''

[21] 17 CFR 240.10A–3.

[22] 15 U.S.C. 78l(k).

that are not required to file reports with the Commission to provide three copies of reports required to be filed with its appropriate regulatory authority to Nasdaq in connection with its application to list its securities. Nasdaq proposes to require only one copy of required reports for these Companies in proposed Rule 5205(d). Nasdaq believes that, for the few Companies that must provide copies of reports to Nasdaq, a single copy is sufficient for Nasdaq's purposes.

Nasdaq proposes combining Rule 4310(c)(15) with Rule 4330, which describes a Company's obligation to provide information to Nasdaq, into new Rule 5250(a). Rule 4310(c)(15) requires Companies to provide full and prompt responses to requests by Nasdaq for information related to unusual market activity or to events that may have a material impact on trading of its securities in Nasdaq. Rule 4330 sets forth Nasdaq's general authority to request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued listing. In new Rule 5250(a) Nasdaq clarifies that the responsibility to respond promptly to requests for information applies to requests both from Nasdaq, and from FINRA, acting on behalf of Nasdaq. FINRA provides certain regulatory services to Nasdaq and must have access to information to adequately perform such services.

Rule 4310(c)(16) requires Companies to promptly disclose to the public any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. Pursuant to the rule, if the information involves certain events set forth in IM–4120–1, Companies must provide prior notice of the disclosure to Nasdaq's MarketWatch Department. Nasdaq is moving Rule 4310(c)(16) to proposed new Rule 5250(b)(1) with only minor changes. Nasdaq has, however, added clarifying language regarding the method by which notices to the MarketWatch Department should be made. As described in IM–4120–1, and proposed new IM–5250–1, prior notice of a required disclosure should be made through Nasdaq's Web-based electronic disclosure system.

Rule 4310(c)(23)(A), which applies to all Nasdaq tiers, was modified in the new rules to make clear that all securities listed on both the Capital Market and Nasdaq Global Market must have a Committee on Uniform Securities Identification Procedures number (a ''CUSIP number'') or foreign equivalent. Currently, Rule 4310(c)(23)(A) requires that domestic securities have a CUSIP number; however, the rule does not require Canadian securities to have a CUSIP. Rule 4320, which applies to non-Canadian Foreign securities and American Depository Receipts, also does not have a similar identification assignment requirement. A CUSIP number is a security-specific number that identifies stocks of all registered U.S. and Canadian companies, and U.S. government and municipal bonds. Historically, Nasdaq has not explicitly required Canadian securities listed on Nasdaq to follow the general requirement that Nasdaq-listed securities have a CUSIP number; however, as a practical matter, all Canadian securities listed on Nasdaq have a CUSIP number. Likewise, although Nasdaq has not historically required an equivalent to the CUSIP number for non-Canadian foreign securities, all such securities currently listed on Nasdaq have an identifier. The use of a CUSIP number or foreign equivalent facilitates efficient clearing and settlement processes. Nasdaq believes that all securities listed on Nasdaq should have such a number to facilitate a fair and orderly market, and to date, all listed Companies have such a number. As such, Nasdaq is explicitly requiring all Nasdaq-listed securities to have a CUSIP number or equivalent, as denoted in proposed new Rule 5210(g)(2).

Rule 4320(e)(1) sets forth the Capital Market non-Canadian foreign securities and American Depository Receipt initial and continued listing requirements regarding market makers. Nasdaq is moving a part of Rule 4320(e)(1), which discusses how such a deficiency is determined and the timeframe in which to regain compliance, to proposed new Rule 5810(c)(3)(B). Unlike Rule 4310(c)(8)(A), which is the Capital Market Domestic and Canadian Company continued listing requirement for Market Makers, Rule 4320(e)(1) is silent on how a Company can regain compliance with the non-Canadian foreign securities and American Depository Receipt continued listing Market Maker requirement. As a matter of practice, Nasdaq has applied the same test to non-Canadian foreign securities and American Depository Receipts as Domestic and Canadian issues. As such, proposed new Rule 5810(c)(3)(B) applies both to Domestic and Canadian Companies, as well as non-Canadian foreign securities and American Depository Receipts, and includes a description of how compliance can be achieved based on Rule 4310(c)(8)(A).

Nasdaq is proposing to divide Rules 4310(c)(14) and 4320(e)(12), which set forth the requirement that Companies provide Nasdaq with three copies of all reports and other documents filed or required to be filed with the Commission, into two new rules. Proposed Rule 5205(d) applies to Companies seeking initial listing, and in which Nasdaq has proposed reducing the number of paper copies of required reports and documents that must provided to Nasdaq by Companies that do not file through EDGAR System from three to one. Proposed Rule 5250(c)(1) applies to the continued listing of securities and allows Companies that do not file through the Commission's EDGAR System to comply with the rule by providing Nasdaq two copies of required reports and documents, which can be provided by e-mail. Nasdaq has also added a requirement to both of the proposed new rules not found in Rule 4320(e)(12) that requires annual reports to contain audited financial statements. Rule 4310(c)(14) requires that Domestic and Canadian Companies have audited financial statements in their annual reports; however, there is not an analogous requirement for securities listed pursuant Rule 4320, notwithstanding that Companies listing non-Canadian foreign securities or American Depository Receipts must have audited financial statements in their annual reports pursuant to Rule 4350(b)(1)(A). Accordingly, Nasdaq is adding clarifying language to make it clear that the audited financial statement requirement applies equally to all Companies.

Rules 4310(c)(22) and 4420(h)(3) set forth the specific disclosure requirements for Companies applying to list units on the Capital Market and Global Market, respectively. Nasdaq proposes moving Rules 4310(c)(22) and 4420(h)(3) to new Rules 5225(b) and 5225(a), respectively. Although, no changes are made to the rule text in the new proposed rules, Nasdaq is making clear that when determining eligibility for listing units, all components of the unit must meet Nasdaq initial listing standards, including Rule 4310(a)(1), as found in proposed Rule 5210(a)(1), which require securities to be registered pursuant to Section 12(b) under the Act.[23]

Nasdaq has combined Rules 4340(b) and 4450(f), which concern Nasdaq's process with respect to Companies in bankruptcy or the liquidation process. Under Rule 4300, Nasdaq has broad

[23] 15 U.S.C. 78l(b).

discretionary authority over the initial and continued listing of securities on all Nasdaq market tiers, including using such authority when a Company files for protection under any provision of the Federal bankruptcy laws or comparable foreign laws. Rule 4340(b) details Nasdaq's discretionary authority to delist a Company should it file for bankruptcy protection and describes further a Company's obligations should Nasdaq not exercise its discretion to delist. Rule 4450(f) is a Global Market rule that restates Nasdaq's authority to delist a Company should it file for bankruptcy stated in Rule 4340(b), but also provides that Nasdaq may delist a Company's securities if it has announced that liquidation has been authorized by its board of directors and that it is committed to proceed. Although it has been a long-standing practice of Nasdaq to exercise its discretionary authority to delist a Company from any market tier should such a Company announce that liquidation has been authorized by its board, Rule 4340(b) was silent on how Nasdaq would proceed in cases involving Capital Market Companies. Accordingly, Nasdaq is combining Rule 4340(b) and 4450(f) into new Rule 5110(b) so that it is clear that any Nasdaq Company, regardless of tier, may be delisted should it announce that its board determined to liquidate the Company.

Rule 4350(i)(3) describes what shares are considered for calculations involving shareholder approval. Often confusing to Companies, Nasdaq has rewritten the rule in proposed new Rule 5635(e)(1) to clarify the application of the old rule by providing additional detail on the method used to calculate shares issued in a transaction, and the method to determine the number of shares outstanding. The new rule, however, does not change the application or calculation found in Rule 4350(i)(3).

Nasdaq proposes combining part of Rule 4410(a) and Rule 4330 into new Rule 5205(e). Rule 4410(a) is a Global Market rule that requires, in part, Companies to provide Nasdaq information relevant to an initial listing determination upon Nasdaq's request. Rule 4330 sets forth Nasdaq's general authority to request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued listing. Under the new combined Rule 5205(e), Nasdaq is applying the broader authority to request any information or documentation to make a an initial listing determination found in Rule 4330, which currently applies to all market tiers. As a result, the new Rule will be a more accurate reflection of the already existing authority to request information found under Rule 4330.

Nasdaq has made clarifying changes to Rule 4426(f), which explains what type of securities other than common stock may be included in the Global Select Market, as found under proposed new Rule 5320. Nasdaq has clarified the type of securities that may be listed on the Global Select Market by using the defined term Primary Equity Security to replace the term ''common stock'' and by noting the types of securities that are not eligible to be listed with a cross reference to the rule governing such securities' listing. The defined term Primary Equity Security includes common stock in addition to Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts or American Depositary Shares, all of which are eligible for listing on the Global Select Market under the current rules.

Nasdaq has expanded the scope of the 4800 Series, now found in the 5800 Series, to include details on deficiency processing. In the 4800 Series, for example, a description of the compliance periods available to a Company that failed to meet the bid price requirement was located in the 4310, 4320 and 4450 Series. In the new rules, Nasdaq proposes consolidating all these descriptions into the 5800 Series. As a consequence, Nasdaq has changed the introductory language to the 4800 Series that was previously contained in Rule 4802(a) and now found in the introduction to the 5800 Series to include more than procedures for the independent review of Nasdaq determinations. The new 5800 Series introduction describes all the procedures for Companies found to be deficient in Nasdaq listing requirements.

Nasdaq is proposing to add new clarifying language to Rule 4802(c), found in proposed new Rule 5840(b). The proposed new rule clarifies that information compiled under the rule will be made part of the record, which includes any written notice provided by the Adjudicator requesting information, responses to the notice, and the information considered. Although this authority is also stated in Rule 4811, which concerns the record on review in a proceeding and can be found under Rule 5840, Nasdaq believes that it is appropriate to make this authority clear under proposed Rule 5840(b) as well.

Nasdaq is proposing to make clarifying changes to Rule 4803, as found in new Rule 5810. Rule 4803(a) requires, among other things, staff of the Listing Qualifications Department to immediately notify a Company once the staff has determined that the Company does not meet a listing standard. This requirement is found in proposed new Rule 5810, which also provides additional clarifying information regarding the types of notifications sent by staff to Companies that fail to meet a listing standard. Nasdaq believes such clarifying information is helpful to Companies in understanding Nasdaq's deficiency notice process.

Nasdaq is proposing to make clarifying changes to Rule 4803(a)(3), which sets forth the process that Nasdaq Listing Qualifications Department staff will follow when it determines that a Company does not meet a listing standard that provides for a compliance period or certain standards that provide a cure period. The requirements of Rule 4803(a)(3) are found in proposed new Rule 5810(c)(3). Proposed Rule 5810(c)(3) also provides greater detail about the compliance periods and cure periods afforded under the rules implicated by Rule 4803(a)(3), since the relevant language formerly located in Rules 4310, 4320, 4350, 4360, and 4450 has been incorporated into proposed new Rule 5810(c)(3). Nasdaq believes that consolidating the applicable rules under the new rule provides a more useful format, and that providing more descriptive information will help the reader to better understand the deficiency process.

Nasdaq is proposing to make clarifying changes to Rule 4803(a)(4), which states that Nasdaq will issue a Staff Determination letter in all cases not noted in Rules 4803(a)(1)–(3). This requirement is found in proposed new Rule 5810(c), but because the new rule is structured as the introductory paragraph for various types of notices provided by staff, Nasdaq has added new descriptive information to Rule 5810(c) that explains that the type of deficiency identified by Listing Qualifications Department staff will determine whether the Company will receive immediately a delisting determination resulting in the suspension of the Company's securities unless appealed, or if the Company will be afforded the opportunity to provide staff with a compliance plan, or receive a cure period or compliance period prior to receiving a delisting determination.

Nasdaq proposes clarifying changes to Rule 4804(a), as found in proposed new Rules 5810(a)(1)–(3). The old rule was significantly expanded to provide greater detail on the types of letters

issued by Staff, and the effects of these letters. Rule 4804(a) only specifies what is contained in a Staff Delisting Determination. Proposed Rules 5810(a)(1)–(3) provide detail on what is contained in each type of deficiency letter. Similarly, Nasdaq has added clarifying language to Rules 4804(c)–(d), as found in proposed new Rule 5810(d). Rules 4804(c)–(d) discuss the written notices of additional deficiencies from Staff to Companies under the review of an Adjudicatory Body. New Rule 5810(d) provides more clarity on notifications of additional deficiencies that are identified by Staff for a Company under the review of an Adjudicatory Body.

Nasdaq Rule 4805 concerns requests for hearings before the Hearings Panel. Pursuant to the rule, a Company must request a hearing within seven calendar days of the Staff Determination. The rule, however, is unclear on the form that the request must be made (*i.e.*, oral or written). In contrast, Rule 4807 explicitly states that Companies requesting a review by the Nasdaq Listing and Hearing Review Council must do so in writing. Rule 4808 concerns the reconsideration of both Hearings Panel and Nasdaq Listing and Hearing Review Council decisions. Pursuant to Rule 4808(a), a Company may request the Hearings Panel reconsider a Hearings Panel Decision upon the basis that a mistake of material fact existed at the time of the Decision. A similar provision applicable to Nasdaq Listing and Hearing Review Council Decisions is found in Rule 4808(b). Rules 4808(a) and (b), however, are silent on the form that such requests must be made. Although it is common practice for Companies to submit requests pursuant to Rules 4805 and 4808(a) and (b) in writing, Nasdaq believes that such a practice should be codified in the proposed 5800 Series. Written requests not only provide documentation of such requests, they also become part of the written record on review. Accordingly, Nasdaq is taking this opportunity to harmonize the process for these rules by requiring all such request to be in writing, as provided by proposed new Rules 5815, 5820(a), 5815(d)(5), and 5820(e)(4).

Nasdaq also proposes combining, in part, Rules 4804(e) and 4805(a). Rule 4804 concerns written notices of staff determinations, and paragraph (e) states that a Company that fails to request a Panel hearing timely after receiving a Staff Determination, other than a Public Reprimand, will be subject to suspension and delisting. Rule 4805 concerns requests for Panel hearings, and paragraph (a), among other things, sets forth the process for requesting a Panel hearing timely, yet does not mention that failure to request a hearing timely will result in suspension and delisting as discussed in Rule 4804(e). Nasdaq is proposing to combine the two rules into new Rule 5815(a)(2), which will provide a central location for all consequences resulting from failing to request a Panel hearing timely, and will make clear that such a failure will result in the immediate suspension and delisting.

Nasdaq is proposing to make clarifying changes to Rule 4805(c), as found in new Rule 5815(a)(5). Rule 4805(c) describes the nature of the written submission that a Company may provide as part of the hearings process, which could state the specific grounds for the Company's contention that the Staff Determination was in error, or could request that the Hearings Panel grant the Company an exception to the listing standards, as permitted by Rule 4802. Proposed new Rule 5815(a)(5) provides a more detailed description of the submission that a Company may submit to the Hearings Panel when seeking an exception to the listing standards. In particular, the new rule provides that a Company's submission may be in the form of a written plan to regain compliance with Nasdaq listing standards together with a request that the Panel grant the Company an exception to the listing standards to regain compliance, as permitted by proposed new Rule 5815(c)(1)(A). Although not stated in the old rule, the ability to provide a plan of compliance and request an exception is implied by the fact that the Hearings Panel may grant exceptions to the listing standards. Nasdaq is also proposing to add further clarifying language that makes clear that the Hearings Panel will review the written record prior to the hearing, consistent with proposed new Rule 5840(a), which addresses the record on review and captures much of the current rule that addresses the record on review, Rule 4811.

Nasdaq is proposing clarifying changes to Rule 4806(a), which sets forth the Panel Hearing process. Rule 4806(a) provides, among other things, that a Company may make a presentation as it deems appropriate to the Hearings Panel. Rule 4806(a) does not make a distinction between an oral hearing and a written hearing. Much of Rule 4806(a) is conveyed in new Rule 5815(a)(6), which concerns presentations at Panel Hearings. In the proposed new rule, Nasdaq is making it clear that presentations by Companies are allowed only at oral hearings. The limitation to oral hearings is consistent with Nasdaq's long-standing practice.

Nasdaq is proposing to add clarifying language to Rule 4811(b), which concerns additional documents considered as part of the written record in a proceeding. Rule 4811(b) provides that if any additional information is considered as permitted by Rule 4802(c), that information and any written submission addressing the significance of that information, shall be made part of the record. Rule 4802(c) provides, among other things, that an Adjudicator may request additional information from the Company or Listing Qualifications Department, and may consider information from any source it deems relevant. Rule 4802(c)(2) provides that the Listing Qualifications Department and Company will be afforded written notice and an opportunity to address the significance of information from any source the Adjudicatory Body deems relevant to consider. Rule 4802(c)(2) does not, however, note that the information considered by Adjudicatory Body and any written submissions addressing the significance of such information by the Listing Qualifications Department or Company will be made part of the record. Nasdaq proposes combining Rules 4802(c)(2) and 4811(b) into new Rule 5840(b)(2), which will provide a single location for the rules applicable to information from sources other than the Listing Qualifications Department and Company considered by an Adjudicatory Body.

Nasdaq is proposing clarifying changes to Rule 4811(e), which sets forth the scope of what action an Adjudicatory Body Decision may direct if it is determined that a Company failed to satisfy the quantitative standards or qualitative considerations set forth in the 4000 Series. Currently, Rule 4811(e) applies equally to the Hearings Panel, Listing Council and the Board. Nasdaq is proposing to house rules generally applicable to the review by the Hearings Panel, Listing Council, and Board under proposed new Rule Series 5815, 5820, and 5825, respectively. Proposed Rules 5815(c)(1) and (2) address the scope of the Hearings Panel's discretion, and contains the requirements found in Rule 4811(e). Unlike Rule 4811(e), which describes only the action a Hearings Panel may take in issuing a decision if it concludes that a Company has failed to satisfy a qualitative or quantitative listing standard, proposed Rules 5815(c)(1) and (2) describe the possible action the Hearings Panel may take in issuing a decision and is not limited to a determination that a Company has

failed to meet a listing standard. As such, proposed Rules 5815(c)(1) and (2) provide significantly greater clarity on the options available to the Hearings Panel when issuing a decision by including the alternatives should a Company regain compliance with an applicable standard during the Hearings process. In that regard, the new rule includes in Rule 5815(c)(1)(E) the Panel's options when determining that a Company has evidenced compliance with all the applicable listing standards.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 under the Act,[24] in general and with Section 6(b)(5) under the Act,[25] in particular. Section 6(b)(5) [26] requires that Nasdaq's rule be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that reorganizing the Listing Rules into a new, more intuitive structure will help avoid investor confusion and foster better understanding of Nasdaq's listing requirements among both investors and companies alike. Nasdaq also believes that the use of plain English and descriptive language will help make the Listing Rules more accessible to the investing public. As such, Nasdaq believes the proposed rule change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On December 3, 2007, Nasdaq solicited comment from issuers on the impact of the revisions to the rules. Nasdaq received three responses to this solicitation, two from representatives of companies and one from a law firm. One of the commentators voiced support for the rule change. Two commentators suggested minor changes to enhance the readability and ease of use of the new rules. Specifically, one commentator suggested clarifying the meaning of a particular sentence, and the other suggested that Nasdaq use hyperlinks throughout the rule text to help readers navigate to rules or interpretive material referenced in the rule text. In response, Nasdaq has amended the sentence consistent with the comment. Nasdaq also plans on using hyperlinks within its on-line manual to simplify navigation.

The third commentator requested clarification on Nasdaq's changes so that he could more fully reply. This commentator did not provide a follow-on submission to Nasdaq.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after 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 [27] and Rule 19b–4(f)(6) thereunder.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–018 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–NASDAQ–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, 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 Nasdaq 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–NASDAQ–2009–018 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7630 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59661; File No. SR–NASDAQ–2009–026]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Suspension of the Continued Listing Requirements Related to Bid Price and Market Value of Publicly Held Shares for Listing on the Nasdaq Stock Market Through July 19, 2009

March 31, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 18, 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 designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[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

Nasdaq proposes to extend the temporary suspension of the application of the continued inclusion bid price and market value of publicly held shares requirements for listing on the Nasdaq Stock Market through July 19, 2009.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 16, 2008, Nasdaq filed a proposed rule change, which was immediately effective, to temporarily suspend the bid price[5] and market value of publicly held shares[6] continued listing requirements otherwise applicable to issuers of common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts, and their equivalents.[7] This suspension was designed to provide temporary relief to companies from the application of these requirements during a period in which the financial markets face almost unprecedented turmoil, resulting in a crisis in investor confidence and concerns about the proper functioning of the securities markets.[8] On December 18, 2008, Nasdaq filed a proposed rule change to extend this suspension until April 19, 2009.[9]

Market conditions have not improved since the suspension began and, in fact, both the number of securities trading below $1 and the number of securities trading between $1 and $2 on Nasdaq has increased since the initial suspension. Nasdaq continues to believe that there was no fundamental change in the underlying business model or prospects for many of these companies, and that a decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. These same conditions continue to make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests.[10]

Given these extraordinary market conditions, Nasdaq has determined that it is appropriate to continue the temporary suspension of the bid price and market value of publicly held shares requirements for an additional three months, until July 19, 2009. Under this proposal, companies would not be cited for new bid price or market value of publicly held shares deficiencies during the suspension period, and the time allowed to companies already in a compliance period or in the hearings process for bid price or market value of publicly held shares deficiencies would remain suspended with respect to those requirements.[11] Following the

[5] Nasdaq's continued listing requirements relating to bid price are set forth in Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). Nasdaq has proposed to reorganize and renumber these rules, effective April 13, 2009. *See* SR–NASDAQ–2009–018 (pending). Under these rules, a security is considered deficient if it fails to achieve at least a $1 closing bid price for a period of 30 consecutive business days. Once deficient, Capital Market issuers are provided one automatic 180-day period to regain compliance. Thereafter, these issuers can receive an additional 180-day compliance period if they comply with all Capital Market initial inclusion requirements except bid price. Global Market issuers are also provided one automatic 180-day period to regain compliance, after which they can transfer to the Capital Market, if they comply with all Capital Market initial inclusion requirements except bid price, to take advantage of the second 180-day compliance period. A company can regain compliance by achieving a $1 closing bid price for a minimum of ten consecutive business days.

[6] Nasdaq's continued listing requirements relating to market value of publicly held shares are set forth in Rules 4310(c)(7), 4320(e)(5), 4450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1). Nasdaq has proposed to reorganize and renumber these rules, effective April 13, 2009. *See* SR–NASDAQ–2009–018 (pending). Under these rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Thereafter, companies have a compliance period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of ten consecutive business days.

[7] Securities Exchange Act Release No. 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR–NASDAQ–2008–082). One comment was submitted on this proposal by Alan F. Eisenberg, Executive Vice President, the Biotechnology Industry Organization. This comment supported the suspension and ''any efforts by the Commission and NASDAQ to extend [the suspension], as necessary, beyond the termination date of January 16, 2009.''

[8] *See, e.g.*, Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (''The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.'')

[9] Securities Exchange Act Release No. 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009) (SR–NASDAQ–2008–099).

[10] In this regard, Nasdaq notes that the New York Stock Exchange recently filed, on an immediately effective basis, a proposed rule change to adopt a similar suspension for its $1 price requirement, lasting until June 30, 2009. Securities Exchange Act Release No. 59510 (March 4, 2009), 74 FR 10636 (March 11, 2009) (SR–NYSE–2009–21).

[11] Nasdaq would continue to identify on its Web site and in its daily data feed to vendors those companies in a compliance period or in the hearings process as not satisfying the continued listing standards, unless the company regains compliance during the suspension. A company

Continued

temporary suspension, any new deficiencies with the bid price or market value of publicly held shares requirements would be determined using data starting on July 20, 2009.[12] When the suspension expires, companies that were in a compliance period as of October 16, 2008, when the suspension first began, would receive the balance of any pending compliance periods in effect at the time of the initial suspension.[13] Similarly, companies that were in the Hearings process prior to October 16, 2008, would resume in that process at the same stage they were in when the suspension first went into effect. Nasdaq will continue to monitor securities to determine if they regain compliance during the temporary suspension.

Nasdaq believes that extending the temporary suspension will permit companies to continue focusing on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment. Moreover, this extension will allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term.[14] Nasdaq will continue to monitor market conditions and consider whether it is appropriate to further extend the suspension.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general and with 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of companies to remain listed on Nasdaq during this especially turbulent market environment, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

While written comments were not solicited about the proposed extension, there was one comment submitted by the Biotechnology Industry Organization on the original suspension of the bid price and market value of publicly held shares requirements, which supported the extension. That comment is described in footnote 6, above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, in that the proposed rule change: (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 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; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[17]

Nasdaq believes that the proposed extension of the temporary suspension does not significantly affect the protection of investors or the public interest as it is a temporary measure designed to respond to extraordinary market conditions. Nasdaq also believes that the proposed extension of the temporary suspension will help protect investors and the public interest by allowing the management of listed companies to focus more on the successful operation of their businesses than on responding to market conditions that are entirely unpredictable at the present time and often completely out of the control of the company's management. Further, Nasdaq has previously imposed a similar temporary suspension following the events of September 11, 2001, when there were also extraordinary market conditions.[18] As such, Nasdaq believes that it is appropriate to file this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A)[19] and Rule 19b–4(f)(6).[20]

At any time within 60 days of the filing of the proposed rule change, 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–2009–026 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.

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would continue to be subject to delisting for failure to comply with other listing requirements.

[12] Nasdaq would not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a company that was not yet non-compliant with those requirements at the start of the suspension.

[13] For example, if a company was 120 days into its first 180-day compliance period for a bid price deficiency when the suspension first started and the company does not regain compliance during the suspension, the company would have sixty days remaining, starting on July 20, 2009, to regain compliance. The company may be eligible for the second 180-day compliance period if it satisfies the conditions for the second compliance period at the conclusion of the first compliance period.

[14] As noted above, following the suspension, companies presently in the compliance process will remain at that same stage of the process.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] Securities Exchange Act Release No. 44857 (September 27, 2001), 66 FR 50485 (October 3, 2001) (SR–NASD–2001–61).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

All submissions should refer to File Number SR–NASDAQ–2009–026. 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 official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–026 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7631 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59655; File No. SR–NYSE–2009–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC, as Modified by Amendment No. 2, Changing Certain NYSE Rules and Rule Interpretations To Harmonize Them With Changes to Corresponding Rules Recently Filed by the Financial Industry Regulatory Authority, Inc.

March 30, 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 9, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 27, 2009, the Exchange filed Amendment No. 1 to the proposed rule change, which was withdrawn.[4] On March 30, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to certain NYSE Rules and Rule Interpretations, retroactively effective to December 15, 2008, to harmonize them with changes to corresponding rules recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission or submitted for immediate effectiveness.[6] FINRA filed the rule changes as part of its effort to develop a new consolidated rulebook for its members (the ''Consolidated FINRA Rulebook'').[7] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD'') and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA.[8] As discussed in more detail below, FINRA recently filed, and the Commission approved, changes to certain NASD and FINRA Incorporated NYSE Rules and adopted a number of Consolidated FINRA Rules to replace other NASD and FINRA Incorporated NYSE Rules. The effective date for the FINRA rule changes was December 15, 2008.

To reduce regulatory duplication, the Exchange proposes to harmonize NYSE Rules with the recently approved FINRA rule changes by deleting certain NYSE Rules and Rule Interpretations and replacing them with rules that are

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] On March 30, 2009, the Exchange withdrew Amendment No. 1.

[5] Amendment No. 2 to SR–NYSE–2009–25 replaces the original filing in its entirety. References to Amendment No. 1 in Amendment No. 2 should be read as Amendment No. 2. Telephone call between Nancy Burke-Sanow, Division of Trading and Markets, Commission, and Clare Saperstein, Managing Director, NYSE, March 30, 2009.

[6] *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR–FINRA–2008–027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030); and Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057). *See also* FINRA *Regulatory Notice* 08–57, October 16, 2008.

[7] The current FINRA rulebook consists of three sets of rules: (1) NASD Rules, (2) rules and rule interpretations incorporated from the NYSE (''FINRA Incorporated NYSE Rules'') (together, referred to as the ''Transitional Rulebook''), and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

[8] Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and NASD entered into an agreement (the ''Agreement'') to reduce regulatory duplication for Dual Members by allocating to FINRA regulatory responsibility for certain NYSE and NASD Rules (the ''Common Rules''). *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules include the FINRA Incorporated NYSE Rules. *See* Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct) (SR–NASD–2007–054). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

identical to, or substantially identical to, the recently approved FINRA Rules, subject to technical amendments to make them specific to the Exchange. To more readily identify those NYSE Rules that are harmonized with FINRA Rules, the Exchange proposes to adopt the same rule numbering used in the Consolidated FINRA Rulebook.

The Exchange further proposes that these rule changes be retroactively effective to December 15, 2008, the same as the effective date of FINRA's rule changes on which this filing is based.

The FINRA approved rule changes and the Exchange's proposed conforming rule changes are summarized below.[9]

FINRA Rule Filing SR–FINRA–2008–027 [10]

FINRA adopted NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA Rules 3220 and 2070, respectively. FINRA Rule 3220 prohibits members or associated persons from giving gifts or gratuities in excess of $100 per year to an agent or employee of another person where it relates to the business of the employer of the recipient. FINRA Rule 2070 addresses conflicts of interest involving FINRA employees.

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 407(a) and 407.10 (Transactions—Employees of Members, Member Organizations and the Exchange) and 350 (Compensation or Gratuities to Employees of Others), and Rule Interpretations 350/01 (Application) and/02 (Conflicts of Interest).[11] FINRA also deleted FINRA Incorporated NYSE Rule Interpretation 350/03 (Entertainment), which deals with business entertainment expenses, since it is addressed in a separate rule filing.[12]

Accordingly, to harmonize the NYSE Rules with the approved FINRA rule changes, the Exchange proposes to (i) delete NYSE Rule 350 and Rule Interpretations 350/01–/03, and (ii) adopt proposed NYSE Rules 2070 and 3220, which are nearly identical to FINRA Rules 2070 and 3220, to replace the deleted NYSE Rules. The Exchange believes that proposed NYSE Rules 2070 and 3220, together with other existing and/or proposed NYSE Rules, address the specific provisions of NYSE Rule 350 and the related Rule Interpretations.

Specifically, NYSE Rule 350(a) addresses the giving of gifts or gratuities by members, member organizations and their employees to other members, member organizations, their employees or the employees of non-members engaged in certain businesses. NYSE Rules 350(a) and (b) address the employment or compensation of others by members, member organizations and their employees, including Floor-based employees of other members or member organizations. Under Rule 350(b), payment in excess of $200 for employment or compensation of a Floor employee of another member or member organization requires the employee to become registered with such member or member organization.

The Exchange believes that proposed new NYSE Rule 3220 replaces NYSE Rule 350(a) because it addresses the giving of gifts or gratuities to, and the employment or compensation for services of, the employees of others, both members and non-members. Proposed Rule 3220(a) harmonizes with FINRA Rule 3220(a) because it prohibits the giving of gifts or gratuities in excess of $100 per year to ''any person, principal, proprietor, employee, agent or representative of another person'' where that gift is related to the business of the recipient's employer.

Proposed NYSE Rule 3220(b) replaces NYSE Rule 350(b) because it addresses situations requiring dual employment and prior written consent when compensation provided to another employee exceeds a specified amount. Rule 350(b) requires dual employment for any payments over $200 to Floor employees whereas proposed Rule 3220(b) requires dual employment for any payment made to any employee for employment or services over the $100 limit prescribed by 3220(a), including Floor employees of a member organization.

Because under proposed NYSE Rule 3220(a) any employee, including Floor employees, receiving more than $100 for services from another member organization must be dually employed with that member organization, the requirement under NYSE Rule 350(b) that a Floor employee receiving more than $200 in compensation be dually registered is no longer necessary. Under NYSE Rules 35 and 35.50, which require that all member and member organization Floor employees must be registered with the Exchange on Form U–4, any Floor employee that is dually employed must be registered with each member organization for whom he or she works. Accordingly, because the new dual employment requirement under proposed Rule 3220(b) triggers the Rule 35 dual registration requirements, it is not necessary to specify dual registration in proposed Rule 3220. Upon adoption of Rule 3220 the Exchange intends to issue guidance to its members and member organizations reminding them that any person who is dually employed by two or more members or member organizations must be registered with each such member or member organization pursuant to Rule 35.

NYSE Rules 350(a) and 350.10 also specifically address, *inter alia*, the giving of gifts or gratuities to, or the employment or compensation of, employees of the Exchange by members, member organizations and their employees. In particular, Rule 350.10 specifies, *inter alia*, the procedures for seeking the Exchange's consent for the employment or compensation of Exchange employees and describes the types of dual-employment arrangements generally acceptable to the Exchange and those that are not acceptable.

The Exchange believes that proposed NYSE Rules 3220 and 2070 specifically address the provisions of NYSE Rule 350(a) and 350.10 dealing expressly with Exchange employees. To begin with, proposed Rule 3220 concerns the giving of gifts or gratuities to, or the employment or compensation of, any employee of another, which would include employees of the Exchange. In addition, proposed Rule 2070(c) specifically provides that, notwithstanding the more general prescriptions of Rule 3220(a), members and member organizations are prohibited from giving anything of value to an Exchange employee responsible for any regulatory matter involving such member or member organization. The Exchange did not include the standards

[9] NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. *See* SR–NYSEALTR–2009–26 (formally submitted March 9, 2009), amended.

[10] *See* Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008).

[11] FINRA also noted that certain provisions of FINRA Incorporated NYSE Rules 350 and 350.10 and Rule Interpretation 350/02 related to operations/Floor employees of the Exchange are not applicable to FINRA and could be deleted. *See* Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008). The Exchange believes that the substance of these provisions is adequately addressed in existing NYSE Rules and the proposed NYSE Rules 2070 and 3220.

[12] *See* Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (SR–NASD–2006–44), as subsequently amended, January 2, 2008. The Exchange has proposed the adoption of a new NYSE Rule 350A that is substantively duplicative of the rule proposed in SR–NASD–2006–044. *See* Securities Exchange Act Release No. 55766 (May 15, 2007), 72 FR 28534 (May 21, 2007) (SR–NYSE–2006–06). These filings have not been approved by the Commission as of the date of this filing.

or procedures for dual-employment arrangements for its employees contained in Rule 350.10 into the proposed Rules 2070 and 3220 because those rules bind only Exchange members and member organizations and not its employees. The Exchange does believe, however, that proposed Rules 2070 and 3220 governing member conduct, together with the Exchange's internal policies and procedures governing the acceptance of gifts and gratuities and dual employment arrangements by its employees, provide sufficient protection against any improper relationships between its employees and its members.

NYSE Rule Interpretation 350/01 prohibits, in conjunction with NYSE Rule 401 (Business Conduct), conflicts of interest (via gifts, gratuities or compensation) between member organizations and agents or employees of customers. Rule Interpretation 350/01 also specifically prohibits member organizations from aiding and abetting fraudulent practices by money managers. NYSE Rule Interpretation 350/02 cautions member organizations about possible conflicts of interest when Floor employees are employed by other member organizations, including the monitoring of the amount and type of compensation paid to such employees.

The Exchange believes that proposed NYSE Rule 3220—which, as described above, deals more generally with the provision of gifts or compensation to employees of others—when read with other current and proposed NYSE Rules, prohibits the same types of conduct specifically referenced in NYSE Rule Interpretations 350/01 and /02. For example, current NYSE Rule 476(a)(1) prohibits members and member organizations from violating any provision of the Act and current NYSE Rule 476(a)(5) prohibits engaging in fraud or fraudulent acts. In addition, proposed NYSE Rules 2010 and 2020, which require member organizations to observe high standards of commercial honor, to use just and equitable principles of trade, and prohibit the use of manipulative, deceptive or fraudulent devices, would also apply to such conduct.[13]

NYSE Rule Interpretation 350/03 concerns business entertainment expenses. As noted above, FINRA deleted this Rule Interpretation on the grounds that its current interpretations of FINRA Rule 3220 concerning business expenses, together with a pending rule filing, sufficiently govern this conduct. The Exchange believes that proposed NYSE Rule 3220—which is virtually identical to FINRA's Rule and, with respect to business entertainment expenses, FINRA would have regulatory responsibility for the NYSE rule pursuant to Rule 17d–2 of the Act—harmonizes with FINRA's approach to business entertainment expenses. Upon adoption of new NYSE Rule 3220, the Exchange intends to issue an Information Memorandum to its members and member organizations, which would include both dual FINRA and NYSE members and member organizations as well as NYSE-only members and member organizations, informing them of their obligations under the new Rule incorporating the FINRA interpretations under its Rule 3220 concerning business entertainment expenses.[14]

As proposed, new NYSE Rules 2070 and 3220 are virtually identical to FINRA Rules 2070 and 3220, previously approved by the Commission. With respect to proposed NYSE Rule 2070, the Exchange proposes minor changes to the approved FINRA version of that Rule to conform it to the Exchange, including changing the title of the Rule to ''Transactions Involving Exchange Employees,'' adding the term ''member organization,'' and adding language that requires member organizations to provide statements to the Exchange, rather than FINRA, for accounts held by Exchange employees. In addition, the Exchange proposes to add language to 2070(c) to include listing applications and delisting proceedings, and to remove the reference to dispute-resolution proceedings.[15] With respect to proposed NYSE Rule 3220, to conform that Rule to Exchange definitions, the Exchange proposes adding the term ''member organization.''

Finally, although FINRA has deleted language from FINRA Incorporated NYSE Rule 407, because the Exchange uses its corresponding NYSE Rule to, *inter alia*, monitor accounts held by Exchange employees, the Exchange will retain NYSE Rule 407 without change.[16]

FINRA Rule Filing SR–FINRA–2008–028[17]

FINRA adopted, *inter alia*, NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) as FINRA Rules 2010 and 2020, respectively. FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. This Rule is used to protect market participants from dishonest and unfair practices even where those practices do not violate a specific law, rule or regulation. FINRA Rule 2020 is a general antifraud provision that is used to address a range of conduct, including market manipulation, excessive trading, insider trading and fraudulent misrepresentation. In a separate filing, FINRA also adopted FINRA Rule 6140 (Other Trading Practices), which replaces NASD Rule 5120 and governs a number of prohibited trading practices, including manipulation and disseminating false and misleading information about a security.[18]

Because they are substantively duplicative of these FINRA Rules, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 401(a) (Business Conduct) and 435(1), (3) and (4) (Miscellaneous Prohibitions) and Rule Interpretation 401/01 (Trading Against Firm Recommendations).[19] In addition,

[13] In this filing, *infra*, the Exchange proposes to replace current NYSE Rule 401(a), concerning good business practices, with proposed NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, approved by the Commission.

[14] Specifically, FINRA's interpretative guidance concerning business entertainment expenses includes a June 24, 1999, Letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc. This interpretative letter and other interpretive guidance concerning business entertainment expenses are currently available at FINRA's Web site at *http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm*.

[15] Unlike FINRA, the Exchange still reviews listing applications and conducts delisting proceedings and believes it is appropriate to include these matters in proposed NYSE Rule 2070(c). In addition, since the Exchange no longer engages in dispute-resolution proceedings (*i.e.*, arbitrations), it does not need such a designation in proposed Rule 2070.

[16] Even though FINRA amended FINRA Incorporated NYSE Rule 407 when it adopted FINRA Rule 2070, those two rules are not inconsistent. NYSE Rule 407(a) provides, *inter alia*, that a member or member organization must obtain prior written consent before opening an account or executing a trade for an Exchange employee. FINRA Rule 2070(a) and proposed NYSE Rule 2070(a) simply require that, once a member or member organization has actual notice of an account held by a FINRA or Exchange employee, it must provide duplicate account statements to the Exchange. In addition, NYSE Rule 407.10 prescribes procedures for how Exchange employees may open accounts that are not addressed by FINRA Rule 2070 or proposed NYSE Rule 2070. Thus, the Exchange can retain NYSE Rule 407 in its original form as well as adopt NYSE Rule 2070 without any regulatory conflict for its members and member organizations.

[17] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[18] FINRA Rule 6140 was adopted in SR–FINRA–2008–021. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[19] In addition to being covered more generally by FINRA Rules 2010 and 2020, provisions (1), (3) and (4) of FINRA Incorporated NYSE Rule 435 are also

Continued

FINRA deleted NYSE Rule Interpretation 401/02 (Private Sales), which requires members to monitor personnel that market securities through private offerings, for being substantively duplicative of NASD Rule 3040 (Private Securities Transactions of an Associated Person) and NYSE Rules 407(b) and 407.11.[20] FINRA also deleted FINRA Incorporated NYSE Rule 435 provisions (6) and (7) as being obsolete and/or substantively duplicative of Federal Reserve Board Regulation T.

Accordingly, to harmonize NYSE Rules with the approved FINRA Rules, the Exchange similarly proposes to delete (i) NYSE Rule 401(a) and Rule Interpretations 401/01 and /02, (ii) NYSE Rule 476(a)(6),[21] and (iii) NYSE Rules 435(1), (3), (4), (6), and (7). To replace NYSE Rules 401(a) and 476(a)(6) and Rule Interpretation 401/01, the Exchange proposes to adopt NYSE Rules 2010 and 2020, which are substantially identical to FINRA Rules 2010 and 2020, except for adding the term ''member organization.'' To replace NYSE Rules 435(1), (3), and (4), the Exchange proposes to adopt NYSE Rule 6140, which is substantially identical to FINRA Rule 6140, except for adding the term ''member organization.'' For the same reasons proposed by FINRA, the Exchange proposes deleting NYSE Rule Interpretation 401/02 as being substantively duplicative of NYSE Rules 407(b) and 407.11, and deleting NYSE Rules 435(6) and (7) as being obsolete and/or substantively duplicative of Reserve Board Regulation T.

FINRA Rule Filing SR–FINRA–2008–029 [22]

FINRA deleted, *inter alia*, FINRA Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs—Disclosure and Monitoring), 440F (Public Short Sale Transactions Effected on the Exchange), 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) and 477 (Retention of Jurisdiction—Failure to Cooperate) as being duplicative of other NASD, FINRA or SEC rules or regulations or as being specific to the NYSE marketplace.

For the same reasons set forth in the approved FINRA filing, the Exchange proposes to delete NYSE Rule 405A. As FINRA noted, the prescriptions of Rule 405A are addressed under the Investment Advisers Act of 1940 and also, to the extent fee-based programs continue to exist in brokerage accounts, in NASD Notice to Members 03–68, which applies NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) to such accounts.[23] The Exchange is proposing to adopt NYSE Rule 2010, which is substantially the same as FINRA 2010, and so, to the extent fee-based programs continue to exist in brokerage accounts they would be addressed under the proposed Rule.[24]

With respect to NYSE Rules 440F and 440G, as FINRA noted these Rules are Exchange specific—they require member organizations to file with the Exchange certain information about short sale and proprietary transactions executed at the Exchange. These Rules date to a time when trading at the Exchange was not as automated as it is today. Today, the Exchange is able to track short sale and proprietary trades through its ''OCS'' and ''PTP'' systems and run surveillances based on that information. Because the Exchange can derive that information from its trading systems, the Exchange no longer needs member organizations to file separately that information. The Exchange therefore believes that these Rules can be deleted in their entirety.

Finally, although FINRA has deleted FINRA Incorporated NYSE Rule 477, because the Exchange uses that Rule for disciplinary purposes specific to the Exchange, the Exchange will retain NYSE Rule 477 without change. Because FINRA has deleted FINRA Incorporated NYSE Rule 477, NYSE Rule 477 will lose its status as a Common Rule and FINRA will no longer retain any regulatory responsibility for this Rule.

FINRA Rule Filing SR–FINRA–2008–030 [25]

FINRA adopted NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM–3013 (Annual Compliance and Supervision Certification) as FINRA Rule 3130. FINRA Rule 3130 requires each member firm to designate one or more principals to serve as Chief Compliance Officer and also requires that the Chief Executive Officer certify annually that the firm has established and maintained procedures and processes reasonably designed to ensure compliance with all applicable FINRA Rules and federal laws and regulations.

Because they are substantively duplicative of the FINRA Rule, FINRA deleted the corresponding provisions of FINRA Incorporated NYSE Rules 342.30(d) and (e) (Annual Report and Certification) and Rule Interpretations 311(b)(5)/04 (Formation and Approval of Member Organizations—Officers—Other Dual or Multi-Designations) and/05 (Co-Designation of Principle Executive Officers) and 342.30(d)/01 (Annual Reports and Certification—Designation of Chief Compliance Officer) and (e)/01 (Annual Certification).

To harmonize NYSE Rules with the approved FINRA Rules, the Exchange proposes to (i) delete NYSE Rules 342.30(d) and (e) and Rule Interpretations 311(b)(5)/04 and/05 and 342.30(d)/01 and (e)/01, and (ii) replace them with proposed NYSE Rule 3130, which is substantially similar to FINRA Rule 3130. As proposed, NYSE Rule 3130 adopts the same language as FINRA Rule 3130, except for changing the term ''member'' to ''member organization.'' Therefore, as proposed, NYSE Rule 3130 would require NYSE member organizations to complete their annual certifications at the same time they complete their certifications for FINRA.

substantially the same as FINRA Rule 6140. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[20] FINRA has stated that these particular NASD and NYSE Rules are proposed for inclusion in the so-called ''supervision rules'' that are to be adopted at some later date as part of the Consolidated FINRA Rulebook. *See* FINRA *Regulatory Notice* 08–24.

[21] Although it is not addressed by FINRA in its filing because it is not a FINRA Incorporated NYSE Rule subject to FINRA's regulatory responsibility under the Agreement, NYSE Rule 476(a)(6) prescribes that NYSE members and member organizations and their employees may not engage in conduct ''inconsistent with just and equitable principles of trade[.]'' The Exchange is hereby including this provision for deletion since ''just and equitable principles of trade'' are addressed in new NYSE Rule 2010, proposed for adoption herein.

[22] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[23] NASD Rule 2110 was adopted by FINRA as FINRA Rule 2010 in SR–FINRA–2008–028. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–021, –022, –026, –028, –029).

[24] The Exchange is not adopting NASD Notice 03–68 as it is not a formally adopted rule. It is important to note that all of the Exchange's members and member organizations that have public customers are also members of, and have their member firm conduct regulated by, FINRA. Thus, to the extent FINRA Rule 2010 and new NYSE Rule 2010 apply to conduct involving non-managed fee-based account programs, which concerns member firm conduct, such application will be administered by FINRA. Upon adoption of new NYSE Rule 2010, the Exchange intends to issue guidance to its members and member organizations informing them of their obligations for such programs under the new Rule and FINRA rules.

[25] *See* Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR–FINRA–2008–030).

FINRA Rule Filing SR–FINRA–2008–033 [26]

FINRA adopted NASD Rule 3360 (Short-Interest Reporting) and FINRA Incorporated NYSE Rules 421(1) (Periodic Reports) and 421.10 (Short Positions) as new FINRA Rule 4560 and deleted these provisions from the Common Rules. FINRA Rule 4560 adopted rule text to consolidate the NASD and NYSE short-interest reporting requirements, including requiring members to follow certain reporting requirements for short positions in over-the-counter (''OTC'') and exchange-listed securities for all customer and proprietary accounts.

Accordingly, the Exchange proposes to (i) delete NYSE Rules 421(1) and 421.10, and (ii) adopt proposed NYSE Rule 4560 to replace the deleted NYSE Rules. Proposed NYSE Rule 4560 is substantially identical to FINRA Rule 4560. To conform NYSE Rule 4560 to the Exchange, the Exchange proposes to remove the references to ''OTC Equity Securities'' in the rule, including provision (b)(3), and change the term ''member'' to ''member organization.'' Because FINRA processes short-interest reporting on behalf of multiple exchanges, including the NYSE, proposed NYSE Rule 4560 will retain the requirement that member organizations report to FINRA.

FINRA Rule Filing SR–FINRA–2008–039 [27]

FINRA adopted, *inter alia*, provisions of NASD Rules 2710(b)(10) and (11) (Corporate Financing Rule—Underwriting Terms and Arrangements) and FINRA Incorporated NYSE Rule 392(a) (Notification Requirements for Offerings of Listed Securities) as consolidated FINRA Rule 5190. FINRA Rule 5190 contains the Regulation M-related notice requirements for members participating in securities offerings. FINRA also deleted FINRA Incorporated NYSE Rule 392(b) as specific to the NYSE marketplace.

The Exchange continues to have regulatory responsibility with respect to Regulation M and relies on reports filed by member organizations pursuant to NYSE Rule 392 to conduct certain surveillances. Accordingly, the Exchange continues to need an Exchange-specific rule requiring firms to report this information to the Exchange. However, in an effort to harmonize the reporting obligations across the Exchange and FINRA as much as possible, the Exchange proposes to delete NYSE Rule 392 and adopt proposed NYSE Rule 5190.

Proposed NYSE Rule 5190 is substantially identical to FINRA Rule 5190, except for replacing the term ''member'' with the term ''member organization'', changing the references to ''OTC Equity Securities'' and ''securities'' in the Rule to ''listed securities'' in order to apply the Rule to the Exchange, and adding language to paragraphs (b) and (e) of the Rule concerning stabilizing bids in order to ensure that the requirements of NYSE Rule 392(b) are fully imported into new NYSE Rule 5190. The substantive reporting requirements of NYSE Rule 392 are essentially being reorganized and renumbered into new NYSE Rule 5190 to help eliminate confusion and regulatory duplication for its member organizations. Member organizations will therefore continue to file these reports with the Exchange.

FINRA Rule Filing SR–FINRA–2008–057 [28]

In this filing, FINRA proposed additional clean-up rule changes, including to FINRA Rules 3130, 4560 and 5190 addressed in this filing. The Exchange has included the proposed rule changes to NYSE Rule 5190; the proposed changes to FINRA Rules 3130 and 4560 are not applicable to NYSE Rules 3130 and 4560 as proposed for adoption.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[29] in general, and further the objectives of Section 6(b)(5) of the Act,[30] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1) [31] of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes will provide greater harmonization between NYSE Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules. The Exchange therefore believes that the proposed rule changes support the objectives of the Act by providing greater regulatory clarity and relieving unnecessary regulatory burdens.

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

[26] *See* Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR–FINRA–2008–033).

[27] *See* Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR–FINRA–2008–039).

[28] *See* Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR–FINRA–2008–057).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78k–1(a)(1).

Number SR–NYSE–2009–25 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–2009–25. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–25 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Florence E. Harmon,

Deputy Secretary.

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[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59642; File No. SR–NYSEAmex–2009–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending the Option Trading Rules in Order To Extend the Penny Pilot Program

March 27, 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 27, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules in order to extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission''), through July 3, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. 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 Exchange hereby proposes to extend the time period of the Pilot Program[6] which is currently scheduled to expire on March 27, 2009 through July 3, 2009. This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to submit a report to the Commission that includes data and written analysis of information collected from February 1, 2009 through April 30, 2009 which will be submitted by the close of May 2009. The report will analyze the impact of the Pilot Program on market quality and options systems capacity. This report will include, but is not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the NYSE Arca's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 34–55162 (January 24, 2007), 72 FR 4738 (February 1, 2007); Securities Exchange Act Release No. 34–56567 (September 27, 2007), 72 FR 56396 (October 7, 2007).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Penny Pilot Program to continue without interruption through July 3, 2009.[13] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–06 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAmex–2009–06. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Amex's principal office and on its Internet Web site at *http://www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–06 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[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] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59658; File No. SR–NYSEAmex–2009–01]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Amending Its Schedule of Fees and Charges for Exchange Services

March 31, 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 19, 2009 NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On March 26, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the purpose section and Exhibit 1 to the proposed rule change and clarified that the title of its Fee Schedule reflects the Exchange's recent name change. *See infra* at n.4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes adding a Cancellation Fee of $1.50 to its Fee Schedule. The proposed Cancellation Fee will be charged to an executing clearing member for each public customer order (origin code ''C'') cancelled in excess of 500 public customer orders per month. The Cancellation Fee will only be assessed on cancelled orders in excess of the number of public customer orders that the clearing member executes in a month on behalf of itself or a correspondent firm.

The Exchange also proposes to aggregate and count as one execution all public customer options orders from the same correspondent firm executed in the same series on the same side of the market at the same price within a 300 second period. Recognizing that order cancels and trades often happen in large numbers, the purpose of this fee is to focus on activity that is truly excessive and uses bandwidth and system capacity while fairly allocating costs among members.

Additionally, this fee will not apply to cancelled public customer orders that improve the Exchange's prevailing best bid-offer (''BBO'') market at the time the orders are received. Orders that match the prevailing BBO market at the time the order is received and are subsequently cancelled will be included in the Cancellation Fee calculation. This provision seeks to remove any disincentives for firms to enter at risk orders that improve the BBO.

Excessive order cancelling has the residual effect of exhausting system resources, bandwidth, and capacity. To effectively allocate the costs associated with order cancellation activity, the Exchange believes the fee should be calculated based on cancels at the correspondent firm level. While the clearing firm will ultimately be responsible for payment of the fee, the Exchange proposes to calculate the fee for cancelations [sic] in excess of the threshold that occur at the correspondent firm level. If the clearing firm does not have any correspondent firms associated with it, the fee will be assessed based on the clearing firm's order cancellation activity. This practice will fairly allocate the fee to the party responsible for order cancellations.

The Exchange proposes to waive the Cancellation Fee until June 1, 2009.

The Exchange also proposes clarifying language to the Specialist/e-Specialist/DOMM Rights Fee. The Specialist/e-Specialist/DOMM Rights Fee is based on the average number of national daily customer contracts traded in a given issue over a three month period. The Exchange calculates the number of average national daily customer contracts on a rolling three month basis with a one month lag. For example, the monthly base rate for Specialists, e-Specialists, and DOMMs trading in a given symbol in May will be based on the national average daily customer volume in that issue in January, February, and March. The rational [sic] for a one month lag is to give Specialists, e-Specialists, and DOMMs seeking to register in a given symbol a clear understanding of the monthly base rate at the time of registration. The monthly base rate is then divided and charged to all of the Specialists, e-Specialists and DOMMs registered in that issue based on their prorated share of volume on the Exchange in that issue during the month. The proposed language seeks to clarify the concepts discussed above.

The Exchange also seeks to reflect the name change from NYSE Alternext US LLC to NYSE Amex LLC in the Fee Schedule.[4]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all similarly situated members and other Exchange participants of NYSE Amex Options will be charged the same reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and paragraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex-2009–01 on the subject line.

[4] *See* SR–NYSEALTR–2009–24 Proposal to change the name of the Exchange to NYSE Amex LLC.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 26, 2009, the date the Exchange filed Amendment No. 1.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAmex-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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2009–01 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7605 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59662; File No. SR–NYSEArca–2009–25)

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 2 Thereto To Extend the Pilot Program for NYSE Arca Realtime Reference Prices Service

March 31, 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 20, 2009, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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. On March 27, 2009, the Exchange submitted Amendment No. 1 to the proposed rule change, which was withdrawn.[3] On March 30, 2009, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal, as modified by Amendment No. 2, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the expiration date of its pilot program for the NYSE Arca Realtime Reference Prices service until June 30, 2009. There is no new rule text.

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 III 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

In File No. SR–NYSEArca–2008–96, the Exchange established a pilot program that allows the Exchange to test the viability of a new NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''NYSE Arca Realtime Reference Prices'') and to establish a flat monthly fee for that service. The Commission approved that pilot program on August 29, 2008.[5]

The Exchange intends for the NYSE Arca Realtime Reference Prices service to accomplish three goals:

1. To provide a low-cost service that will make real-time prices widely available to millions of casual investors;

2. To provide vendors with a real-time substitute for delayed prices; and

3. To relieve vendors of administrative burdens.

This pilot program is similar to pilot programs that the Nasdaq Stock Market, Inc. (''Nasdaq'')[6] and the New York Stock Exchange, LLC (''NYSE'')[7] have established.

The pilot program allows internet service providers, traditional market data vendors, and others (''NYSE Arca-Only Vendors'') to make available NYSE Arca Realtime Reference Prices on a real-time basis.[8] The NYSE Arca Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. It includes only prices, and not the size of each trade and not bid/asked quotations.

It features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Exchange established November 1, 2008 as the end date for the pilot program. The Exchange then extended

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 30, 2009, the Exchange withdrew Amendment No. 1.

[4] References to Amendment No. 1 in Amendment No. 2 should be read as Amendment No. 2. Telephone call between Theodore Venuti and Sarah Albertson, Division of Trading and Markets, Commission, and Bridget Spaulding, Managing Director, NYSE Market Data, March 31, 2009.

[5] *See* Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR–NYSEArca–2008–96).

[6] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 57973 (June 16, 2008), 73 FR 35430 (June 23, 2008) (SR–NASDAQ–2008–050).

[7] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR–NYSE–2007–04).

[8] The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

that end date to December 31, 2008 [9] and then extended it to March 31, 2009.[10] The Exchange now seeks to extend that end date to June 30, 2009.[11] Prior to the end of the pilot period, the Exchange will assess its experience with the product and either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or it will announce publicly that it does not seek to extend the pilot program beyond the program's termination date.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) [12] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5) [13] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the pilot program benefits investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Arca Realtime Reference Prices service. Extending the pilot program will extend those benefits while the Exchange assesses the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will result in 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 received any unsolicited written comments from members or other interested parties.

[9] *See* Securities Exchange Act Release No. 58895 (October 31, 2008), 73 FR 66956 (November 12, 2008) (SR–NYSEArca–2008–122).

[10] *See* Securities Exchange Act Release No. 59184 (December 30, 2008), 74 FR 755 (January 7, 2009) (SR–NYSEArca–2008–143).

[11] NYSE Arca will file a proposed rule change within thirty days of this Partial Amendment No. 2 seeking to make the NYSE Arca Realtime Reference Price service a permanent service rather than a pilot program.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

III. 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–2009–25 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–2009–25. 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 official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–25 and should be submitted on or before April 27, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, it is consistent with Section 6(b)(4) of the Act,[15] 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,[16] 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,[17] 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,[18] 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.[19]

The Commission approved the fee for NYSE Arca Realtime Reference Prices for a pilot period which runs until March 31, 2009.[20] The Commission notes that the Exchange proposes to extend the pilot program for three months. The Exchange proposes no other changes to the existing pilot program. In addition, the Commission notes that it did not receive any comments on the previous extensions of the pilot program.[21]

[14] 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).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(8).

[18] 17 CFR 242.603(a).

[19] NYSE Arca is an exclusive processor of its last sale data 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 data on an exclusive basis on its own behalf.

[20] *See supra* notes 5, 9, and 10.

[21] *See supra* notes 9 and 10.

On December 2, 2008, the Commission issued an approval order (''Order'') that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products, such as NYSE Arca Realtime Reference Prices.[22] The Commission believes that NYSE Arca's proposal to temporarily extend the pilot program is consistent with the Act for the reasons noted in the Order.[23] The Commission believes that approving NYSE Arca's proposal to temporarily extend the pilot program that imposes a fee for NYSE Arca Realtime Reference Prices for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information. In addition, extending the pilot program for an additional three months will allow the public to comment on, and the Commission to analyze consistent with the Order and in light of Section 19(b) of the Act, a proposal to permanently approve the fee for NYSE Arca Realtime Reference Prices.[24]

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 2, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in NYSE Arca Realtime Reference Prices. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[25] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis to extend the operation of the pilot until June 30, 2009.

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2009–25), as modified by Amendment No. 2, is hereby approved on an accelerated basis until June 30, 2009.

[22] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[23] *See supra* notes 5, 9, and 10.

[24] The Exchange has represented that it will file a proposed rule change within thirty days of filing Amendment No. 2 to the proposal seeking to make the NYSE Arca Realtime Reference Price service a permanent service rather than a pilot program. *See supra* note 11.

[25] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary,

[FR Doc. E9–7628 Filed 4–3–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59635; File No. SR–OCC–2009–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Schedule of Fees

March 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 6, 2009, The Options Clearing Corporation (''OCC'') 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 OCC. OCC 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 implements changes to OCC's Schedule of Fees, effective May 1, 2009, to reflect the adoption of a fee for transactions in OCC's Stock Loan/Hedge and Market Loan Programs.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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

OCC's Stock Loan/Hedge Program, which allows approved Clearing Members to register their privately negotiated securities lending transactions with OCC, benefits OCC's Clearing Members and the industry by reducing the cost of credit, increasing operational efficiency, and providing stability through a central counterparty guarantee. Transactions have been free to Stock Loan/Hedge participants since the program's inception nearly fifteen years ago.

On January 31, 2009, OCC launched its Market Loan Program to create a framework for OCC to provide clearing services for stock loan and borrow transactions effected through electronic trading systems, such as the market operated by Automated Equity Finance Markets, Inc. (''AQS''), a wholly-owned subsidiary of Quadriserve, Inc.[5] Although receiving securities lending transactions executed through electronic trading markets will expand the number of securities lending transactions that will be cleared and settled by OCC, OCC also anticipates that such expansion will cause OCC to incur higher ongoing administrative, maintenance, and systems costs.

In order to adequately cover costs of operating the Programs, effective May 1, 2009, OCC will implement a one dollar ($1.00) transaction fee against all new loan activity that will be assessed to each lender and borrower participating in OCC's Stock and Market Loan Programs. The transaction fee will be calculated daily, will be billed monthly, will only apply to new loans, and will not be assessed to recall and return transactions.

The proposed rule change is consistent with Section 17A of the Act because it benefits clearing members and other market participants by keeping fees associated with OCC's Stock and Market Loan Programs as low as possible while allowing OCC to adequately cover the ongoing administrative costs. The Programs, in

[26] 17 CFR 200.30–3(a)(12).

[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] *See* Securities Exchange Act Release No. 59294 (January 23, 2009), 74 FR 5954 (February 3, 2009) (File No. SR–OCC–2008–20). OCC's By-Laws and Rules governing the Market Loan Program and the provisions governing the Stock Loan/Hedge Program are substantively the same, except where differences are clearly intended or where the context requires a different interpretation based on the nature of the transaction.

turn, benefit OCC's Clearing Members and the industry by reducing the cost of credit, increasing operational efficiency, and providing stability through a central counterparty guarantee. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would 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 were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [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–OCC–2009–03 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–OCC–2009–03. 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 OCC. 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–OCC–2009–03 and should be submitted on or before April 27, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7581 Filed 4–3–09; 8:45 am]

BILLING CODE 8011–01–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).

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0298]

C3 Capital Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that C3 Capital Partners II, L.P., 4520 Main Street, Suite 1600, Kansas City, MO 64111, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). C3 Capital Partners II, L.P. proposes to provide equity/debt security financing to Findett, LLC, 8 Governor Drive, St. Charles, MO 63301. The financing is contemplated for the acquisition of a supplier and growth capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because C3 Capital Partners, L.P. an Associate of C3 Capital Partners II, L.P., owns more than ten percent of Findett, LLC; therefore Findett, LLC is considered an Associate of C3 Capital Partners II, L.P., as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 19, 2009.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–7546 Filed 4–3–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6567]

Determination and Certification Under Section 490(b)(1)(A) of the Foreign Assistance Act Relating to the Largest Exporting and Importing Countries of Certain Precursor Chemicals

Pursuant to Section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, I hereby determine and certify that the top five exporting and importing countries and territories of pseudoephedrine and ephedrine (India, Germany, Singapore, Belgium, United Kingdom, China, Taiwan, Argentina, South Korea, Switzerland, Indonesia, and Thailand) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives established by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

This determination and certification shall be published in the **Federal Register**, and copies shall be provided to the Congress together with the accompanying Memorandum of Justification.

Dated: March 3, 2009.

James B. Steinberg,

Deputy Secretary of State, Department of State.

[FR Doc. E9–7675 Filed 4–3–09; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed I–405/NE 195th to SR 527 Northbound Auxiliary Lane Project in the City of Bothell, King and Snohomish Counties, in the State of Washington. These actions grant licenses, permits, and approvals for the Project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before October 5, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Pete Jilek, Urban Area Engineer, Federal Highway Administration, 711 S. Capitol Way #501, Olympia, WA 98501; *telephone*: (360) 753–9550; and *e-mail: pete.jilek@dot.gov.* The FHWA Washington Division's Urban Area Engineer's regular office hours are between 7 a.m. and 4 p.m. (Pacific Time). You may also contact William Jordan, I–405 Environmental Manager, Washington State Department of Transportation, 600–108th Avenue, NE., Suite 405, Bellevue, WA 98004; *telephone*: (425) 456–8547; and *e-mail: william.jordan@i405.wsdot.wa.gov.* The I–405 Corridor Program's regular office hours are between 8 a.m. and 5 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Washington: I–405/NE 195th Street to SR 527 Northbound Auxiliary Lane Project. The Project will construct a northbound auxiliary lane for approximately 1.8 miles along I–405 (milepost 24.6 to milepost 26.4) from NE 195th Street north to SR 527. As part of the Project, WSDOT will also be constructing associated stormwater treatment and a noise wall. In addition, the Project includes other elements that are typical for urban interstate widening projects such as retaining walls, barriers, guardrails, pavement markings, roadway signs, intelligent transportation systems, and illumination systems.

These actions by the Federal agencies, and the laws under which such actions were taken, are described in the March 2009 Environmental Classification Summary (ECS) and in other documents in the FHWA administrative record, which support FHWA's determination that this project qualifies as a Documented Categorical Exclusion. The ECS and other documents in the FHWA administrative record are available by contacting FHWA or WSDOT at the addresses provided above. The FHWA Federal Aid number is ARRA–4053(859).

This notice applies to all Federal agency decisions on the project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Peter A. Jilek,

Urban Area Engineer, Olympia, Washington.

[FR Doc. E9–7610 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–25290]

Commercial Driver's License Standards: Application for Exemption; Isuzu Motors America, Inc. (Isuzu)

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

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that Isuzu North America Corporation (Isuzu) has applied for an exemption from the Federal requirement that drivers of commercial motor vehicles (CMV) hold a commercial driver's license (CDL) issued by one of the States. Isuzu requests exemption so that 20 of its Japanese employees can test-drive Isuzu CMVs in the United States. Each of these 20 Isuzu employees holds a valid Japanese CDL but lacks the U.S. residency necessary to obtain a CDL from one of the States. Isuzu believes the knowledge and skills tests and training program that drivers undergo to obtain a Japanese CDL would provide for a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption.

DATES: Comments must be received on or before May 6, 2009.

ADDRESSES: You may submit comments to Federal Docket Management System Number FMCSA–2003–25290 by any of the following methods:

- *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. 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.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of the 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) or you may visit *http://www.regulations.gov*.

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at *http://docketsinfo.dot.gov*. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Jr., FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses. The Agency must also provide an opportunity for public comment on the application.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely provide for a level of safety that is equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying the request for exemption or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Isuzu has applied for an exemption from the commercial driver's license (CDL) rule, specifically 49 CFR 383.23, that prescribes licensing requirements for drivers operating CMVs in interstate or intrastate commerce. Isuzu requests the exemption because its driver-employees, as citizens and residents of Japan, cannot apply for a CDL in any of the United States. A copy of the application is in Docket No. FMCSA–2003–25290. The exemption would allow 20 drivers to operate CMVs in interstate commerce as a team, testing and evaluating production and prototype CMVs in the United States in order to assist in the design of safe vehicles for sale in the United States.

The drivers are: Tadashi Shoda, Ryouji Matsuzawa, Hisashi Hashiguchi, Nobuhisa Okuda, Minoru Endo, Fumiaki Takei, Akira Yoshino, Tadao Shibuya, Akira Iizuka, Yoshinori Ugai, Kazuyoshi Tateishi, Naomi Uchida, Kiyoshi Toshima, Khoki Natsumi, Minuro Tsuchida, Mitsuo Konno, Hiroaki Kurata, Naoki Morimoto, Takayuki Kaneda, and Chito Agatsuma.

Each driver holds a valid Japanese CDL, and as explained by Isuzu in previous exemption requests, drivers applying for a Japanese-issued CDL must undergo a driver training program and pass knowledge and skills tests. Isuzu also stated in prior exemption requests that the knowledge and skills tests and training program that Japanese drivers undergo to obtain a Japanese CDL provide for a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. FMCSA has previously determined that the process for obtaining a Japanese CDL is comparable to, or as effective as, the Federal CDL knowledge and skills requirements of 49 CFR part 383 as enforced by the States, and adequately assesses the driver's ability to operate CMVs in the U.S. The initial notice of a similar nature was published by FMCSA on October 16, 2003, granting a similar exemption to Isuzu for 31 Japanese CDL drivers (68 FR 59677).

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Isuzu's application for an exemption from the CDL requirements of 49 CFR 383.23. The Agency will consider all comments received by close of business on May 6, 2009. Comments will be available for

examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: March 27, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7564 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2008–0399]

Qualification of Drivers; Exemption Applications; Diabetes

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt thirty-seven individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 6, 2009. The exemptions expire on April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://Docketinfo.dot.gov*.

Background

On February 12, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from thirty-seven individuals, and requested comments from the public (74 FR 7093). The public comment period closed on March 16, 2009 and no comments were received.

FMCSA has evaluated the eligibility of the thirty-seven applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These thirty-seven applicants have had ITDM over a range of 1 to 47 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the February 12, 2009, **Federal Register** Notice (74 FR 7093). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual

medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the thirty-seven exemption applications, FMCSA exempts Michael D. Akers, Donald J. Altier, Richie Anderson, Rick M. Bryant, Casey D. Carr, David L. Coggin, Daniel J. Conner, James K. Dowden, Luis G. Garcia, Gary A. Garrett, Joseph M. Godinho, Gerardo Gonzales, Darryl B. Goskey, Douglas A. Greve, Edlyne C. Harrison, Edwin L. Haynie, Darryl D. Hewitt, Mark D. Hoag, James B. Hodge, Jr., Kevin J. Hood, Charles T. Hughes, Norman G. Jovin, Patrick H. Junkins, Paul A. Kurimski, Charles L. Martinez, Joseph S. Moore, Jeffrey D. Moul, Ellis E. Murdock, Richard J. Neeman, Michael A. Potter, Carson R. Reighard, Frank B. Rivett, Timothy D. Schaff, Jeffrey A. Scovel, Charles C. Smith, Michael L. Wise, and Richard L. Wright from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued On: March 27, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7559 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2009–0067]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 38 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before May 6, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0067 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 38 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Paul Anaya

Mr. Anaya, age 54, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Anaya meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009

and certified that he does not have diabetic retinopathy. He holds a Class A commercial driver's license (CDL) from Colorado.

William C. Arrington

Mr. Arrington, 51, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arrington meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Gregory W. Arsenault

Mr. Arsenault, 61, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Arsenault meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Connecticut.

Raymond Barajas

Mr. Barajas, 46, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barajas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Gary R. Butts

Mr. Butts, 36, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Buck H. Bowers

Mr. Bowers, 35, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bowers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Darin L. Carpenter

Mr. Carpenter, 42, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carpenter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Montana.

William N. Carpenter

Mr. Carpenter, 30, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carpenter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Kentucky.

James F. Carroll

Mr. Carroll, 52, has had ITDM since 2000. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carroll meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Jeffrey W. Cotner

Mr. Cotner, 46, has had ITDM since 1996. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cotner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Oregon.

Randy J. Cool

Mr. Cool, 52, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Cool meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Boyd L. Croshaw

Mr. Croshaw, 56, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Croshaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

William Frantz

Mr. Frantz, 47, has had ITDM since 1991. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frantz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Steven Garcia

Mr. Garcia, 63, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garcia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Mexico.

Carl A. George

Mr. George, 56, has had ITDM since 1999. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. George meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

James E. Gordon, Jr.

Mr. Gordon, 47, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gordon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

Scott D. Gottheld

Mr. Gottheld, 38, has had ITDM since 2006. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gottheld meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Juan A. Hartwell

Mr. Hartwell, 46, has had ITDM since 1997. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hartwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Connecticut.

Cole G. Hoff

Mr. Hoff, 26, has had ITDM since 1992. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hoff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

David A. Holzbach

Mr. Holzbach, 40, has had ITDM since 1975. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holzbach meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from South Carolina.

Gary A. Hopkins

Mr. Hopkins, 62, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Hopkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A3 CDL from South Dakota, which allows him to operate a combination vehicle greater than 26,000 lbs. gross vehicle weight rating (GVWR) and with a trailer greater than 10,000 lbs. GVWR.

Joseph T. Jackson

Mr. Jackson, 44, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Connecticut.

Donald A. Lambrecht

Mr. Lambrecht, 46, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lambrecht meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Carolina.

William M. Liebert

Mr. Liebert, 50, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Liebert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nevada.

Howard A. McCowan

Mr. McCowan, 46, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCowan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

William J. Mlejnek

Mr. Mlejnek, 34, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mlejnek meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

John F. Naughton

Mr. Naughton, 52, has had ITDM since 2004. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Naughton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Curtis J. Panther

Mr. Panther, 38, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Panther meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Eric S. Ritter

Mr. Ritter, 30, has had ITDM since 1982. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ritter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Gary L. Robinson

Mr. Robinson, 49, has had ITDM since 2000. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Robinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Tennessee.

Todd J. Schoeller

Mr. Schoeller, 43, has had ITDM since 1990. His endocrinologist examined him

in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schoeller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has nonproliferative stable diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Chad W. Schumaker

Mr. Schumaker, 36, has had ITDM since 1989. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schumaker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Kevin J. Sears

Mr. Sears, 48, has had ITDM since 1964. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sears meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Illinois.

David W. Slininger

Mr. Slininger, 35, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Slininger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Peter A. Storm

Mr. Storm, 31, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Storm meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D chauffeur's license from Louisiana.

Robert J. Streets

Mr. Streets, 62, has had ITDM since 2005. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Streets meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Don A. Wisnosky

Mr. Wisnosky, 52, has had ITDM since 1982. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wisnosky meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Patrick D. Yasten

Mr. Yasten, 39, has had ITDM since 1979. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yasten meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Nebraska.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: March 31, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7636 Filed 4–3–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 112 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable two-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated 112 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 14 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application:

Richard L. Bilby
Phillip J. Collova
Layne Coscorrosa
Craig D. Delph
Jerry L. Gray
Daniel Hill
Matthew B. Lairamoe
James F. McMahon, Jr.
Gary R. Morgan
Dale E. Schoettmer
Jack Skaw
Edward S. Stout
Kenneth D. Summers
George R. Van Gelder

The following 11 applicants did not have any experience operating a CMV.

Joey J. Abney
Amy J. Armstrong
Anthony W. Armstrong
James Bay
John H. Beenenga
Leo M. Lampinen
Rod Mosby
Andrea R. Piatz
Litter Rivera
Sirrane Traylor
Plato Watkins

The following 22 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency.

Dylan T. Arndt
Fred R. Ballard, Jr.
Dwight A. Bennett
Walter Crean, III
James E. Creswell
Chris Croteau
Jerold D. Endress
Alvaro Esparza
James L. Gordon
Jerry N. Greear
Semir Husnic
Edward Kimpel
Daryl C. Lenz
Robert D. Lotz
Guy E. McCraw
Eric R. Mills
Rodney Richardson
Matthew N.D. Robbins
Temistocles E. Sanchez
Thomes L. Steinbach
Glenn R. Theis
Gary E. Valentine

The following 7 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency.

Leonard C. Jackson
Larry S. Keith
Oliver A. Murphy
Herbert Recore, Jr.
William Rogers
Jeffery C. Stokes
Lyndon W. Williams

The following 19 applicants did not have sufficient driving experience over the past 3 years under normal highway operating conditions.

Danny F. Ahlgren
Ronald Bishop
James W. Carpenter
Travis M. Christian
Sean Conorman
John Doyle
Herman Froehle
Steven H. Harris
Jason L. Hoovan
Jeffrey D. Huckle
Ronald L. Kitchens
Larry P. Magrath
Jame R. Salsgiver
Eric C. Sevier
Claude L. Snider, Sr.
Ronald C. Stringfellow
Douglas E. Weld
Scott Westphal
Casey Willis, Jr.

Two applicants, Martin L. Bailey and Darrol W. Rippee, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, Joseph Ivey, did not have sufficient peripheral vision in his better eye to qualify for an exemption.

The following 7 applicants had commercial driver's license suspensions during the 3-year review period in

relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

Gary Alvarez
Giovanni Cerino
Robert O. Dolphin
Todd Gilliam
Paul H. Glowinski
Ranjodh Singh
Stephen Whitt

One applicant, Robert D. Crumb, had 2 serious commercial motor vehicle violations within a 3-year period. Each applicant is only allowed a total of 2 moving violations, 1, which can be serious.

One applicant, Charles H. Allen, did not have verifiable proof of commercial driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

One applicant, Justin M. Pool, did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period.

The following 9 applicants were denied for miscellaneous/multiple reasons.

John P. Atkinson
Randy S. Benitez
Kevin Byrd
Gary M. Eggers
Bradley C. Hansell
Randall E. Harnack
Owen E. Jackson
Valentino Parker
Dustin A. Wilson

The following 4 applicants never submitted the required documents.

James R. Blair
Charles V. Fitzgerald
Herman Gray
Norman Patterson

Finally, the following 13 applicants met the current federal vision standards. Exemptions are not required for applicants that meet the current regulations for vision.

Jose F. Armenta
Carlos R. Cordova
Frederick L. Feyen
Kenneth A. Keen
Diana L. Martin
Freddie B. Mills
James W. Mize, Sr.
James A. Shearin
Oliver Smith
Kenneth L. Sutphin
Kenneth C. Thornton
Edward Werling
Leroy C. Williams

Issued on: March 27, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7560 Filed 4–3–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2008–0398]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 33 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective April 6, 2009. The exemptions expire on April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov*.

Background

On February 12, 2009, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (74 FR 7098). That notice listed 33 applicants' case histories. The 33 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 33 applications on their merits and made a determination to grant exemptions to all of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 33 exemption applicants listed in this notice are in this category. They are

unable to meet the vision standard in one eye for various reasons, including amblyopia, prosthesis, optic nerve hypoplasia, macular dystrophy, retinal vein occlusion, Ischemic optic atrophy, toxoplasmosis chorioretinopathy and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but 6 of the applicants were either born with their vision impairments or have had them since childhood. The 6 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 36 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 33 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3½ to 45 years. In the past 3 years, five of the drivers had convictions for traffic violations and three of the drivers were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 12, 2009 notice (74 FR 7098).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 33 applicants, four of the applicants had traffic violations for speeding, one of the applicants had a traffic violation for improperly following another vehicle, and three of the applicants were involved in crashes. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 33 applicants listed in the notice of February 12, 2009 (74 FR 7098).

We recognize that the vision of an applicant may change and affect his/her

ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 33 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received four comments in this proceeding. The comments were considered and discussed below.

Three of the comments received were in favor of granting the Federal vision exemption to Mr. Forrest L. Wright. The fourth comment, from an anonymous individual, was in favor of the Federal Vision Program and was of the opinion that the current Federal Vision standard should be changed and updated.

In response to the fourth comment, Congress established a Medical Review Board (MRB) to provide FMCSA with advice and recommendations on medical standards and guidelines for the physical qualifications of CMV drivers [49 U.S.C. 31149(a)]. The Agency is currently evaluating the MRB's recommendations regarding the current vision standard; the opinions of medical research panels; and evidence reports related to vision.

Conclusion

Based upon its evaluation of the 33 exemption applications, FMCSA exempts James M. Andrews, Michael L. Ayers, Todd J. Berglund, Sr., George M. Callahan, William D. Cardiff, Paul V. DaLuisio, Richard DiStaola, Tracy A. Doty, Vincent C. Durazzo, Jr., Matthew A. Ericson, Breck L. Falcon, Charles W. Hillyer, Stephen R. Jackson, Wesley J. Jenkins, Richard H. Johnson, Darrel R. Martin, James W. McGhee, Felix L. McLean, James P. Mittlefehldt, Robert E. Morrison, Pahl M. Olson, Craig P. Osborn, Jeremy L. Perry, Wayne G. Resch, Brad E. Robrock, James L. Rooney, James E. Russell, Robert C. Sellers, Jr., James A. Smith, Richard Sturk, Wayne A. Whitehead, Charles F. Wotring, and Forrest L. Wright from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 27, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7562 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2004–17984; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2006–26066; FMCSA–2006–25246; FMCSA–2007–27333]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 7, 2009. Comments must be received on or before May 6, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5578; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2004–17984; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2006–26066; FMCSA–2006–25246; FMCSA–2007–27333, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the On-Line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments On-Line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000

(65 FR 19476). This information is also available at *http://DocketInfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 22 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:
Rex A. Botsford
Roger C. Carson
Robert A. Casson
Gregory L. Cooper
Kenneth D. Craig
Christopher A. Deadman
Jerald O. Edwards
David R. Gross
George Harris
Francisco J. Jimenez
Kenneth C. Keil
Paul R. Kerpsie
Melvin A. Kleman
Roosevelt Lawson
Emanuel N. Malone
Roberto E. Martinez
Richard W. Mullenix
George K. Sizemore
James A. Strickland
Clarence L. Swann, Jr.
Kerry W. VanStory
Manuel A. Vargas

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 22 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 48504; 65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 12265; 72 FR 11426; 72 FR 11425; 67 FR 76439; 68 FR 10298; 70 FR 7543; 72 FR 18726; 69 FR 33997; 69 FR 61292; 72 FR 184; 69 FR 64806; 70 FR 2705; 72 FR 5489; 70 FR 2701; 70 FR 16887; 70 FR 12666; 71 FR 63379; 72 FR 1050; 72 FR 180; 72 FR 9397; 72 FR 12666; 72 FR 25831). Each of these 22 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by May 6, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 22 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: March 31, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7565 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363; FMCSA–2002–13411]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 12, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 11 renewal applications, FMCSA renews the Federal vision exemptions for Howard K. Bradley, Kirk G. Braegger, Ambrosio E. Calles, Jose G. Cruz, Harry P. Henning, Christopher L. Humphries, Ralph J. Miles, Thomas C. Rylee, Stanley B. Salkowski, III, Michael G. Thomas, and William H. Twardus.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: March 27, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–7563 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2009–0001–N–7]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 5, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number _____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic

submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Stencilling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stencilling to identify freight cars.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

Respondent Universe: 718 railroads.

Total Estimated Responses: 20,000 cars stencilled.

Total Estimated Annual Burden: 15,000 hours.

Status: Regular review.

OMB Control Number: 2130–0523.

Title: Rear-End Marking Devices.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: The collection of information is set forth under 49 CFR Part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current ''Guidelines For Testing of Rear End Marking Devices.'' Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

Respondent Universe: 718 railroads.

Frequency of Submission: On occasion.

Total Estimated Responses: 4.

Total Estimated Annual Burden: 8 hours.

Status: Regular review.

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures, which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Respondent Universe: 2 Locomotive Manufacturers

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
210.27—New Loco. Certification—Requests for Information.	2 Locomotive Manuf	40 requests	30 minutes	20
—Identification of Locomotives	2 Locomotive Manuf	790 badges/plates	30 minutes	395
210.31—Operation Standards—Measurement of Loco Noise Emissions.	2 Locomotive Manuf	790 recorded measurements.	3 hours	2,370

Total Estimated Responses: 1,620.

Total Estimated Annual Burden: 2,785 hours.

Status: Regular review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 31, 2009.

Kimberly Orben,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–7655 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0032]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Compassrose*.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0032 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver

criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before May 6, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0032. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *Compassrose* is:

Intended Use: ''Day sailing with 2 to 6 passengers near Seattle WA. Over night charters in Puget Sound with 2 to 4 passengers.''

Geographic Region: ''Washington state.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 31, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–7682 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0031]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VIVA LA VIDA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0031 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before May 6, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0031. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VIVA LA VIDA is:

Intended Use: ''Owner intends to charter the vessel for offshore competitive sailing races for those who would like to participate in offshore sailing races, but cannot afford to do so.''

Geographic Region: ''Intended operations will be up and down the west coast and the east coast of the United States. The individual states in the U.S. include: California, Oregon, Washington, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: March 31, 2009.

By Order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–7696 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2009 0029]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime

Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Jerome Davis, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–0688; or *e-mail: Jerome.davis@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: ''Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels.''

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0006.

Form Numbers: MA–29, MA–29A, and MA–29B.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens; or the transfer of such vessels to foreign registry and flag; or the transfer of foreign flag vessels by their owners as required by various contractual requirements.

Need and Use of the Information: The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Description of Respondents: Respondents are vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Annual Responses: 60 responses.

Annual Burden: 120 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT* (*or EST*), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: March 30, 2009.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–7684 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2009 0030]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Jerome Davis, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone*: 202–366–0688 or *e-mail*: *Jerome.davis@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Voluntary Intermodal Sealift Agreement (VISA).

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0532.

Form Numbers: MA–1020.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This information collection is in accordance with Section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems necessary to meet national defense requirements. In order to meet national defense requirements, the government must assure the continued availability of commercial sealift resources.

Need and Use of the Information: The information collection is needed by MARAD and the Department of Defense (DOD), including representatives from the U.S. Transportation Command and its components, to evaluate and assess the applicants' eligibility for participation in the VISA program. The information will be used by MARAD and the U.S. Transportation Command, and its components, to assure the continued availability of commercial sealift resources to meet the DOD's military requirements.

Description of Respondents: Operators of qualified dry cargo vessels.

Annual Responses: 60 responses.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT* (*or EST*), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the

name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: March 30, 2009.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E9–7686 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34836]

Arizona Eastern Railway—Construction and Operation—Graham County, AZ

AGENCIES: Lead: Surface Transportation Board. Cooperating: Federal Railroad Administration.

ACTION: Notice of Availability of Post Environmental Assessment.

SUMMARY: On August 4, 2006, the Arizona Eastern Railway (AZER) filed a petition with the Surface Transportation Board (Board) seeking an exemption under 49 United States Code (U.S.C.) 10502 from prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate 12 miles of new rail line in Graham County, Arizona (AZ). The Board, pursuant to 49 U.S.C. 10901, is the agency responsible for granting authority for the construction and operation of new rail line facilities. On February 25, 2008, the Board's Section of Environmental Analysis (SEA) and the Federal Railroad Administration, a cooperating agency, issued an Environmental Assessment (EA) in this proceeding. The EA was made available to agencies, the public, and interested parties for a 36-day public comment period. The Board extended the comment period by another 30 days to May 1, 2008 in response to stakeholders' requests. SEA received 25 comments on the EA. The Post EA responds to those comments and makes final environmental recommendations to the Board.

Based on its independent analysis of all information available to date, SEA concludes that the Applicant's Proposed Action would not result in any significant environmental impacts if the mitigation measures recommended in this Post EA are imposed and implemented. Accordingly, SEA recommends that any decision by the Board approving the proposed construction and operation of the Proposed Action should be contingent upon AZER complying with the mitigation set forth in Chapter 1 of the Post EA. SEA recommends 40 mitigation measures in the Post EA that are either new mitigation measures based on SEA's additional analysis or modifications of the 39 mitigation measures previously proposed in the EA. These conditions, which SEA developed in response to comments and additional analysis, address a broad range of issues including traffic safety, flooding impacts, and the transportation and handling of hazardous materials. Because the Proposed Action, as mitigated, would not have the potential for significant environmental effects, preparation of an EA for this case is appropriate and the full Environmental Impact Statement (EIS) process is unnecessary.

The Board will now consider the entire environmental record, including SEA's final recommended mitigation measures and all environmental comments received in this proceeding, in making its final decision as to whether to approve the Proposed Action, and if so, what mitigation to impose.

Copies of the Post EA have been served on all interested parties and will be made available to additional parties upon request. The entire EA is also available for review on the Board's Web site (*http://www.stb.dot.gov*) by clicking on the ''Decisions and Notices'' link, then ''E-LIBRARY'' and searching by the Service Date (February 25, 2008 and April 6, 2009) or Docket Number (FD 34836).

FOR FURTHER INFORMATION CONTACT: Diana Wood, SEA Project Manager, at (202) 245–0302; e-mail: *woodd@stb.dot.gov*. Federal Information Relay Service for the hearing impaired: 1–800–877–8339.

Decided: April 6, 2009.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–7561 Filed 4–3–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 519 (Sub-No. 4)]

Notice of National Grain Car Council Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of National Grain Car Council meeting.

SUMMARY: Notice is hereby given of a meeting of the National Grain Car Council (NGCC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Tuesday, June 2, 2009, beginning at 10 a.m. and is expected to conclude at 3 p.m.

ADDRESSES: The meeting will be held at the Headquarters of Bunge North America, Inc., 11701 Borman Drive—2nd Floor, St. Louis, MO 63146.

FOR FURTHER INFORMATION CONTACT: Tom Brugman at (202) 245–0281. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: The NGCC arose from a proceeding instituted by the Surface Transportation Board's (Board) predecessor agency, the Interstate Commerce Commission (ICC), in National Grain Car Supply—Conference of Interested Parties, Ex Parte No. 519. The NGCC was formed as a working group to facilitate private-sector solutions and recommendations to the ICC (and now the Board) on matters affecting grain transportation. The general purpose of this meeting is to discuss rail carrier preparedness to transport the 2009 Fall grain harvest. Agenda items include the following: Remarks by Board Chairman Frank Mulvey and Vice-Chairman Charles Nottingham (who serves as Co-Chairman for the NGCC), member and new member introductions, reports by rail carriers and shippers on grain-service related issues, a report by rail car manufacturers and lessors on current and future availability of various grain-car types, and an open forum on the impact of current Federal regulation on grain car supply. A more detailed agenda for this meeting will be posted on the Board's Web site at *http://www.stb.dot.gov*.

The meeting, which is open to the public, will be conducted pursuant to the NGCC's charter and Board procedures. Further communications about this meeting may be announced

through the Board's Web site at *http://www.stb.dot.gov*.

Persons wishing to attend and requiring special accommodations may direct their needs to Tom Brugman (202) 245–0281.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: April 1, 2009.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–7647 Filed 4–3–09; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Monday,
April 6, 2009

Part II

Department of Justice

Drug Enforcement Administration

21 CFR Part 1300, 1301, 1304, et al.
Implementation of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008; Final Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, 1306

[Docket No. DEA–322I]

RIN 1117–AB20

Implementation of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Ryan Haight Online Pharmacy Consumer Protection Act, which was enacted on October 15, 2008, amended the Controlled Substances Act and Controlled Substances Import and Export Act by adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the Internet. DEA is hereby issuing an interim rule to amend its regulations to implement the legislation and is requesting comments on the interim rule.

DATES: This interim rule is effective April 13, 2009, except §§ 1300.04, 1301.19, and 1304.40, which are effective April 6, 2009. Section 1300.04(i) (the definition of ''practice of telemedicine'') has an implementation date of January 15, 2010, unless such date is superseded by future regulatory actions as explained in the **SUPPLEMENTARY INFORMATION** section.

Written comments must be postmarked on or before June 5, 2009, and electronic comments must be sent on or before midnight Eastern time June 5, 2009.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–322'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION: Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

Preamble

I. Legislation Upon Which These Regulations Are Based

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Pub. L. 110–425) (hereafter, the ''Ryan Haight Act'' or the ''Act'') was enacted on October 15, 2008. The Act amended the Controlled Substances Act (CSA) and Controlled Substances Import and Export Act (CSIEA) by adding various provisions to prevent the illegal distribution and dispensing of controlled substances by means of the Internet.[1] The law becomes effective April 13, 2009 (except for one provision relating to telemedicine discussed below). Thus, as of April 13, 2009, it will be illegal under federal law to ''deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by [the CSA]'' or to aid or abet such activity. 21 U.S.C. 841(h)(1). The Act applies to all controlled substances in all schedules.

This document serves three purposes: (1) To explain the new legislation; (2) to announce the amendments to the DEA regulations that implement the new legislation; and (3) to request comments on the amendments to the regulations, which are being issued as an interim rule as contemplated in the legislation.

II. Authority in Ryan Haight Act To Issue Regulations

The Ryan Haight Act contains various provisions that call upon the Attorney

[1] Consistent with the CSA itself, the Ryan Haight Act relates solely to controlled substances. Controlled substances are those psychoactive drugs and other substances—including narcotics, stimulants, depressants, hallucinogens, and anabolic steroids—that are placed in one of the five schedules of the CSA due to their potential for abuse and likelihood that they may cause psychological or physical dependence when abused.

Controlled substances constitute only a small percentage of all pharmaceutical drugs. Approximately 10 percent of all drug prescriptions written in the United States are for controlled substances, with the remaining approximately 90 percent of prescriptions being written for noncontrolled substances. The amendments to the CSA made by the Ryan Haight Act, as well as the regulations being issued here, do not apply to noncontrolled substances.

General to issue regulations to implement the Act. Among these is the following general grant of authority:

> The Attorney General may promulgate and enforce any rules, regulations, and procedures which may be necessary and appropriate for the efficient execution of functions under this Act or the amendments made by this Act, and, with the concurrence of the Secretary of Health and Human Services where this Act or the amendments made by this Act so provide, promulgate any interim rules necessary for the implementation of this Act or the amendments made by this Act, prior to its effective date.[2]

This regulatory authority of the Attorney General has been delegated to the Administrator of DEA.[3] It is evident from the foregoing provision of the Act that Congress contemplated it would be necessary for DEA to issue regulations on an interim basis in order to implement the Act within the relatively short time period between the passage of the Act (October 15, 2008) and its effective date (April 13, 2009). Indeed, Congress envisioned that DEA would need to issue interim rules ''prior to its effective date'' (*i.e., before* April 13, 2009) to effectively implement the new requirements of the Act.[4] Accordingly, the rules published here are effective immediately while at the same time the agency is seeking public comment on them. Following the comment period, DEA will review the comments and make any modifications to the interim rule that are appropriate. Also, as explained below, the Act contemplates that DEA will, with the concurrence of the Secretary of Health and Human Services, promulgate regulations governing the issuance to practitioners of a special registration relating to the practice of telemedicine. Those regulations will be issued separately at a later date.

[2] Public Law 110–425, sec. 3(k)(1).

[3] Functions vested in the Attorney General under the CSA have been delegated to the Administrator of DEA. 28 CFR 0.100. Accordingly, in this document, ''DEA Administrator'' will be used in place of all statutory references to the Attorney General.

[4] Congress's express grant of authority under the Ryan Haight Act to issue interim rules as the DEA Administrator finds necessary to implement the Act prior to its effective date forms the basis for the DEA Administrator's conclusion, as is set forth in Section X below, that ''good cause'' exists under the Administrative Procedure Act (APA) for the issuance of interim rules (those which take effect immediately on an interim basis prior to the public comment period) because ''notice and public procedure thereon are impracticable, * * *[and] contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B).

III. Overview of the Legislation

A. Reasons for the Legislation

The unlawful use of pharmaceutical controlled substances has reached alarming levels in the United States in recent years, causing a substantial detrimental effect on the public health and safety. According to the most recently published National Survey on Drug Use and Health (2007),[5] 6.9 million Americans reported using psychotherapeutic drugs[6] nonmedically during the prior month.[7] With specific regard to pain relievers, 5.2 million respondents reported abusing these drugs,[8] which is an 18 percent increase from 2004.[9] This study further indicates that, in the United States, the abuse of prescription drugs is second only to that of marijuana and is higher than the abuse of cocaine, heroin and hallucinogens combined.[10] Among persons aged 12 and older who reported using illicit drugs for the first time in 2007, abuse of pain relievers was the most common category of first-time illicit drug use.[11]

The false sense of security that some associate with the abuse of these substances is also alarming. Many mistakenly believe that if a drug may be prescribed for medical use, abusing that drug cannot be as harmful as abusing more conventional ''street'' drugs, such as heroin or cocaine. According to the 2005 Partnership Attitude Tracking Study[12], 40 percent of teens surveyed believe that prescription medicines are ''much safer'' to use than illegal drugs. Furthermore, the same study concluded that 31 percent believe there is ''nothing wrong'' with using prescription medicines without a prescription ''once in awhile.''[13]

One of the main factors contributing to the nationwide increase in the diversion of pharmaceutical controlled substances has been the rise in the number of Internet sites that sell or facilitate the sale of these drugs for other than legitimate medical purposes. While in-person ''prescription mills'' (practitioners' offices that readily supply drug seekers with prescriptions for controlled substances without establishing a legitimate medical basis for doing so) have always been, and remain, a significant source of diversion, the advent of rogue Web sites that cater to those who abuse pharmaceutical controlled substances has allowed the criminal operators of these sites to exploit the anonymity of the Internet to generate illicit sales of controlled substances (and/or prescriptions therefor) that far exceed those of any in-person prescription mill. This is particularly evident when examining the data relating to the sales of hydrocodone, which is the most widely abused pharmaceutical controlled substance in the United States. According to data registered distributors of controlled substances provided to DEA[14] in 2006, 34 pharmacies in the United States that were supplying rogue Internet sites dispensed a total of more than 98 million dosage units of hydrocodone. Hence, these pharmacies each dispensed an average of approximately 2.9 million dosage units of hydrocodone per pharmacy in a single year. By means of comparison, the average pharmacy in the United States dispenses approximately 88,000 dosage units of hydrocodone per year.

Congress passed the Ryan Haight Act precisely because of ''the increasing use of prescription controlled substances by adolescents and others for nonmedical purposes, which has been exacerbated by drug trafficking on the Internet.''[15] The person for whom the Act was named, Ryan Haight, was ''a California high school honors student and athlete who died in 2001 from an overdose of controlled substances that he had purchased from a rogue online pharmacy.''[16] According to the Senate Report accompanying the legislation, ''Ease of access to the Internet, combined with lack of medical supervision, has led to tragic consequences in the online purchase of prescription controlled substances.''[17] The Senate Report then cited a list of examples of persons in the United States who had died from overdoses of controlled substances obtained via the Internet.[18]

[5] Available at *http://www.oas.samhsa.gov/nsduh/2k7nsduh/2k7Results.pdf.*

[6] The study states: ''Psychotherapeutics include the nonmedical use of any prescription-type pain relievers, tranquilizers, stimulants, or sedatives. Over-the-counter substances are not included.'' *Id.* at 55.

[7] *Id.* at 1.

[8] *Id.*

[9] *Compare* 2004 National Survey on Drug Use and Health at 1, available at *http://www.oas.samhsa.gov/nsduh/2k4nsduh/2k4results.pdf.*

[10] *See id.* at 73.

[11] *Id.* at 4.

[12] Partnership for a Drug-Free America; Partnership Attitude Tracking Study, Teens in grades 7 through 12, 2005; *http://www.drugfree.org/Files/Full_Teen_Report* (page 21).

[13] *Id.* at 20–21.

[14] Distributors are required to submit certain reports to DEA's ARCOS unit, as provided in 21 CFR 1304.33.

[15] S. Rep. No. 110–521, at 1 (2008).

[16] *Id.* at 12.

[17] *Id.* at 5.

[18] *Id.* at 5–6.

B. Common Methods Employed by Operators of Rogue Web Sites That Sell Pharmaceutical Controlled Substances

The rogue Web sites that the Ryan Haight Act seeks to eliminate take on a variety of appearances and use a variety of methods. One common factor is that all these Web sites are marketed toward drug seekers who are willing to pay a premium to obtain pharmaceutical controlled substances without having a legitimate medical need for them. While the ''business models'' that the operators of these sites employ to evade detection by law enforcement and/or to create the facade of compliance with the law have evolved significantly over time, there tend to be three categories of participants in these schemes: the prescribing practitioner; the pharmacy that fills the prescriptions; and the criminal facilitator (a non-DEA registrant) who runs the operation.[19]

While it has always been illegal to dispense a controlled substance without a legitimate medical purpose, prior to the Act, a rogue operator could design a site that would make it clear to drug seekers that pharmaceutical controlled substances could be obtained through the site without a legitimate medical purpose. For example, a typical rogue site would display prominently on its homepage a list of the pharmaceutical controlled substances that it sold and prompt customers to click on their desired drugs. These Web sites could easily be found by using any of various Internet search engines and entering search terms such as ''hydrocodone no prescription.'' Unsolicited e-mails or other forms of online advertising and marketing often steered potential customers to these Web sites; the advertisements announced that controlled substances could be readily obtained through the Web site without an in-person medical evaluation and sometimes without even a prescription—thus insuring a drug seeking customer could obtain the controlled substance without a legitimate medical need.

Thus, prior to passage of the Act, attracting customers was relatively easy for these rogue Web sites. However, to deliver the goods that the customers were seeking (pharmaceutical controlled substances and/or prescriptions for such), the operator of the rogue Web site usually had to enlist the services of two types of DEA registrants: a practitioner and pharmacy. Thus, the typical criminal facilitator had to recruit an unscrupulous practitioner willing to prescribe controlled substances without a legitimate medical evaluation obtained through a bona fide doctor-patient relationship. While the overwhelming majority of practitioners would want no part of this type of improper arrangement, criminal facilitators were able to find some unscrupulous practitioners willing to participate. Investigations have revealed that these facilitators often target practitioners who carry significant debt, such as those recently graduated from medical school, or those who have retired and are looking for some ''extra income.'' Regardless of the motivations of the participating practitioners, the facilitator would persuade them to enter into an agreement whereby they would agree to write prescriptions for controlled substances without adhering to the standard professional practices employed by practitioners when evaluating the medical condition of patients and determining the appropriate treatment in return for payment from the facilitator based on the number of prescriptions they would write. These arrangements operated in several ways. In some instances, the facilitator would arrange for a practitioner to issue prescriptions for controlled substances based solely on reviewing online questionnaires the customers submitted to the Web site. Other schemes involved facilitators requiring the customers of the Web site to fax some documentation that purported to be the customers' ''medical records'' and then having an unscrupulous practitioner issue prescriptions for controlled substances based on a ''review'' of these faxed documents. A third type of scheme involved the facilitator having customers of the Web site call a telephone number staffed by employees of the site, answer a series of questions purporting to create a ''medical history,'' and then have unscrupulous practitioners write the prescriptions based on these answers. Whatever the methods employed, these rogue Web site operations were merely a sham, as every step in the process was designed to sell customers controlled substances and/or prescriptions for controlled substances without regard to actual medical need.

Some criminal facilitators have been content to take in the profits associated with selling the prescriptions for controlled substances. (Some rogue Web sites charge customers a separate fee for arranging the issuance of prescriptions.) Others have sought to increase their profits by also having customers fill the prescriptions through a pharmacy affiliated with the Web site. To achieve the latter, the criminal facilitator needed to enter into an agreement with an unscrupulous pharmacy that was willing—for a fee—to fill prescriptions for controlled substances with essentially no questions asked and for as many prescriptions as the Web site could steer toward the pharmacy.[20] In addition to paying the pharmacy for the cost of the drugs, the criminal facilitator would also typically pay the pharmacy an agreed upon amount that, in some instances, amounted to millions of dollars. Given the amount of money to be made from these arrangements, DEA has seen pharmacies close their doors completely to walk-in customers and convert their entire business to filling orders generated from rogue Web sites. In some instances, criminal facilitators have used multiple brick and mortar pharmacies to service their list of drug seeking customers. In other cases, a single pharmacy has supplied multiple rogue Web sites.

These rogue Web sites generally provide the customer with a wide variety of quick and easy payment methods, such as cash-on-delivery, lines of credit, and credit ''gift'' cards. They also typically structure the various steps of the ordering process so as to link and shift the buyer to different Web sites, making it difficult for investigators to connect payments, products, and Web providers together. Rarely do such rogue Web sites contain any identifying information about where the online pharmacy is located or who owns or operates the Web site. On the contrary, these Web sites frequently fluctuate in name and number minute by minute. Finally, the typical rogue Web site fails to provide any information on how a patient may contact the prescribing practitioner or the pharmacist to consult with them about the drug(s) ordered, including drug interactions and adverse reactions.

Recognizing that these rogue Web sites fuel the abuse of prescription controlled substances and thereby increase the number of resulting overdoses and other harmful consequences, Congress passed the Ryan Haight Act to prevent the Internet from being exploited to facilitate such unlawful drug activity.

[19] The ''business models'' described here are not the only ones employed by operators of rogue sites; methods other than those described above have been utilized by those who divert controlled substances by means of the Internet.

[20] The small percentage of pharmacies who have so participated in these rogue Web site schemes have, in many cases, filled extraordinary numbers of prescriptions for controlled substances that dwarf the sales figures of walk-in pharmacies.

IV. Brief Summary of Some of the Key Provisions of the Legislation

Before examining the legislation in detail, the following is a brief recitation of two of the most important new statutory requirements: the in-person medical evaluation requirement for prescribing practitioners and the modified registration requirement for online pharmacies.

A. *In-person medical evaluation requirement*—One of the primary ways in which the Ryan Haight Act combats the use of the Internet to facilitate illegal sales of pharmaceutical controlled substances is by mandating, with limited exceptions, that the dispensing of controlled substances by means of the Internet be predicated on a valid prescription involving at least one in-person medical evaluation. While the lack of an in-person medical evaluation has always been viewed as a ''red flag'' indicating that diversion might be occurring, the Ryan Haight Act makes it unambiguous that it is a *per se* violation of the CSA for a practitioner to issue a prescription for a controlled substance by means of the Internet without having conducted at least one in-person medical evaluation, except in certain specified circumstances. At the same time, it is crucial to bear in mind that, as Congress expressly stated under the Act, the mere fact that the prescribing practitioner conducted one in-person medical evaluation does *not* demonstrate that the prescription was issued for a legitimate medical purpose within the usual course of professional practice. Even where the prescribing practitioner has complied with the requirement of at least one in-person medical evaluation, a prescription for a controlled substance must still satisfy the additional, fundamental prerequisite that has been legally mandated for more than 90 years: it must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.[21]

B. *Requirement of modified registration for online pharmacies*—Another of the core provisions of the Act is the requirement that any person who operates a Web site that fits within the definition of an ''online pharmacy'' must obtain from DEA a modification of its DEA pharmacy registration that expressly authorizes such online activity. Only DEA-registered pharmacies are eligible under the Act to obtain such a modification of registration. One of the ramifications of this requirement is that those who are not DEA-registered pharmacies (for example, those nonregistrants who have heretofore facilitated unlawful Internet controlled substance sales by enlisting the services of unscrupulous pharmacies and/or prescribing practitioners) are prohibited from operating online pharmacies.

The Act's definition of ''online pharmacy'' encompasses more than merely legitimate pharmacies that may obtain a modification of their DEA registrations allowing them to dispense controlled substances by means of the Internet. As explained below, the definition of ''online pharmacy'' includes, among others, those persons who operate the types of rogue Web sites that the Act was designed to eliminate. Consistent with the longstanding structure of the CSA (since it was enacted in 1970), the Ryan Haight Act prohibits all controlled substance activities by ''online pharmacies'' except those expressly authorized by the Act. Again, only DEA-registered pharmacies may obtain a modification of their registration authorizing them to operate as online pharmacies. In addition, a pharmacy that has obtained such a modification of its registration may not operate as an online pharmacy unless it has notified DEA of its intent to do so and its Web site contains certain declarations designed to provide clear assurance that it is operating legitimately and in conformity with the Act. (These requirements are discussed at length below.)

V. Detailed Explanation of the Legislation

Consistent with the structure of the CSA, the Ryan Haight Act sets out numerous regulatory requirements and other substantive provisions and makes it unlawful to ''knowingly or intentionally * * * deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by [the Act].'' [22] Thus, this explanation of the Act will be divided into two main parts: (1) Explaining the Act's regulatory requirements and other substantive provisions and (2) explaining what it means to ''knowingly or intentionally * * * deliver, distribute, or dispense a controlled substance by means of the Internet.''

A. New definitions under the Act

The Act adds several new definitions to the CSA. These new statutory definitions are being added to the DEA regulations as part of this Interim Rule. While many of the new definitions are self-explanatory, some are discussed in this preamble to assist in understanding the Act.

The following are two of the key definitions in the Act, which are set forth in 21 U.S.C. 802:

> (51) The term ''deliver, distribute, or dispense by means of the Internet'' refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

This definition is plainly broad in scope, encompassing any activity utilizing the Internet that causes or facilitates the delivery, distribution, or dispensing of a controlled substance. This definition is incorporated into the Act's definition of an ''online pharmacy'':

> (52) The term ''online pharmacy'' * * * means [with certain exceptions discussed below] a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the Internet.

The definition of ''online pharmacy'' is also broad in scope. First, it includes not only a ''person'' [23] but also any other ''entity'' or ''Internet site''—''whether in the United States or abroad''—that otherwise meets the definition of an ''online pharmacy.'' Second, it also includes not only any such person, entity or Internet site ''that knowingly or intentionally delivers, distributes, or dispenses * * * a controlled substance by means of the Internet,'' but also any such one who ''offers or attempts'' to do so.

Hence, the term ''online pharmacy'' includes, among other things: (i) Any Web site that sells, or offers to sell, any controlled substance or a prescription therefor to a person in the United States; (ii) any person who operates such a Web site; [24] (iii) any person who pays a practitioner to write prescriptions for controlled substances for customers of such a Web site; (iv) any person who pays a pharmacy to fill prescriptions for controlled substances that were issued

[21] 21 CFR 1306.04(a); *United States* v. *Moore*, 423 U.S. 122 (1975). This requirement has been a part of federal law since the Harrison Narcotic Act of 1914. *Id.* at 131. For a detailed explanation of the ''legitimate medical purpose requirement,'' *see* 71 FR 52716, 52717 (2006 DEA policy statement).

[22] 21 U.S.C. 841(h)(1)(A).

[23] As set forth in 1 U.S.C. 7, the word ''person'' includes ''corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.'' Consistent therewith, the DEA regulations define ''person'' to include ''any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity.'' 21 CFR 1300.01(b)(34).

[24] The Act exempts certain categories of persons from the application of 21 U.S.C. 841(h)(1), such as Internet service providers and Web hosting services, so long as such persons do not act in concert with others who violate the Act.

to customers of such a Web site; (v) any pharmacy that knowingly or intentionally fills prescriptions for controlled substances that were issued to customers of such a Web site; and (vi) any person who sends an e-mail that: Offers to sell a controlled substance or a prescription for a controlled substance in a manner not authorized by the Act; directs buyers to a Web site operating in violation of the Act; or otherwise causes or facilitates the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by the Act.

While the general scope of the definition of an ''online pharmacy'' is broad, the definition expressly excludes the following categories:

> (i) Manufacturers or distributors registered under subsection (a), (b), (d), or (e) of [21 U.S.C. 823] who do not dispense controlled substances to an unregistered individual or entity;
>
> (ii) Nonpharmacy practitioners who are registered under [21 U.S.C. 823(f)] and whose activities are authorized by that registration;
>
> (iii) Any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under [21 U.S.C. 823(f)];
>
> (iv) A health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act;
>
> (v) Any agent or employee of any hospital or facility referred to in clause (iii) or (iv), provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in clause (iv), only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such clause;
>
> (vi) Mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;
>
> (vii) A person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;
>
> (viii) A pharmacy registered under [21 U.S.C. 823(f)] whose dispensing of controlled substances via the Internet consists solely of—
>
> (I) Refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph [21 U.S.C. 802(55)]; or
>
> (II) Filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph [21 U.S.C. 802(56)]; or
>
> (ix) Any other persons for whom the [DEA Administrator] and the Secretary [of Health and Human Services] have jointly, by regulation, found it to be consistent with effective controls against diversion and otherwise consistent with the public health and safety to exempt from the definition of an ''online pharmacy''.

21 U.S.C. 802(52)(B).

To elaborate briefly on these exceptions, under exception (i), a DEA-registered manufacturer or distributor [25] that uses the Internet to facilitate activities permitted by its DEA registration does *not* constitute an online pharmacy. Under exception (ii), a DEA-registered nonpharmacy practitioner (*e.g.*, physician, dentist, veterinarian, scientific investigator, hospital, or other person authorized by his registration to dispense controlled substances) may do so by means of the Internet without being an online pharmacy. Under exceptions (iii) through (v), certain hospitals and other health care facilities associated with the United States government, as well as agents and employees acting in the course of their duties for such institutions, are not online pharmacies. Under exception (vi), an advertisement is not an online pharmacy, provided the advertisement does not ''attempt to facilitate an actual transaction involving a controlled substance.''

Under exception (vii), a person, entity, or Internet site located outside the United States is only excepted from the definition of an online pharmacy if it ''does *not* facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to *any person in the United States*.'' (Emphasis added.) Thus, Web sites operated by persons located abroad, along with persons who operate the sites, *do* fall within the definition of an online pharmacy if they sell or offer to sell controlled substances to persons in the United States or otherwise ''facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States.''

Under exception (viii), a DEA-registered pharmacy is excepted from the definition of an online pharmacy if it dispenses controlled substances via the Internet solely by ''refilling prescriptions for controlled substances in schedule III, IV, or V'' and ''filling new prescriptions for controlled substances in schedule III, IV, or V'' (as those terms are defined in the Act). Finally, under exception (ix), the DEA Administrator and the Secretary of Health and Human Services have the authority to jointly decide to issue regulations making further exceptions to the definition of an online pharmacy, where they determine that doing so is ''consistent with effective controls against diversion and otherwise consistent with the public health and safety.'' Pursuant to this clause, the regulations being issued here contain two exceptions to the definition of an online pharmacy: One relating to electronic prescribing of controlled substances and the other to the use of automated dispensing systems. These exceptions are explained below.

B. In-Person Medical Evaluation Requirement

To directly prohibit what had been the practice of many rogue Web sites—allowing customers to buy controlled substances and/or prescriptions for controlled substances via the Internet without ever seeing the prescribing practitioner in person—the Ryan Haight Act includes as one of its central features the ''valid prescription'' requirement. This requirement is set forth in 21 U.S.C. 829(e)(1): ''No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act [26] may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.''

The Act further defines the meaning of ''valid prescription'' in 21 U.S.C. 829(e)(2)(A): ''The term 'valid prescription' means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by—(i) a practitioner who has conducted at least 1 in-person medical evaluation of the patient; or (ii) a covering practitioner.'' The Act explains the meaning of ''in-person medical evaluation'' in 21 U.S.C. 829(e)(2)(B):

> (i) The term ''in-person medical evaluation'' means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.
>
> (ii) Nothing in clause (i) shall be construed to imply that 1 in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

Thus, for every controlled substance that is delivered, distributed, or dispensed by means of the Internet,

[25] Under the CSA, a DEA-registered ''distributor'' delivers controlled substances to other DEA registrants; it may *not* administer, dispense, or otherwise deliver controlled substances to patients. *See* 21 U.S.C. 802(11), 822(a), 822(b), 828(a).

[26] Nearly every pharmaceutical controlled substance is a prescription drug under the Federal Food, Drug, and Cosmetic Act (FDCA). In the very rare instance where a drug contains a controlled substance but may be dispensed under the FDCA without a prescription, the DEA regulations specify the procedures a pharmacist must follow to dispense such a drug lawfully to a purchaser. 21 CFR 1306.26.

there must be a ''valid prescription,'' which means not only that the prescription must comply with the longstanding requirement of being issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice, but also that the prescribing practitioner must either (i) have conducted at least one in-person medical evaluation of the patient or (ii) meet the definition of a ''covering practitioner'' (explained below). Any practitioner who writes a prescription for a controlled substance that fails to comply with this provision of the Act, as well as any pharmacy that knowingly or intentionally fills such a prescription, violates 21 U.S.C. 841(h)(1).

Hence, the Act makes it unambiguous that, except in limited and specified circumstances, it is a per se violation of the CSA for a practitioner to issue a prescription for a controlled substance by means of the Internet without having conducted at least one in-person medical evaluation. However, the Act also expressly provides that a prescribing practitioner does not automatically meet the requirement of issuing a prescription for a legitimate medical purpose while acting in the usual course of professional practice merely by having conducted a single in-person medical evaluation of the patient. Rather, as with all situations in which a prescription for a controlled substance is issued, all the facts and circumstances surrounding the issuance of the prescription must be evaluated in determining whether it was issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.[27] A rogue Internet operation cannot, for example, defeat the purpose of the Act by establishing a method of operation in which a practitioner conducts a perfunctory in-person ''evaluation'' of each ''patient'' simply for the purpose of selling prescriptions for controlled substances to the patient in perpetuity with no follow-up visits. This topic is addressed further below in Section VII, which provides additional information for practitioners.

With respect to the term ''covering practitioner,'' the Act states (21 U.S.C. 829(e)(2)(C)):

> The term ''covering practitioner'' means, with respect to a patient, a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who—(i) has conducted at least 1 in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and (ii) is temporarily unavailable to conduct the evaluation of the patient.

Thus, a prescribing practitioner who falls within the above definition of a ''covering practitioner'' need not conduct an in-person medical evaluation as a prerequisite to prescribing a controlled substance to a given patient, provided that the practitioner for whom the covering practitioner is covering has conducted an in-person medical evaluation of that patient and provided further that this covering arrangement is taking place on only a temporary basis. Moreover, just as with the primary practitioner, the requirement that the prescription must be issued in the usual course of professional practice for a legitimate medical purpose applies with equal force to a ''covering practitioner.''

The Act also provides for an exception to the requirement of an in-person medical evaluation for practitioners who are engaged in the ''practice of telemedicine'' within the meaning of the Act. 21 U.S.C. 829(e)(3)(A). Of course, a practitioner engaged in the ''practice of telemedicine'' remains subject to the requirement that every prescription for a controlled substance be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. The Act provides a temporary definition of the ''practice of telemedicine'' pending issuance of new regulations addressing ''telemedicine.'' The topic of ''telemedicine'' is further addressed in paragraph D below.

C. Requirements for Online Pharmacies

Modified Registration Requirement—The Act imposes various requirements for those persons and other entities that fit within the Act's definition of an online pharmacy. To begin with, an online pharmacy may only operate lawfully as an online pharmacy if it is a DEA-registered pharmacy that has obtained from DEA a modification of its registration authorizing it to engage in such activity. 21 U.S.C. 823(f), 841(h)(1). An online pharmacy that is not validly registered with a modification authorizing it to operate as an online pharmacy as required by 21 U.S.C. 823(f) will violate 21 U.S.C. 841(h)(1) if it knowingly or intentionally delivers, distributes, or dispenses a controlled substance by means of the Internet. Moreover, under the Act, the only type of online pharmacy that is eligible to apply to DEA for such modification of registration is a DEA-registered pharmacy. 21 U.S.C. 823(f). Thus, any person, entity, or Internet site that falls within the definition of an online pharmacy—and is not a DEA-registered pharmacy that has obtained a modification of its registration authorizing it to operate as an online pharmacy—is necessarily violating the Act if it knowingly or intentionally delivers, distributes, or dispenses a controlled substance by means of the Internet.

The regulations being issued here set forth the process by which a DEA-registered pharmacy may apply online for a modification of its registration authorizing it to operate as an online pharmacy. Under the Act, DEA must base its decision on whether to grant or deny such an application for a modification of registration on the same statutory criteria that it must consider in evaluating an application for registration submitted by a pharmacy or other practitioner. 21 U.S.C. 823(f).

Reporting Requirement—A pharmacy that has obtained a modification of its registration authorizing it to dispense controlled substances by means of the Internet must report to DEA, on a monthly basis, the total amount of each controlled substance it dispenses. 21 U.S.C. 827(d)(2). For pharmacies that are subject to this requirement, the monthly report must include all controlled substances dispensed by any means—not just controlled substances dispensed by means of the Internet. *Id.* However, if a pharmacy with such a modified registration dispenses an amount that falls below the threshold in a given month, it is not required to submit a report for that month. *Id.* The monthly threshold is either (A) 100 or more prescriptions for controlled substances filled by the pharmacy or (B) 5,000 or more total dosage units of controlled substances dispensed. *Id.* Again, these threshold amounts include all controlled substances dispensed by the pharmacy by any means (through walk-in business, by mail, by means of the Internet, or otherwise). *Id.* If the pharmacy meets or exceeds either of the foregoing amounts in a given month, it must report to DEA the total amount of controlled substances it dispensed by any means during that month. *Id.* The regulations being issued here specify the time and manner in which such reports must be filed.

Statements that must appear on an online pharmacy's Web site—Every online pharmacy is required under the Act to ''display in a visible and clear manner on its homepage a statement that it complies with the requirements of [21 U.S.C. 831] with respect to the delivery or sale or offer for sale of

[27] For a detailed explanation of the ''legitimate medical purpose requirement,'' see 71 FR 52716, 52717 (2006 DEA policy statement). *See* also, 21 CFR 1306.04(a); *United States* v. *Moore*, 423 U.S. 122 (1975).

controlled substances and shall at all times display on the homepage of its Internet site a declaration of compliance in accordance with this section.'' 21 U.S.C. 831(a).

In addition, the Act requires every online pharmacy to satisfy the following requirement relating to what the Act refers to as the ''Internet Pharmacy Site Disclosure Information.'' As set forth in 21 U.S.C. 831(c), each online pharmacy shall post in a visible and clear manner on the homepage of each Internet site it operates, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage, the following information for each pharmacy that delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of, that Web site:

- The name and address of the pharmacy as it appears on the pharmacy's Drug Enforcement Administration Certificate of Registration.
- The pharmacy's telephone number and e-mail address.
- The name, professional degree, and States of licensure of the pharmacist-in-charge, and a telephone number at which the pharmacist-in-charge can be contacted.
- A list of the States in which the pharmacy is licensed to dispense controlled substances.
- A certification that the pharmacy is registered under this part to deliver, distribute, or dispense by means of the Internet controlled substances.
- The name, address, telephone number, professional degree, and States of licensure of any practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.
- The following statement, unless revised by the [DEA Administrator] by regulation: ''This online pharmacy will only dispense a controlled substance to a person who has a valid prescription issued for a legitimate medical purpose based upon a medical relationship with a prescribing practitioner. This includes at least one prior in-person medical evaluation or medical evaluation via telemedicine in accordance with applicable requirements of section 309.''

While the foregoing requirements are largely self-explanatory, some aspects warrant special emphasis. The requirement that an online pharmacy post the foregoing information ''in a visible and clear manner on the homepage of each Internet site it operates, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage'' is intended to ensure that members of the public who visit such Web sites are informed about the Ryan Haight Act's core requirements and to ensure that the DEA-registered pharmacies and prescribing practitioners affiliated with the site, if any, are clearly identified. Any effort by an online pharmacy to hide or reduce the visibility on the Web site of this required information will subject those responsible to potential criminal and civil liability and, in the case of DEA registrants, potential loss of registration. The required information must be displayed ''for each pharmacy that delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of, that Web site.'' Thus, if multiple pharmacies dispense controlled substances pursuant to orders made on, through, or on behalf of, that Web site, each required category of information must be displayed for each such pharmacy.

The requirement (under paragraph (4)) that an online pharmacy list the States in which it is licensed to dispense controlled substances is designed to ensure that an online pharmacy only dispenses controlled substances to patients in States in which it is authorized to practice pharmacy. Dispensing beyond the scope of State licensure is one of the recurring transgressions of some rogue online pharmacies and generally violates State law.[28]

State licensure requirement—The Act also requires that online pharmacies comply with State licensure requirements. Specifically, the Act requires that:

> Each online pharmacy shall comply with the requirements of State law concerning the licensure of pharmacies in each State from which it, and in each State to which it, delivers, distributes, or dispenses or offers to deliver, distribute, or dispense controlled substances by means of the Internet, pursuant to applicable licensure requirements, as determined by each such State.

21 U.S.C. 831(b).

Required notification to DEA—The Act contains a provision that is designed to ensure that DEA, and the applicable State boards of pharmacy, are aware of the existence of an online pharmacy before it commences operation. The Act's notification requirements are set forth in 21 U.S.C. 831(d)(1):

> Thirty days prior to offering a controlled substance for sale, delivery, distribution, or dispensing, the online pharmacy shall notify the [DEA Administrator], in such form and manner as the [Administrator] shall determine, and the State boards of pharmacy in any States in which the online pharmacy offers to sell, deliver, distribute, or dispense controlled substances.

Pursuant to this provision, the regulations being issued here provide that such notification to DEA shall be made by the pharmacy as part of the process by which it applies to DEA for a modification of its registration authorizing it to operate as an online pharmacy. The Act specifies that the foregoing notification must include the following information:

> (A) The information required to be posted on the online pharmacy's Internet site under [21 U.S.C. 831(c)] and shall notify the [DEA Administrator] and the applicable State boards of pharmacy, under penalty of perjury, that the information disclosed on its Internet site under [21 U.S.C. 831(c)] is true and accurate;
>
> (B) The online pharmacy's Internet site address and a certification that the online pharmacy shall notify the [Administrator] of any change in the address at least 30 days in advance; and
>
> (C) the Drug Enforcement Administration registration numbers of any pharmacies and practitioners referred to in [21 U.S.C. 831(c)], as applicable.

21 U.S.C. 831(d)(2).

Thus, the information that an online pharmacy is required to post on its Web site must also be provided to DEA as part of the application for a modification of its DEA registration in order to satisfy part of the notification requirement.

Declaration of compliance—Beginning on the date on which the online pharmacy makes the notification to DEA required by 21 U.S.C. 831(d), and continuing thereafter, it must ''display on the homepage of its Internet site, in such form as the [DEA Administrator] shall by regulation require, a declaration that it has made such notification to the [Administrator].'' 21 U.S.C. 831(e). The regulations being issued here specify precisely the form in which this declaration must be made.

Additional considerations regarding statements, declarations, notifications, and disclosures required under the Act—As stated in 21 U.S.C. 831(f): ''Any statement, declaration, notification, or disclosure required under [21 U.S.C. 831] shall be considered a report required to be kept under [the CSA].'' One important effect of this provision is that, in conjunction with 21 U.S.C. 843(a)(4), it is a felony violation of the CSA to furnish false or fraudulent

[28] A State may bring a civil action in federal court to enjoin any violation of the Ryan Haight Act—not merely those violations of State law—and to obtain other appropriate legal or equitable relief. 21 U.S.C. 882(c).

material information in, or omit any material information from, any statement, declaration, notification, or disclosure required under 21 U.S.C. 831.[29]

D. Telemedicine

As indicated above, ''a practitioner engaged in the practice of telemedicine'' within the meaning of the Act is exempt from the requirement of an in-person medical evaluation as a prerequisite to prescribing or otherwise dispensing controlled substances by means of the Internet. Before explaining the meaning of the ''practice of telemedicine,'' it bears repeated emphasis that all practitioners who prescribe controlled substances—even those engaged in the practice of telemedicine—remain subject to the requirement that the prescription be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. Prescribing a controlled substance without conducting an in-person medical evaluation has always been, and remains under the Act, a strong indication (or ''red flag'') of likely diversion.[30] The Act simply made the failure to perform an in-person medical evaluation in certain circumstances [31] an automatic violation of the CSA, while leaving it as a factor indicative of possible diversion in all other circumstances.

The definition of the ''practice of telemedicine'' includes seven distinct categories that involve circumstances in which the prescribing practitioner might be unable to satisfy the Act's in-person medical evaluation requirement, yet nonetheless has sufficient medical information to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice. In these circumstances, provided certain safeguards are in place to ensure that the practitioner who is engaged in the practice of telemedicine is able to conduct a bona fide medical evaluation of the patient at the remote location, and is otherwise acting in the usual course of professional practice, the Act contemplates that the practitioner will be permitted to prescribe controlled substances by means of the Internet despite not having conducted an in-person medical evaluation. The Act defines these categories, through the definition of ''practice of telemedicine,'' which is set forth in 21 U.S.C. 802(54).

The Act specifies that the definition of the ''practice of telemedicine'' found in 21 U.S.C. 802(54) does not take effect at the same time the rest of the Act takes effect (April 13, 2009). Rather, the Act provides for a temporary definition of the ''practice of telemedicine'' that will apply beginning April 13, 2009, and continuing until the *earlier* of two dates: (i) three months after the date on which regulations are promulgated to carry out 21 U.S.C. 831(h) [relating to the issuance of a special registration to practice telemedicine] or (ii) January 15, 2010.[32] Until the first of the foregoing two dates is reached, the Act states that the following definition applies:

> [T]he term ''practice of telemedicine'' means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), if the practitioner is using an interactive telecommunications system that satisfies the requirements of section 410.78(a)(3) of title 42, Code of Federal Regulations.

The rule being issued today contains both definitions of the practice of telemedicine (temporary and permanent), with the respective effective dates indicated.

Special registration for telemedicine—A practitioner who is engaged in the practice of telemedicine within the meaning of the Act is not subject to the mandatory in-person medical evaluation requirement of 21 U.S.C. 829(e) (although such practitioner remains subject to the requirement that all prescriptions for controlled substances be issued for a legitimate medical purpose). The Act's permanent definition of the ''practice of telemedicine'' includes, as an example, ''a practitioner who has obtained from the [DEA Administrator] a special registration under [21 U.S.C. 831(h)].'' 21 U.S.C. 802(54)(E). The Act specifies certain criteria that DEA must consider when evaluating an application for such a registration. However, the Act contemplates that DEA must issue certain regulations to effectuate this special registration provision. Specifically, the Act states: ''The [DEA Administrator] shall, with the concurrence of the Secretary [of Health and Human Services], promulgate regulations specifying the limited circumstances in which a special registration under [21 U.S.C. 831(h)] may be issued and the procedures for obtaining such a special registration.'' DEA will issue a separate rule promulgating regulations consistent with this directive. As explained above, until such regulations are promulgated, or until January 15, 2010 (whichever comes first), the temporary definition of the practice of telemedicine recited above remains in effect.

E. Exemptions for Electronic Prescribing of Controlled Substances and Automated Dispensing Systems

Electronic prescribing of controlled substances—On June 27, 2008, DEA published in the **Federal Register** a Notice of Proposed Rulemaking that would amend the DEA regulations to allow practitioners to electronically prescribe controlled substances (73 FR 36722). DEA is currently developing a final rule on electronic prescribing of controlled substances that takes into account the numerous public comments that were submitted in response to the proposed rule. Once the rule is finalized and published in the **Federal Register**, practitioners will be permitted to electronically prescribe controlled substances in accordance with the requirements in the regulations. In most cases, electronic prescribing of controlled substances will occur by means of the Internet. Given the Act's definitions, a pharmacy that knowingly or intentionally fills an electronic prescription for a controlled substance would (in the likely event that such an electronic prescription were transmitted via the Internet) fall within the Act's definition of an online pharmacy.

As indicated above, the Act gives the DEA Administrator, acting jointly with the Secretary of Health and Human Services, authority to exempt by regulation certain persons from the definition of an ''online pharmacy,'' where the Administrator and the Secretary have found that doing so is ''consistent with effective controls against diversion and otherwise consistent with the public health and safety.'' 21 U.S.C. 802(52)(B)(ix). Pursuant to this authority, the regulations being issued here today contain a provision that exempts from the definition of an online pharmacy any DEA-registered pharmacy ''whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of * * * filling prescriptions that were electronically prescribed in a manner authorized by

[29] In addition, the Act lists the following as an example of a violation of 21 U.S.C. 841(h)(1): ''making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under [21 U.S.C. 831(d) or (e)].'' 21 U.S.C. 841(h)(2)(E). Such conduct might also subject the offender to liability under 18 U.S.C. 1001(a).

[30] *See, e.g., United States* v. *Rosen*, 582 F.2d 1032, 1036 (5th Cir. 1978).

[31] These circumstances are specified in 21 U.S.C. 829(e) and discussed above.

[32] Public Law 110–425, section 3(j).

this chapter and otherwise in compliance with the Act.'' 21 CFR 1300.04(h)(9). To eliminate any possible confusion as to how this exception applies, this provision of the regulations further states: ''A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than [the acceptance of electronic prescriptions for controlled substances transmitted in accordance with the requirements of this chapter], it would fall outside the definition of an online pharmacy.'' A DEA-registered pharmacy that is so exempted from the definition of an online pharmacy is not required to obtain a modified registration and is not subject to the reporting requirement of 21 U.S.C. 827(d)(2) or the additional requirements relating to online pharmacies set forth in 21 U.S.C. 831.

It should be understood that the exception provided in 21 CFR 1300.04(h)(9) cannot take effect until DEA issues regulations allowing for the electronic prescribing of controlled substances. Until then, electronic prescribing of controlled substances is not permitted by the DEA regulations and thus cannot form the basis for any exception to the requirement of a modified registration for DEA-registered pharmacies.

It should also be clear from the language of 21 CFR 1300.04(h)(9) that this exception provides no loophole for operators of rogue Internet Web sites or unscrupulous pharmacies that fill prescriptions generated through such sites. The mere fact that a pharmacy accepts electronic prescriptions does *not*, in any way, immunize the pharmacy from the requirements of the Act. Likewise, a rogue Web site that operates in violation of the Act cannot escape liability simply by having either (i) unscrupulous practitioners who have a contract to write prescriptions on behalf of the site issue such prescriptions electronically or (ii) unscrupulous pharmacies that have a contract to fill such prescriptions do so through the acceptance of electronic prescriptions. To the contrary, the regulation is written so that the exception cannot possibly be utilized by a rogue Web site; only a DEA-registered pharmacy is eligible for the exception and only to the extent it is otherwise acting in conformity with the CSA and the DEA regulations.

Exemption for automated dispensing systems—Under current DEA regulations, a DEA-registered retail pharmacy may install and operate an automated dispensing system at a long term care facility under certain specified conditions. 21 CFR 1301.27. Among other requirements, any retail pharmacy that installs and operates an automated dispensing system at a long term care facility must maintain a separate registration at each long term care facility in which its automated dispensing systems are located. *Id.* Prescription information may be transmitted by the retail pharmacy to the automated dispensing system via the Internet. Therefore, a pharmacy that operates an automated dispensing system at a long term care facility could potentially fall within the Act's definition of an online pharmacy. Pursuant to 21 U.S.C. 802(52)(B)(ix), the DEA Administrator and the Secretary have jointly concluded that it would be consistent with effective controls against diversion and otherwise consistent with the public health and safety to issue the following exemption. As set forth in 21 CFR 1300.04(h)(10), if a DEA-registered retail pharmacy does not deliver, distribute, or dispense, or offer to deliver, distribute, or dispense, controlled substances by means of the Internet, other than to communicate prescription information to an automated dispensing system for which it holds a separate registration at a long term care facility, that retail pharmacy is exempted from the definition of an online pharmacy. As a result, such a pharmacy is not required to obtain a modified registration and is not subject to the reporting requirement of 21 U.S.C. 827(d)(2) or the additional requirements relating to online pharmacies set forth in 21 U.S.C. 831.

VI. Criminal Provisions of the Ryan Haight Act

The Ryan Haight Act adds two new criminal offenses to the CSA. The first new offense is set forth in 21 U.S.C. 841(h)(1), which states:

> It shall be unlawful for any person to knowingly or intentionally–
>
> (A) Deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by [the CSA]; or
>
> (B) Aid or abet (as such terms are used in section 2 of title 18, United States Code) any activity described in subparagraph (A) that is not authorized by [the CSA].

The Act contains specific examples of conduct which would violate 21 U.S.C. 841(h)(1). These examples in the Act, however, are *not* an exclusive list of the types of conduct that constitute violations of 21 U.S.C. 841(h)(1). With this proviso made clear, 21 U.S.C. 841(h)(2) lists the following as examples of violations:

> (A) Delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by [21 U.S.C. 823(f)] (unless exempt from such registration);
>
> (B) Writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of [21 U.S.C. 829(e)];
>
> (C) Serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by [21 U.S.C. 823(f) or 829(e)];
>
> (D) Offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and
>
> (E) Making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under [21 U.S.C. 831(d) or (e)].

As these examples are largely self-illuminating, and some have already been addressed in this preamble, only limited further amplification is provided here. Paragraph (C), in particular, reflects that the Act was intended not only to prohibit DEA registrants from using the Internet to facilitate the unlawful dispensing of controlled substances, but to also prohibit non-DEA registrants from doing so. Most notably, paragraph (C) is aimed squarely at the criminal facilitator whose ''business plan'' for operating a rogue online pharmacy is to recruit an unscrupulous practitioner to write prescriptions based on insufficient or nonexistent medical evaluations and/or an unscrupulous pharmacist to fill such prescriptions.

The Act contains certain categories of conduct that do not result in the participants falling within the Act's definition of an online pharmacy. Specifically, 21 U.S.C. 841(h)(3) states:

> (A) This subsection [21 U.S.C. 841(h)(1)] does not apply to:
>
> (i) The delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under [the CSA];
>
> (ii) The placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or
>
> (iii) except as provided in subparagraph (B), any activity that is limited to—
>
> (I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934) [47 U.S.C. 231]; or
>
> (II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made

by another person in a manner consistent with section 230(c) of the Communications Act of 1934 [47 U.S.C. 230(c)] shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

Thus, paragraph (A)(i) allows DEA-registered nonpractitioners (such as manufacturers and distributors) to utilize the Internet in carrying out activities authorized by their DEA registrations (and otherwise in conformity with the CSA) without being subject to liability under 21 U.S.C. 841(h)(1). Paragraph (A)(ii) allows for Web sites that advocate the use of controlled substances or contain pricing information ''without attempting to propose or facilitate an actual transaction involving a controlled substance.'' Paragraph (A)(iii) exempts from application of 21 U.S.C. 841(h)(1) Internet service providers, Web hosting services, and certain other specified entities that do not alter content of Internet transmissions. However, it is crucial to bear in mind that the exception of paragraph (A)(iii) does *not* apply to ''a person acting in concert with a person who violates [21 U.S.C. 841(h)(1)].'' Thus, any person whose conduct would be sufficient to prove that he conspired to violate 21 U.S.C. 841(h)(1), or aided and abetted such violation, is not immune from prosecution under paragraph (A)(iii).

The second new criminal offense added by the Act is 21 U.S.C. 843(c)(2)(A). This provision expressly prohibits using the Internet to advertise illegal transactions in controlled substances. Specifically, this provision states:

It shall be unlawful for any person to knowingly or intentionally use the Internet, or cause the Internet to be used, to advertise the sale of, or to offer to sell, distribute, or dispense, a controlled substance where such sale, distribution, or dispensing is not authorized by [the CSA] or by the Controlled Substances Import and Export Act.

The Act further states:

Examples of activities that violate [21 U.S.C. 843(c)(2)(A)] include, but are not limited to, knowingly or intentionally causing the placement on the Internet of an advertisement that refers to or directs prospective buyers to Internet sellers of controlled substances who are not registered with a modification under [21 U.S.C. 823(f)].

Thus, for example, it is unlawful under the Act to knowingly or intentionally place an advertisement on the Internet that directs persons to a Web site that sells prescriptions for controlled substances where the operator of the Web site is not a DEA-registered pharmacy with a modification authorizing it to operate as an online pharmacy. As another example, it is unlawful under the Act to knowingly or intentionally place an advertisement on the Internet that offers to sell a controlled substance without a prescription or that directs persons to a Web site through which a controlled substance may be purchased without a prescription.

Two important points should be noted with respect to 21 U.S.C. 843(c)(2)(A). First, to establish a violation of this felony provision, it is *not* necessary that the person placing the advertisement actually engage in a transaction involving a controlled substance. Rather, merely placing on the Internet an advertisement that is designed to facilitate, or offers to facilitate, an illegal sale of a controlled substance is sufficient to violate 21 U.S.C. 843(c)(2)(A). Second, the Act applies to advertisements relating to violations not only of the CSA, but also of the Controlled Substances Import and Export Act (CSIEA, which is found in 21 U.S.C. 951 through 971). Thus, it is a violation of 21 U.S.C. 843(c)(2)(A) to place an advertisement on the Internet that offers, for example, to ship controlled substances into the United States for personal medical use, since doing so would violate the CSIEA.[33] *What It Means to ''Knowingly or intentionally deliver, distribute, or dispense a controlled substance by means of the Internet.''*

The Ryan Haight Act is structured around the phrase ''knowingly or intentionally deliver, distribute, or dispense a controlled substance by means of the Internet.'' The meaning of this phrase is therefore essential to the meaning of the Act. To explain its meaning, it is helpful to divide the phrase into two parts, starting with the latter half (''deliver, distribute, or dispense a controlled substance by means of the Internet''). The Act itself contains the following definition:

The term ''deliver, distribute, or dispense by means of the Internet'' refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is *caused* or *facilitated* by means of the Internet.

21 U.S.C. 802(51) (emphasis added). Given that the phrase ''deliver, distribute, or dispense by means of the Internet'' has the foregoing definition, the next question is: What does it mean to ''*knowingly or intentionally*'' deliver, distribute, or dispense a controlled substance by means of the Internet?

The phrase ''knowingly or intentionally'' has been a part of the CSA since its enactment in 1970. Among other provisions, 21 U.S.C. 841(a)(1) (the most widely utilized criminal provision of the CSA) makes it an offense to ''knowingly or intentionally * * * manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance'' except as authorized by the CSA. There are numerous reported federal cases, some of which are discussed below, in which practitioners and pharmacists have been convicted of violating 21 U.S.C. 841(a)(1). These cases establish clear precedent for interpreting the phrase ''knowingly or intentionally'' in the context of practitioners who unlawfully prescribe controlled substances and pharmacists who unlawfully fill prescriptions for controlled substances. Specifically, a practitioner may be convicted of knowingly or intentionally dispensing controlled substances in violation of the CSA where the practitioner either (i) had actual knowledge of the illegal activity or (ii) was presented with facts that put him on notice that criminal activity was particularly likely and yet intentionally failed to investigate those facts.[34] The following statement by one federal court of appeals exemplifies the standard under which pharmacists may be held liable for knowingly or intentionally dispensing controlled substances in violation of the CSA:

The question, then, in any case where a pharmacist is charged with illegal distribution of controlled substances, is whether he knew that the purported prescription was not issued for a legitimate medical purpose or in the usual course of medical practice. The key element of knowledge may be shown by proof that the defendant deliberately closed his eyes to the true nature of the prescription.[35]

Another federal court has similarly stated that a pharmacist may be

[33] Under the CSIEA, the importation of controlled substances into the United States is prohibited except by persons registered with DEA to do so or persons exempted from such requirement. 21 U.S.C. 952, 957, 960. In accordance with the CSIEA, DEA has issued a regulation authorizing a person to import certain controlled substances for personal medical use, provided the person has the drugs in his possession upon entering the United States, makes the required declaration to the U.S. Customs and Border Protection, and otherwise complies fully with the requirements of the regulation. 21 CFR 1301.26; 69 FR 55343 (2004). Under no circumstances is it permissible under the CSIEA or the regulations for a person to have controlled substances shipped into the United States for personal medical use.

[34] *United States* v. *Katz*, 445 F.3d 1023, 1031 (8th Cir. 2006), *cert. denied*, 127 S.Ct. 421 (2006).

[35] *United States* v. *Lawson*, 682 F.2d 480, 482 (4th Cir. 1982) (citations omitted), *cert. denied*, 459 U.S. 991 (1982).

convicted of unlawfully dispensing controlled substances where the evidence establishes that the pharmacist ''deliberately closed his eyes to wrongdoing that should have been obvious to him.''[36] Courts have referred to such conduct as ''willful blindness'' or ''deliberate ignorance.'' As one court has stated:

> Ignorance is deliberate if the defendant was presented with facts that put her on notice that criminal activity was particularly likely and yet she intentionally failed to investigate those facts.* * * If, in light of certain obvious facts, reasonable inferences support a finding that a defendant's failure to investigate is equivalent to 'burying one's head in the sand,' the jury may consider willful blindness as a basis for knowledge.[37]

Thus, a pharmacist who fills a prescription that was issued in violation of any provision of the Act may be held criminally liable under 21 U.S.C. 841(h)(1) if he did so knowingly or intentionally—that is, if he either (i) had actual knowledge of the violation or (ii) deliberately disregarded facts that would have led a reasonable pharmacist to be highly suspicious about the likelihood of such a violation. Likewise, a practitioner who writes a prescription in violation of the Act may be held criminally liable under 21 U.S.C. 841(h)(1) if he did so knowingly or intentionally—which can be proven by showing that either (i) the practitioner had actual knowledge of the violation or (ii) the practitioner deliberately disregarded facts that would have led a reasonable practitioner to be highly suspicious about the likelihood of such a violation.

VII. Additional Information About the Ryan Haight Act for Pharmacists, Practitioners, Other Registrants, and Members of the Public

This section provides additional information specifically tailored to various categories of persons who are likely to be affected by, or otherwise have an interest in, the Ryan Haight Act. This information must be read in conjunction with the general information explaining the Act provided above. For example, the definitions of the terminology used in the Act will not be repeated in this section (due to their length) and should be reviewed as necessary by returning to the appropriate sections of the preamble.

A. Additional Specific Information for Pharmacists

If you are a pharmacist, and your DEA-registered pharmacy falls within the definition of an ''online pharmacy,'' your pharmacy must, beginning on April 13, 2009, obtain from DEA a modification of its registration authorizing it to operate as an online pharmacy. (DEA will issue to the pharmacy a Certificate of Registration indicating the modification of registration.) The Ryan Haight Act contains several exceptions to the definition of an online pharmacy, so you should review carefully these exceptions before submitting an application for such modification of registration. Among other things, particular consideration should be given to the exception set forth in 21 U.S.C. 802(52)(B)(viii) that excludes from the definition of an online pharmacy those DEA-registered pharmacies ''whose dispensing of controlled substances via the Internet consists solely of * * * (I) refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph [21 U.S.C. 802(55)] or (II) filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph [21 U.S.C. 802(56)].''

Also, the regulations being issued here exempt from the definition of online pharmacy any registered pharmacy ''whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of * * * filling prescriptions that were electronically prescribed in a manner authorized by this chapter and otherwise in compliance with the Act.'' Given these exceptions to the definition of an online pharmacy, DEA anticipates that the overwhelming majority of pharmacies in the United States, if they follow their current practices, will not, as of April 13, 2009, fall within the definition of an online pharmacy. However, as of April 13, 2009, if a pharmacist knowingly or intentionally dispenses a controlled substance by means of the Internet, and the pharmacy fits within the definition of an online pharmacy, but does not hold a modified DEA registration authorizing it to operate as an online pharmacy, the pharmacy and the pharmacist are violating 21 U.S.C. 841(h)(1) and subject to potential criminal prosecution and loss of the pharmacy's DEA registration. Accordingly, if the anticipated activities of your pharmacy will render it an online pharmacy within the meaning of the Act, you should submit to DEA your application for a modified registration as early as possible, since you will not be permitted to engage in the activities of an online pharmacy until DEA has approved such application. To expedite matters, DEA has established an online application process for registrants to apply for such modification of registration.

In addition, as explained earlier in this preamble, any pharmacy that fits within the Act's definition of an online pharmacy must display certain information on its Web site and make certain notifications to DEA, as required by the Act and the regulations being issued here. Also, if a pharmacy has applied for and been granted a modification of its registration authorizing it to operate as an online pharmacy, it is obligated to submit monthly reports of all controlled substances dispensed by any means (walk-in business, dispensing by mail, or any other type of dispensing—whether by means of the Internet or not), provided such dispensing meets or exceeds the threshold amounts.

A pharmacist has always had a corresponding responsibility to ensure that any dispensing of controlled substances conforms with the CSA and DEA regulations.[38] That same corresponding responsibility now applies with respect to the new requirements of the Ryan Haight Act and the implementing regulations. That is, a pharmacist's corresponding responsibility now includes ensuring that controlled substances are dispensed in conformity with the Ryan Haight Act. For example, under the Act, a pharmacist may not knowingly or intentionally fill a prescription for a controlled substance that was issued in violation of the inperson medical evaluation requirement of 21 U.S.C. 829(e).

How does a pharmacist, when presented with a prescription (whether it is a written prescription presented in person, an oral prescription, a faxed prescription, or otherwise) know whether the prescription was ''dispensed by means of the Internet,'' and thus subject to the requirements of the Act? Again, under the law, a pharmacist has a corresponding responsibility to ensure that any prescription filled was issued in conformity with the law and regulations. The same legal standard that has always applied in determining whether a pharmacist met this responsibility will also apply in determining whether the pharmacist acted properly in filling a prescription subject to the requirements of the Ryan Haight Act. If the pharmacist either (i) had actual knowledge that the prescription was issued by means of the Internet and that the requirements of the Act were not met or (ii) in view of all

[36] *United States* v. *Veal*, 23 F.3d 985, 988 (6th Cir. 1994).

[37] *Katz*, 445 F.3d at 1031.

[38] *See* 21 CFR 1306.04(a).

the circumstances surrounding a particular prescription, and, in the exercise of proper professional practice, should have known of such violation, or deliberately closed his eyes to circumstances indicative of a possible violation, or otherwise failed to take appropriate steps that a professional pharmacist should take to investigate suspicious circumstances, the pharmacy and pharmacist may be deemed to have knowingly or intentionally violated 21 U.S.C. 841(h)(1).

Depending on the circumstances, the relevant factors for this inquiry might include: the number of prescriptions received from a practitioner; the practitioner's pattern of prescribing; the address of the patient in relation to that of the practitioner; and the distance from the practitioner to the pharmacy. If, taking factors such as these into account, the pharmacist either (a) actually knows that the patient to whom a prescription for a controlled substance was issued was steered to the practitioner through a Web site or (b) should reasonably suspect so and fails to verify, the pharmacist who fills such a prescription will have knowingly or intentionally dispensed a controlled substance by means of the Internet. If such dispensing occurs, both the pharmacy and the pharmacist fall within the definition of an online pharmacy, and both will automatically violate 21 U.S.C. 841(h)(1) if the pharmacy does not have a modified DEA registration authorizing it to operate as an online pharmacy. Again, such a violation, or any other transgression by a pharmacist of the corresponding responsibility as it pertains to the requirements of the Act may result in criminal prosecution of the pharmacist and/or administrative proceedings to revoke the pharmacy's registration.

Pharmacists should also note that the new requirements of the Act are in addition to, and not in lieu of, the longstanding requirement that all prescriptions for controlled substances be issued by a practitioner acting in the usual course of professional practice and otherwise in conformity with the CSA and DEA regulations. Thus, when a prescription for a controlled substance has been issued by means of the Internet, even if the pharmacy that fills the prescription has obtained from DEA a modification of its registration, and even if the pharmacist has confirmed that the prescribing practitioner has conducted at least one in-person medical evaluation of the patient, the pharmacist still has the corresponding responsibility to ensure that the prescription was issued for a legitimate medical purpose in the usual course of professional practice. For example, if the pharmacist knows that a prescription for a controlled substance was issued by a practitioner who works for a Web site that sends its customers to practitioners for a one-time sham medical evaluation with the intent to sell prescriptions to the customers repeatedly thereafter with no in-person follow-up evaluations, the fact that the practitioner conducted an in-person ''evaluation'' purporting to comply with the Act does not excuse the pharmacist from fulfilling his corresponding responsibility to fill only those prescriptions for controlled substances that were issued for a legitimate medical purpose in the usual course of professional practice.

To list another common practice of rogue Internet site operators, if you are an owner of a pharmacy and you are approached by an ''entrepreneur'' who offers to funnel to you large quantities of prescriptions for filling in exchange for a fee, there is a strong possibility that you are being asked to serve as the supplier to a rogue Web site. This is especially so if such ''entrepreneur'' is not affiliated with a legitimate health care organization. Again, the rogue Web sites that the Act was designed to eliminate often depend on the assistance of DEA-registered pharmacies. If you as a pharmacy owner or pharmacist are asked to participate in a scheme that raises suspicions about compliance with the Act, you are risking potential criminal liability and loss of DEA registration if you agree to participate without taking reasonable steps to rule out the possibility that the scheme will violate the Act.

A pharmacist is not, however, obligated to know what cannot be known through the exercise of sound professional pharmacy practice. For example, it is conceivable that a customer could walk into a pharmacy with a prescription that was issued by means of the Internet (or such a prescription could be faxed to a pharmacy) with the pharmacist having no reasonable basis to know or suspect that it was issued by means of the Internet. As long as the pharmacist meets his corresponding responsibility to take reasonable steps under the circumstances to ensure that the prescription was issued in accordance with the requirements of the Ryan Haight Act (as well as all other applicable requirements of the CSA and DEA regulations), the pharmacist will not be held strictly liable for filling a prescription that he could not reasonably have known was issued by means of the Internet. Thus, it is absolutely unnecessary for a pharmacy to apply for a modification of its DEA registration authorizing it to operate as an online pharmacy for the sole purpose of ensuring that it does not—despite the exercise of sound professional judgment—inadvertently fill a prescription that was issued by means of the Internet.

B. Additional Specific Information for Practitioners

If you are a physician, dentist, veterinarian, mid-level practitioner, or other practitioner registered with DEA to prescribe, administer, or dispense controlled substances, and your activities involving controlled substances are limited to those authorized by your registration, you are exempted under the Ryan Haight Act from the definition of an ''online pharmacy.'' As a result, you are not subject to the requirement of obtaining a modified DEA registration that applies to pharmacies that dispense controlled substances by means of the Internet. Nonetheless, there are other requirements of the Act and the implementing regulations that, depending on the nature of your practice, might apply to you.

DEA believes that the overwhelming majority of practitioners in the United States, based on their current practices, do *not* engage in activities that constitute delivering, distributing, or dispensing controlled substances by means of the Internet.[39] Accordingly, the overwhelming majority of practitioners need not change their practices because of the enactment of the Ryan Haight Act. However, if you are a DEA-registered practitioner who prescribes or otherwise dispenses a controlled substance by means of the Internet, you must comply with the provisions of the Act that apply to you.

First, if you are a DEA-registered practitioner who prescribes or otherwise dispenses a controlled substance by means of the Internet, you must comply

[39] As discussed above, the electronic prescribing of controlled substances is not currently permitted under the DEA regulations, but DEA has proposed regulations that, once finalized, will allow such practice. The electronic prescribing of controlled substances through use of the Internet does, as explained above, constitute delivering, distributing, or dispensing controlled substances by means of the Internet. Nonetheless, since the overwhelming majority of practitioners only prescribe controlled substances to patients for whom they have conducted an in-person medical evaluation, and only for a legitimate medical purpose in the usual course of professional practice, it is anticipated that the overwhelming majority of practitioners will continue this practice once electronic prescribing of controlled substances becomes permissible under the DEA regulations. If so, such practitioners would satisfy the ''valid prescription'' requirement of the Ryan Haight Act.

with the provision of the Act relating to the in-person medical evaluation requirement, which is set forth in 21 U.S.C. 829(e). Certain exceptions apply to this requirement, as are discussed above in this preamble. Note, however, that the Act expressly states that compliance by a practitioner with the in-person medical evaluation requirement does not, by itself, satisfy the requirement that every prescription be issued for a legitimate medical purpose in the usual course of professional practice. Whether a prescription was issued for a legitimate medical purpose in the usual course of professional practice must, as always, be determined based on the totality of the circumstances under which a particular prescription was issued to a particular patient. As DEA has previously stated, ''DEA recognizes that the overwhelming majority of American physicians who prescribe controlled substances do so for legitimate medical purposes [and] exercise the appropriate degree of medical supervision—as part of their routine practice during office visits.''[40] However, this favorable characterization cannot be applied to the very small percentage of practitioners who write prescriptions on behalf of rogue Internet Web sites. Indeed, the main reason Congress enacted the Ryan Haight Act was to bring an end to the rogue Web sites that hire unscrupulous practitioners to write prescriptions without a legitimate medical purpose and outside the usual course of professional practice.

If you are a practitioner who knowingly or intentionally prescribes or otherwise dispenses controlled substances on behalf of a particular Web site, and if that Web site is not compliant with the requirements of the Act and the implementing regulations, you are dispensing controlled substances by means of the Internet in a manner not authorized by the Act. Doing so constitutes a violation of 21 U.S.C. 841(h)(1) and may result in criminal prosecution and/or administrative proceedings to revoke your DEA registration.

If you are a practitioner who writes prescriptions on behalf of a particular Web site, your name must appear prominently on that Web site. (This requirement helps to distinguish those Web sites that are compliant with the Act and the implementing regulations from those that are not compliant.) If such Web site is operated on behalf of a group medical practice in which you participate, it is sufficient that your name (along with the names of your fellow practitioners who write prescriptions on behalf of the site) are posted in a visible and clear manner on the homepage of the Web site, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage.[41] It is anticipated that most every medical office in the United States that currently has a Web site is already in compliance with this provision as it is common practice for such Web sites to post in such manner the names of the practitioners. If, however, you are one of what is anticipated to be a very small number of practitioners who, beginning on or after April 13, 2009 (the effective date of the Ryan Haight Act), writes prescriptions on behalf of a Web site of a DEA-registered pharmacy, the Act requires the Web site to post additional information identifying you. Specifically, the Web site must post the following information in a visible and clear manner on the homepage of each Internet site it operates, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage: ''The name, address, telephone number, professional degree, and States of licensure of any practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.''[42]

How does a practitioner know whether he is writing prescriptions that are issued through, or on behalf of, a Web site? In some cases, this will be obvious to the practitioner. For example, if a practitioner is approached by a person who offers to pay the practitioner to write prescriptions for ''patients'' who will be routed to the practitioner through the Web site, the practitioner has actual knowledge that he is being asked to dispense controlled substances by means of the Internet within the meaning of the Act. (As most practitioners would immediately recognize, such a proposal is inherently suspect, since the legitimate practice of medicine is not structured around writing prescriptions for controlled substances and being compensated primarily or exclusively on that basis.)[43] The profitability of rogue Internet Web sites typically depends on the ability of the criminal facilitator who operates the site to recruit unscrupulous practitioners to enter into such types of contractual arrangements.

In response to the enactment of the Ryan Haight Act, some rogue Web sites have come up with the following approach in an effort to circumvent the new law. Drug-seeking customers who visit the rogue Web site are told that they should arrange a visit with one of the practitioners affiliated with the site to satisfy the Act's requirement of an in-person medical evaluation. Once the practitioner has gone through the motions of conducting what purports to be a medical evaluation, the ''patient'' will be permitted to purchase controlled substances (or prescriptions therefor) through the Web site in perpetuity, without having to see the practitioner in person again. A practitioner who might be inclined to consider entering into a contract with the operator of such a rogue Web site should consider that, in all likelihood, such an operation violates the Act—despite its purported compliance with the in-person medical evaluation requirement. For one, under the Act, the only persons who may operate Web sites through which controlled substances are prescribed or otherwise dispensed are DEA-registered practitioners (pharmacies and nonpharmacy practitioners).[44] Thus, a non-DEA registrant may not operate a Web site that constitutes an ''online pharmacy'' within the meaning of the Act (which includes, for example, a Web site that sells prescriptions for controlled substances or fills such prescriptions). Second, even in the unlikely event that the person who is offering the practitioner the opportunity to participate in such a Web site is a DEA registrant with the appropriate registration allowing it to dispense controlled substances by means of the

[40] 71 FR 52716, 52719 & 52723 (2006 DEA policy statement).

[41] As stated in 21 CFR 1304.50: ''For a Web site to identify itself as being exempt from the definition of an online pharmacy by virtue of section 102(52)(B)(ii) of the Act (21 U.S.C. 802(52)(B)(ii)), the Web site shall post in a visible and clear manner on its homepage, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage, a list of the DEA-registered nonpharmacy practitioners who are affiliated with the Web site. Any nonpharmacy practitioner affiliated with such a Web site is responsible for compliance with this section. An institutional practitioner that otherwise complies with the requirements of the Act and this chapter will be deemed to meet the requirements of this section if, in lieu of posting the names of each affiliated individual practitioner, it posts its name (as it appears on its Certificate of Registration) in a visible and clear manner on its homepage and in a manner that identifies itself as being responsible for the operation of the Web site.''

[42] 21 U.S.C. 831(c)(6).

[43] Such an arrangement whereby compensation is based primarily or exclusively on the number of prescriptions for controlled substances issued is a ''red flag'' indicating that diversion of controlled substances into illicit channels might be occurring—regardless of whether the Internet is involved.

[44] *See* 21 U.S.C. 802(51), 802(52), 823(f), & 841(h)(1).

Internet, the prescribing practitioner must ensure that the Web site properly displays his name and the other required information in the manner required by the Act and the implementing regulations.

Further, even if the Web site has the required registration and posts the required information, it is difficult to envision how a conscientious practitioner could enter into a contract to provide medical evaluations and/or issue prescriptions through referrals from a Web site that is designed primarily to attract and supply persons seeking to obtain controlled substances for other than legitimate medical purposes (rather than to provide legitimate medical care to patients without a predetermined goal of selling drugs or prescriptions). Indeed, a Web site that operates in such a manner—such as by offering to arrange in-person ''medical evaluations'' for the purpose of allowing customers to obtain controlled substances through the Web site indefinitely thereafter—should be viewed by a practitioner as a ''red flag'' indicating that diversion of controlled substances to illicit channels might be occurring.

The same considerations apply if you, as a practitioner, are offered a contract or otherwise presented with a proposal to write prescriptions to customers of a Web site based on reviewing online questionnaires or faxed ''medical records'' or by answering telephone calls through a phone number affiliated with the Web site. If these customers are being referred to you through the Web site or at the request of the owner or operator of the Web site, any prescriptions for controlled substances you write for the customers constitute ''dispensing by means of the Internet'' within the meaning of the Act. As explained above, a practitioner who dispenses a controlled substance by means of the Internet in violation of the Act may be held criminally liable under 21 U.S.C. 841(h)(1) if he did so knowingly or intentionally—which can be proven by showing that either (i) the practitioner had actual knowledge of the violation or (ii) the practitioner deliberately disregarded facts that would have led a reasonable practitioner to be highly suspicious about the likelihood of such a violation. In addition, any transgression of the Act may result in administrative action to revoke the practitioner's DEA registration.

With the foregoing considerations in mind, DEA again emphasizes that the current practices of the overwhelming majority of practitioners in the United States do *not* involve delivering, distributing, or dispensing controlled substances by means of the Internet. This means that the vast majority of practitioners need not alter their current practices to conform to the requirements of the Ryan Haight Act.

C. Additional Specific Information for DEA-Registered Distributors

The ability of rogue Internet sites to supply controlled substances to persons who seek them for other than legitimate medical purposes depends largely on the existence of DEA-registered pharmacies that are willing to supply the customers of these Web sites. As the data provided at the beginning of this preamble illustrates, it takes only a relatively small number of unscrupulous pharmacies, working in conjunction with rogue Internet sites, to supply enormous quantities of hydrocodone and other controlled substances, causing a substantial detrimental effect on the public health and welfare. Accordingly, if you are a DEA-registered distributor, it is critical that you are vigilant in taking appropriate steps to avoid supplying the pharmacies that service the customers of rogue Web sites.

In a September 27, 2006, letter to all DEA-registered distributors, DEA specified a number of pharmacy practices that might be indicative of diversion. While all the considerations set forth in that letter remain valid today, the enactment of the Ryan Haight Act should further assist distributors in avoiding distributing controlled substances to pharmacies that are supplying customers of rogue Web sites. For example, if you are a distributor and you know that a pharmacy is soliciting buyers of controlled substances via the Internet, or is associated with an Internet site that solicits orders for controlled substances,[45] you are on notice that the pharmacy is an ''online pharmacy'' under the Act. If so, it is unlawful, per se, for the pharmacy to be operating without a modified DEA registration authorizing it to operate as an online pharmacy. Under such circumstances, if the pharmacy does not have such a modified registration, it would be unlawful for you as a distributor to supply the pharmacy with controlled substances. (The pharmacy's Certificate of Registration will reflect its status as an online pharmacy in its business activity designation.)[46]

Even if you do not have actual knowledge that the pharmacy is operating through a Web site, if the pharmacy's buying patterns are of a volume or otherwise of a nature indicating a reasonable likelihood that the pharmacy is supplying customers of a Web site or otherwise engaging in practices that render it an online pharmacy within the meaning of the Ryan Haight Act, the sound course of action for the distributor would be to confirm that the pharmacy is complying with the Act prior to supplying the pharmacy with controlled substances.[47]

D. Additional Specific Information for Consumers

The full title of the Ryan Haight Act is ''The Ryan Haight Online Pharmacy Consumer Protection Act of 2008.'' As this title implies, a primary purpose of the Act is to protect consumers by ensuring that only legitimate, law-abiding Web sites dispense controlled substances via the Internet. One of the ways the Act achieves this goal is by allowing only pharmacies who are properly registered with DEA to operate Web sites through which prescriptions for controlled substances are filled. In addition, the Act and the implementing regulations require such Web sites to fully disclose to consumers certain basic information, such as the name and telephone number of the pharmacist-in-charge, a list of the states in which the pharmacy is authorized to dispense controlled substances, the names of any

[45] As explained earlier in this preamble, the Ryan Haight Act contains an exception from the definition of ''online pharmacy'' for any pharmacy registered under 21 U.S.C. 823(f) whose dispensing of controlled substances via the Internet consists solely of ''refilling prescriptions for controlled substances in schedule III, IV, or V'' or ''filling new prescriptions for controlled substances in schedule III, IV, or V'' (as those terms are defined in 21 U.S.C. 802(55) and (56)). 21 U.S.C. 802(52)(B)(viii). Given these and other exceptions in the Act, it is anticipated that most pharmacies, if they continue their current practices, will not fall within the definition of an online pharmacy. However, a pharmacy that actively solicits buyers of controlled substances via the Internet or is associated with a Web site that does so cannot fall within the foregoing exception and, therefore, does constitute an online pharmacy.

[46] DEA provides a ''Registration Validation'' tool on its Web site, through which DEA registrants may query DEA's registration database regarding another DEA registrant to gather specific information about that registrant. Information available includes: The registrant's name, address, and DEA registration number; the date of expiration of the registration; business activity; and the schedules of controlled substances the registrant is authorized to handle.

[47] As with all DEA registrants, distributors have a duty to maintain effective controls against diversion of controlled substances. 21 U.S.C. 823(b)(1), 823(e)(1); 21 CFR 1301.71(a). As part of this responsibility, all distributors must design and operate a system to disclose to the registrant suspicious orders of controlled substances and must report to DEA any such suspicious orders of controlled substances in accordance with 21 CFR 1301.74(b). Failure to comply with these or any other applicable regulatory requirements may, depending on the circumstances, result in civil monetary penalties and/or administrative revocation proceedings, among other things.

practitioners who have a contractual relationship to issue prescriptions for controlled substances through referrals from the Web site, and a certification that the Web site is acting in compliance with the Act. Accordingly, the Act should make it easier for consumers to differentiate between legitimate and illegitimate Web sites that sell controlled substances.

One strong indicator of an unlawful Web site is that it lets you as a customer pick the controlled substance and then charges you a fee to arrange for a practitioner to prescribe that controlled substance to you. An unlawful Web site might further offer to refund all or part of your fee if you are not sold the prescription for your drug of choice. A Web site that engages in such practices is virtually certain to be a rogue Web site that is not operating in compliance with the Ryan Haight Act.

Consumers should also be aware that the Act also prohibits certain advertising practices relating to the types of criminal activities the Act is designed to eliminate. Specifically, the Act makes it a crime to place an advertisement on the Internet that offers to sell a controlled substance or a prescription for a controlled substance in a manner that would be illegal (in violation of the CSA or the CSIEA).[48] For example, the Act makes it unlawful to place an advertisement on the Internet stating: ''Hydrocodone! No Prescription Needed!'' (or words to the same effect). This provision of the Act also makes it illegal to place an advertisement on the Internet that refers consumers to a Web site that is operating in violation of the Act (such as one that sells controlled substances but is not properly registered with DEA). This ban on illegal Internet advertising also applies to unsolicited commercial e-mail, which is sometimes referred to as ''spam'' or ''junk e-mail.'' Consequently, beginning on April 13, 2009, if you as a consumer receive an unsolicited commercial e-mail with the subject line: ''Hydrocodone! No Prescription Needed!,'' the sender of that e-mail has violated the law. Likewise, if you receive spam directing you to a Web site that is operating in violation of the Act, the spammer has also violated the Act.

Consumers should also be wary of rogue Web sites falsely claiming that they are allowed to sell controlled substances without complying with the Ryan Haight Act because they are located outside the United States. Any such claim is flatly wrong. In fact, as explained earlier in this preamble, it has always been unlawful under the Controlled Substances Import and Export Act (CSIEA) (even prior to the Ryan Haight Act) to ship controlled substances into the United States for personal medical use. Any person who ships controlled substances from abroad into the United States illegally, along with the person in the United States who places the order for such a shipment and thereby causes the controlled substances to be illegally shipped into the United States, violates the CSIEA and is subject to criminal prosecution.[49]

VIII. Regulatory Changes To Implement the Ryan Haight Act

This section summarizes the regulations contained in this Interim Rule, which are being issued to implement the Ryan Haight Act. This section should be viewed as merely a summary provided for the convenience of the reader, and any registrant subject to the Ryan Haight Act should read carefully the entire preamble along with the text of the regulations being issued here.

A. Notification and Registration

As provided in 21 CFR 1304.40, all online pharmacies that intend to dispense controlled substances by means of the Internet must provide DEA with a thirty-day notice of such intent. To do this, they must apply for a modified registration via the online application process. The Administrator must approve the application for a modified registration and issue a Certificate of Registration indicating the modification before the online pharmacy may engage in any activity of an online pharmacy. As discussed previously in the preamble, the only entities that may apply for a modified registration are registrants with a valid Certificate of Registration (DEA Form 223) as a pharmacy. If you are not registered with DEA as a pharmacy and you intend to dispense controlled substances by means of the Internet, you must first apply for registration as a pharmacy in accordance with 21 CFR 1301.13. Upon receipt of the Certificate of Registration as a pharmacy from the Administrator, you may then apply for a modification to your registration to operate as an online pharmacy.

The Administrator may deny an application for such registration or such modification of registration if the Administrator determines that the issuance of such registration or modification would be inconsistent with the public interest. 21 CFR 1301.19. The same statutory criteria used in determining the public interest for purposes of evaluating an application for registration—those found in 21 U.S.C. 823(f)—will be used in evaluating an application for a modification of registration to operate as an online pharmacy.

An online pharmacy must make a separate thirty-day advance notice to the State boards of pharmacy in each State in which it intends to offer to sell, deliver, distribute, or dispense controlled substances.

In accordance with 21 U.S.C. 831, the following information must be included in the notification to DEA that must be submitted as part of the Application for Modification of Registration:

- All Internet pharmacy site disclosure information as listed below.
- A certification, under penalty of perjury, that the Internet pharmacy site disclosure information that is posted on the online pharmacy's Web site is true and accurate.
- A listing of all Internet Web site addresses (also known as the uniform resource locator or URL) owned by the online pharmacy to conduct its online business activities.
- A certification that the online pharmacy will notify DEA of any changes to any of its Internet Web site addresses (URLs) at least 30 days in advance.
- The name, address, telephone number, professional degree, DEA registration numbers and States of licensure of any practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.
- The DEA registration numbers of each pharmacy that delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of the online pharmacy.

Pharmacies that intend to dispense controlled substances by means of the Internet must apply for the modified registration using the online registration process by going to the DEA Office of Diversion Control Web site at *http://www.deadiversion.usdoj.gov*. Registrants must positively acknowledge and agree to several statements during the application process. These acknowledgements will be printed on the registrant's receipt of registration for future reference. The following is a list of the acknowledgments with which a

[48] The exact wording of this provision is found in 21 U.S.C. 843(c)(2) and is recited above in this preamble.

[49] 21 U.S.C. 952, 957, 960(a)(1).

registrant must agree as part of the online pharmacy application process:

1. Pursuant to section 309(e) of the Controlled Substances Act (21 U.S.C. 829(e)), you, as an online pharmacy, acknowledge and agree that no controlled substance that is a prescription drug may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.

2. Pursuant to 21 CFR 1306.09, you, as an online pharmacy, acknowledge and agree that a prescription for a controlled substance may only be dispensed by means of the Internet by a pharmacist, acting in the usual course of his professional practice, and employed in a pharmacy whose registration has been modified to authorize it to operate as an online pharmacy.

3. You, as an online pharmacy, acknowledge and understand that you may not engage in any activity of an online pharmacy, as defined in 21 CFR 1300.04(h), until your application for modified registration to operate as an online pharmacy is granted and a Certificate of Registration indicating the modification is issued by the Administrator (DEA Form 223).

4. You, as an online pharmacy, understand that the Administrator may deny an application for a modification of registration if the Administrator determines that the issuance of such modification would be inconsistent with the public interest. In determining the public interest, the Administrator considers the factors listed in 21 U.S.C. 823(f).

5. Pursuant to section 303(f) of the Controlled Substances Act (21 U.S.C. 823(f)), you, as an online pharmacy, certify that you are authorized by the appropriate state authority(ies) to modify your existing DEA registration to authorize you to dispense schedule II–V controlled substances by means of the Internet.

6. Pursuant to 21 CFR 1301.19, if you, as an online pharmacy, cease to dispense controlled substances by means of the Internet, you acknowledge and agree that you shall promptly notify the Administrator by modifying your registration to reflect the appropriate business activity.

7. Pursuant to section 307(d) of the Controlled Substances Act (21 U.S.C. 827(d)), you, as an online pharmacy, understand you are required to report the dispensing of controlled substances by means of the Internet to the Administrator in the manner set forth in 21 CFR 1304.55. This report will include the total quantity of each controlled substance that the pharmacy dispenses each calendar month. The report must be submitted to DEA electronically via online reporting, electronic file upload, or other means as approved by DEA. The monthly report shall include the date range of the reporting period, the NDC, and total quantity of each controlled substance dispensed. Reporting shall include all controlled substances dispensed via Internet transactions, mail-order, face-to-face transactions, or any other means. The report shall be submitted to DEA by the 15th day of the following month. (For threshold amounts refer to DEA Web site: *http://www.deadiversion.usdoj.gov*.)

8. Pursuant to section 311(a) of the Controlled Substances Act (21 U.S.C. 831(a)), you, as an online pharmacy, agree to display at all times on your homepage, in a visible and clear manner, a statement that your online pharmacy complies with the requirements of section 311 of the Act (21 U.S.C. 831) with respect to the delivery or sale or offer for sale of controlled substances.

9. Pursuant to section 311(b) of the Controlled Substances Act (21 U.S.C. 831(b)), you, as an online pharmacy, acknowledge and agree to comply with the requirements of State law concerning the licensure of pharmacies in each State from which and to which you, deliver, distribute, or dispense, or offer to deliver, distribute, or dispense controlled substances by means of the Internet.

10. Pursuant to section 311(c) of the Controlled Substances Act (21 U.S.C. 831(c)), you, as an online pharmacy, acknowledge and agree to post the following Internet Pharmacy Site Disclosure information in a visible and clear manner on the homepage of each Internet site you operate, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage:

(A) The name and address of the pharmacy as it appears on the pharmacy's DEA Certificate of Registration.

(B) The pharmacy's telephone number and e-mail address.

(C) Name of pharmacist-in charge, professional degree, States of licensure, and telephone number.

(D) List of States in which the pharmacy is licensed to dispense controlled substances.

(E) Certification that the pharmacy is registered to deliver, distribute, or dispense by means of the Internet, controlled substances.

(F) Practitioner's name, address, telephone number, professional degree, and States of licensure of any practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.

(G) The following statement: ''This online pharmacy is obligated to comply fully with the Controlled Substances Act and DEA regulations. As part of this obligation, this online pharmacy has obtained a modified DEA registration authorizing it to operate as an online pharmacy. In addition, this online pharmacy will only dispense a controlled substance to a person who has a valid prescription issued for a legitimate medical purpose based upon a medical relationship with a prescribing practitioner. This includes at least one prior in-person medical evaluation in accordance with section 309 of the Controlled Substances Act (21 U.S.C. 829), or a medical evaluation via telemedicine in accordance with section 102(54) of the Controlled Substances Act (21 U.S.C. 802(54)).''

11. Pursuant to section 311(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 831(d)(2)(A)), you, as an online pharmacy, certify that the Internet Pharmacy Site Disclosure information disclosed on your Web site, under penalty of perjury, is true and accurate.

12. Pursuant to section 311(d) of the Controlled Substances Act (21 U.S.C. 831(d)), you, as an online pharmacy, acknowledge and agree that, thirty days prior to offering a controlled substance for sale, delivery, distribution, or dispensing, you must notify the Administrator and the State boards of pharmacy in any States in which you offer to sell, deliver, distribute, or dispense controlled substances. By fully completing and submitting this application, you will satisfy this requirement with respect to notifying the Administrator. However, you must separately notify the State boards of pharmacy as required by the Act. You understand that subsequent online pharmacy registration renewals will be accomplished by the online process and the appropriate renewal fee will apply.

13. You understand that in accordance with section 401(h) of the Act (21 U.S.C. 841(h)), as of April 13, 2009, it is unlawful for any online pharmacy to deliver, distribute, or dispense a controlled substance by means of the Internet unless such online pharmacy is validly registered with a modification of DEA registration authorizing the dispensing of controlled substances by means of the internet.

14. Pursuant to section 311(e) of the Controlled Substances Act (21 U.S.C. 831(e)), you, as an online pharmacy, understand and agree that on and after the date you apply for a modified registration, you will display on your homepage, in the manner described in 21 CFR 1304.40(d), a declaration that you have made the required notifications to the DEA Administrator.

There is no fee to apply for modification of an existing DEA registration. When a pharmacy makes application for a modified registration to conduct business as an online pharmacy, and the Administrator issues a Certificate of Registration for the modification to that pharmacy, the registration period continues from the date of the pharmacy's prior registration. When, however, an online pharmacy makes application to renew the modified registration, it will incur the appropriate application fee and, if approved, a new three-year registration period will begin.

An online pharmacy that seeks to discontinue its modification of registration authorizing it to dispense controlled substances by means of the Internet, but continue its business activity as a pharmacy, must so notify the Administrator through the online application process for modification of registration. The Administrator will issue a new Certificate of Registration to the pharmacy based on the changes made to its registration. Once the registration has been changed back to its previous status (retail pharmacy), the pharmacy is no longer authorized to dispense controlled substances by means of the Internet.

B. Licensure

An online pharmacy must comply with the requirements of State law concerning the licensure of pharmacies in each State from which it, and in each State to which it, delivers, distributes, or dispenses or offers to deliver, distribute, or dispense controlled substances by means of the Internet. 21 U.S.C. 831(b).

C. Online Pharmacy Internet Site Disclosure

Online pharmacies have a continual obligation under the Ryan Haight Act to make certain disclosures on their Web sites required by the Act. Consequently, an online pharmacy must maintain an active Web site to post the required information, statements, and other disclosures required by the Act and update the information as necessary.

D. Statement of Compliance

The Act requires that each online pharmacy shall display, at all times and in a visible and clear manner, on its homepage a statement that it complies with the requirements of section 311(a) of the Act (21 U.S.C. 831(a)) with respect to the delivery or sale or offer for sale of controlled substances. This requirement is reiterated in the regulations being issued here in 21 CFR 1304.45(a). This regulation does not require specific language to be used for this statement, but the statement must include the name of the pharmacy as displayed on its DEA Certificate of Registration and clearly state that the pharmacy is in compliance with 21 U.S.C. 831(a). The following is an example of a statement a pharmacy may post on its Web site that would meet the requirements of this provision:

XYZ Pharmacy is in full compliance with the requirements of section 311(a) of the Controlled Substances Act (21 U.S.C. 831(a)) with respect to the delivery or sale or offer for sale of controlled substances.

E. Internet Pharmacy Site Disclosure Information

The Act [50] and the regulations being issued here (21 CFR 1304.45(b)) require that each online pharmacy shall post in a visible and clear manner on the homepage of each Internet Web site it operates, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage, the following information for each pharmacy that delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of, that Web site:

- The name and address of the pharmacy as it appears on the pharmacy's DEA Certificate of Registration.
- The pharmacy's telephone number and active business e-mail address.
- The name, professional degree, and States of licensure of the pharmacist-in-charge, and a telephone number at which the pharmacist-in-charge can be contacted.
- A list of the States in which the pharmacy is licensed to dispense controlled substances.
- A certification that the pharmacy is registered under 21 CFR Part 1301 to deliver, distribute, or dispense controlled substances by means of the Internet.
- The name, address, telephone number, professional degree, and States of licensure with State license number of any practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.
- The following statement: ''This online pharmacy is obligated to comply fully with the Controlled Substances Act and DEA regulations. As part of this obligation, this online pharmacy has obtained a modified DEA registration authorizing it to operate as an online pharmacy. In addition, this online pharmacy will only dispense a controlled substance to a person who has a valid prescription issued for a legitimate medical purpose based upon a medical relationship with a prescribing practitioner. This includes at least one prior in-person medical evaluation in accordance with section 309 of the Controlled Substances Act (21 U.S.C. 829) or a medical evaluation via telemedicine in accordance with section 102(54) of the Controlled Substances Act (21 U.S.C. 802(54)).''

The following is a hypothetical example of a statement that would comply with all of the requirements of 21 CFR 1304.45(b) (assuming the assertions were true):

XYZ Pharmacy,
1 Main Street,
[City, State, zip code],
[Area code and telephone number],
pharmacist@xyzpharmacy.com.
John H. Smith, R.Ph., Pharmacist-in-Charge, licensed in State.

The XYZ Pharmacy is in full compliance with the requirements of section 311(a) of the Controlled Substances Act (21 U.S.C. 831(a)). XYZ Pharmacy is licensed in [State(s)] to dispense controlled substances. The pharmacist-in-charge may be contacted at the above telephone number. XYZ Pharmacy does not have any contractual relationships with any practitioner to provide medical evaluations or issue prescriptions for controlled substances through referrals from this Web site or at the request of the owner or operator of this Web site, or any employee or agent thereof. This online pharmacy is obligated to comply fully with the Controlled Substances Act and DEA regulations. As part of this obligation, this online pharmacy has obtained a modified DEA registration authorizing it to operate as an online pharmacy. In addition, this online pharmacy will only dispense a controlled substance to a person who has a valid prescription issued for a legitimate medical purpose based upon a medical relationship with a prescribing practitioner. This includes at least one prior in-person medical evaluation in accordance with section 309 of the Controlled Substances Act (21 U.S.C. 829) or a medical evaluation via telemedicine in accordance with section 102(54) of the Controlled Substances Act (21 U.S.C. 802(54)).

F. Declaration of Compliance

On and after the date on which an online pharmacy makes the notification and applies for a modified registration, it must display, on the homepage of its Web site, a declaration that it has made such notification/application to the Administrator.

G. Reporting

The Act requires,[51] and 21 CFR 1304.55 reiterates, that each online pharmacy must submit a monthly report to the Administrator of the total quantity of each controlled substance it has dispensed the previous calendar month. This report will be due on or before the 15th day of the following month. The report must include the total amount of such dispensing by any means, including all controlled substances dispensed via Internet transactions, mail-order transactions, face-to-face transactions, or any other means. It is not required that the online pharmacy identify the means of the dispensing in its report. The report is required for every month in which the total amount of dispensing of controlled substances by the pharmacy is either (i) over 100 prescriptions filled or (ii) 5,000 or more dosage units dispensed of all controlled substances combined.

Each online pharmacy shall report a negative response to the Administrator if, during a given calendar month, its total quantity of dispensing of controlled substances falls below both of the thresholds listed above.

The reporting required by online pharmacies under 21 CFR 1304.55 must

[50] 21 U.S.C. 831(c).

[51] 21 U.S.C. 827(d)(2).

be submitted to the Administrator electronically via online reporting, electronic file upload, or other means as approved by DEA. The report shall identify controlled substances by National Drug Code (NDC) number assigned to the product under the National Drug Code System of the Food and Drug Administration.

Online pharmacies must maintain these records for at least two years. The information must be easily accessible and available for inspection by authorized DEA employees.

A pharmacy that has changed its registration status from that of an online pharmacy back to a retail pharmacy remains responsible for submitting reports in accordance with § 1304.55 of this chapter with respect to any controlled substances that it dispensed while it was registered with a modification authorizing it to operate as an online pharmacy.

IX. Section-by-Section Discussion of the Interim Final Rule

In part 1300, new § 1300.04, containing definitions relating to the dispensing of controlled substances by means of the Internet, is added. These definitions are from the definitions contained in the Ryan Haight Act. This includes definitions of the terms ''covering practitioner,'' ''deliver, distribute or dispense by means of the Internet,'' ''filling new prescriptions for controlled substances in Schedule III, IV, or V,'' ''homepage,'' ''in-person medical evaluation,'' ''Internet,'' ''online pharmacy,'' ''practice of telemedicine,'' ''refilling prescriptions for controlled substances in Schedule III, IV, or V,'' ''valid prescription,'' and the temporary definition of ''practice of telemedicine.'' However, please note that the regulations being issued here expand upon the exceptions to the definition of an online pharmacy contained in the Act. Specifically, as discussed above, the regulations add two exceptions to the definition of ''online pharmacy'': One relating to electronic prescriptions for controlled substances issued in a manner permitted by the DEA regulations and another relating to the utilization by retail pharmacies of automated dispensing systems at long term care facilities in a manner permitted by the DEA regulations.

In part 1301 (registration of manufacturers, distributors, and dispensers of controlled substances), new § 1301.11(b) restates the requirements of the Act that any person falling within the definition of an online pharmacy must be validly registered with a modification authorizing it to operate as an online pharmacy and that only pharmacies registered under 21 U.S.C. 823(f) may apply for such modification.

To address the modification of registration as an online pharmacy, the table in § 1301.13(e)(1) is amended in ''(iv) Dispensing or instructing'' to specify the application for an online pharmacy. A comment has been added in the ''Coincident activities allowed'' column to explain that an online pharmacy may perform the activities of both a retail and online pharmacy.

New § 1301.19 (special requirements for online pharmacies) provides in paragraphs (a), (c), and (f) that a pharmacy must request a modification of its registration authorizing it to operate as an online pharmacy by completing the online application process. This section also provides, consistent with the Ryan Haight Act, that a pharmacy registrant may not operate as an online pharmacy until the DEA Administrator grants the modified registration. Paragraph (b) requires, consistent with the Ryan Haight Act, that an online pharmacy must comply with the pharmacy license requirements of not only the State where it is located, but also of any State to which it delivers, distributes, or dispenses controlled substances. Paragraph (d) requires a pharmacy that seeks to discontinue its authorization to operate as an online pharmacy to modify its registration to reflect this change in its business activity.

Section 1301.52, which addresses termination of registrations, is revised to include modification of registration within the meaning of the Act.

Four new sections are added to 21 CFR part 1304 (records and reports of registrants) to implement the reporting requirements of the Ryan Haight Act for online pharmacies, and to specify the information the Act requires to be posted on an online pharmacy's Web site. New § 1304.40(a) requires online pharmacies to notify the Administrator and State boards of pharmacy 30 days before offering to fill prescriptions for controlled substances. Notification to the DEA Administrator will be made by applying for a modification of DEA registration. Paragraph (b) of § 1304.40 contains a list of items that must be included in the notification. Paragraph (c) requires online pharmacies in operation at the time the Ryan Haight Act becomes effective (April 13, 2009) to make this notification by May 13, 2009, but this paragraph also makes clear that, as of April 13, 2009, it is unlawful for any person to operate as an online pharmacy unless it has obtained from DEA a modification of its registration authorizing it to do so. In addition, paragraph (d) requires that on and after an online pharmacy makes notification under this section, it shall display a declaration that it has done so. Under § 1304.40(e), an online pharmacy must notify the Administrator of any changes to the information submitted in its notification thirty days prior to the change.

New section 1304.45 specifies the data elements required to be posted on the Web site of online pharmacies in a visible and clear manner, as provided in the Act.

To identify Web sites that are operating solely on behalf of DEA-registered nonpharmacy practitioners who are acting within the scope of their registrations (and thereby exempt from the definition of an online pharmacy), new § 1304.50 requires such Web sites that dispense controlled substances by means of the Internet to display in a visible and clear manner a list of those DEA-registered nonpharmacy practitioners affiliated with the Web site.

New § 1304.55 implements the requirement of the Act that each online pharmacy make a monthly report to DEA stating the total quantity of each controlled substance the pharmacy has dispensed the previous calendar month. This report must include not only the transactions made through the online pharmacy, but also any that the pharmacy made through mail order, face-to-face, or any other transaction when the pharmacy's total dispensing of controlled substances meets or exceeds the monthly threshold of either 100 prescriptions filled or 5,000 or more dosage units dispensed. Online pharmacies that do not meet this threshold in a given month are required to so notify DEA.

In part 1306 (prescriptions), new § 1306.09 includes requirements for prescriptions that track the requirements of the Act. Paragraph (a) specifies that no controlled substance may be delivered, distributed, or dispensed by means of the Internet without a valid prescription (using the definition of a valid prescription contained in the Act). Also consistent with the Act, paragraph (b) provides that a prescription may only be filled by a pharmacy whose registration has been modified as specified in the Act. Finally, paragraph (c) applies to online pharmacies the requirements of sections 1306.15 and 1306.25 regarding transfers of prescriptions between pharmacies.

X. Regulatory Certifications

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking and allow for a period of public comment prior to implementing new rules. The APA also provides, however, that agencies can be excepted from these requirements ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). DEA has concluded that ''good cause'' exists to promulgate this rule as an Interim Final Rule rather than a proposed rule for the following reasons.

As explained above, the Ryan Haight Act contains the following provision specifically addressing the issuance of interim rules to implement the Act:

> The [DEA Administrator] may promulgate and enforce any rules, regulations, and procedures which may be necessary and appropriate for the efficient execution of functions under this Act or the amendments made by this Act, and, with the concurrence of the Secretary of Health and Human Services where this Act or the amendments made by this Act so provide, promulgate any interim rules necessary for the implementation of this Act or the amendments made by this Act, prior to its effective date.[52]

It is evident from the foregoing provision that Congress envisioned that DEA might need to issue regulations on an interim basis to implement the Ryan Haight Act prior to the Act's effective date (April 13, 2009). This provision indicates that, given the 180 days between enactment of the Act and its effective date, Congress recognized it could be impracticable for DEA to complete notice-and-comment rulemaking within a time frame that would have allowed for regulations to become effective prior to the effective date of the Act. Similarly, this provision indicates that Congress believed it would be contrary to the public interest to delay the promulgation of regulations in a manner that would prevent implementation of the Act upon its effective date. Delaying the effective date of the regulations past the effective date of the Act would also be confusing to the public and would frustrate the intent of Congress to have the new provisions of the Act take effect on April 13, 2009. Accordingly, the rules published here are effective immediately while at the same time the agency is seeking public comment on them.

Under the APA, 5 U.S.C. 553(d), agencies must generally provide a 30-day delayed effective date for final rules. An agency may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). For the reasons just discussed, DEA concludes that such good cause exists to justify an immediate effective date. In addition to the reasons provided above, DEA had to make this rule effective immediately to have in place regulatory procedures that will allow legitimate pharmacies that wish to conduct activity as an ''online pharmacy'' to do so upon the effective date of the Act. With the immediate effective date of these regulations, pharmacies may, sufficiently in advance of the effective date of the Act, submit applications to modify their registrations as required by the Act.

B. Executive Order 12866

The Deputy Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is ''a significant regulatory action.'' Therefore, this action has been reviewed by the Office of Management and Budget. As discussed above, this action is largely codifying statutory provisions and involves limited agency discretion.

Costs. It should be noted that the costs identified here are costs associated with activities that online pharmacies are obligated to carry out to comply with the statutory requirements of the Ryan Haight Act. The regulatory provisions listed here are those which carry forward the statutory requirements mandated by the Act.

Pharmacies with existing online operations and those that wish to begin dispensing controlled substances by means of the Internet must apply to DEA to modify their registrations. Section 1304.40 requires notification to DEA. The application for modification of registration includes the notifications required by the Act; application to DEA is made with an online form. The information required is straightforward: Names, addresses, telephone numbers, the name, professional degree, and telephone number of the pharmacist-in-charge, and required certifications.

Assembly of this information and putting it in the online form in the proper manner can be accomplished by a pharmacist (Standard Occupational Code (SOC) 29–1051). The information required for the online pharmacy Web site is largely the same as that required for the notification, so the pharmacist's work will also provide the information needed for the Web site.

Since an online pharmacy must have a Web site to operate, the initial cost of setting up the Web site is not a cost of the rule. (In fact, it is now commonplace for even small retail establishments to have Web sites.) The only cost is that of entering the required information and certifications on the site. Given that the site is already, or must be, in place, DEA estimates that such revisions will be relatively minor in nature. Modification of the Web site to include the required information will, however, require additional work—work that requires some technical expertise with computer systems and programs, including Web sites. DEA expects that a computer support specialist (SOC 15–1041) will be required for this work.

Completion of the online application for modification of registration will require fifteen minutes of the pharmacist's time and half an hour of the computer support specialist's time to update the Web site with the required information. The Web site will require ongoing maintenance as information changes. This will require one hour per year of the computer-support specialist's time.

Section 1304.55 requires online pharmacies to report to DEA the total quantity of each controlled substance that the pharmacy has dispensed each calendar month. The report must include the total quantity of such dispensing by any means, regardless of whether the controlled substances are dispensed by means of the Internet. Such reporting is required for every calendar month in which the total quantity of controlled substances dispensed by the pharmacy meets or exceeds one of the following thresholds: 100 or more prescriptions for controlled substances filled; or 5,000 or more dosage units dispensed of all controlled substances combined.

Such reporting is not required now from pharmacies of any kind. Based upon common industry practice, DEA believes that virtually all pharmacies will have internal electronic recordkeeping systems which will include the necessary data. A computer programmer (SOC 15–1021) will be required to set up a system that will extract the required data from existing records and put it in a form that meets the rule and is suitable for transmission to DEA. DEA estimates that the initial set-up will take two hours of the programmer's time. DEA expects that maintenance of the reporting system will not entail any increment in cost

[52] Public Law 110–425, sec. 3(k)(1).

beyond the initial work of setting up the system. DEA further assumes that a pharmacist will require ten minutes per month to transmit the monthly report to DEA.

Table 1 presents initial unit costs.

TABLE 1—INITIAL UNIT COSTS

Requirement	Unit time (in hours)	Hourly wage, fully loaded	Unit cost
Application for Modification of Registration (pharmacist)	0.25	$104.40	$26.10
Revision of pharmacy Web site (computer support specialist)	0.5	47.79	23.89
Establishing reporting system (programmer)	2.0	75.96	151.93
Total			201.92

Annual ongoing costs for online pharmacies comprise the cost of filing monthly reports with DEA and revising the pharmacy Web site as needed to comply with the requirements of the Act. As noted previously, DEA assumes that Web site modifications can be handled by a computer support specialist. DEA assumes one hour per year of a computer support specialist's time for those modifications and two hours a year for the pharmacist to file the reports. Table 2 presents annual ongoing costs for online pharmacies.

TABLE 2—ANNUAL ONGOING COSTS

Requirement	Unit time (in hours)	Hourly wage, fully loaded	Unit cost
Pharmacy Web site modification (computer support specialist)	1.0	$47.79	$47.79
Sending monthly report to DEA (pharmacist)	2.0	104.40	208.80
Total			256.59

Total costs. To estimate total costs, it is necessary to estimate the number of firms that will seek to modify their registration to that of online pharmacies. DEA estimates that 250 pharmacies will initially apply for such modification of registration. It is also necessary to estimate the number of pharmacies that will apply for such modification of registration in the future. DEA estimates that there would be a moderate number of registrants applying to modify their registrations in the two years after the first year as some other pharmacies find advantage in an online presence. After that, DEA estimates the number of pharmacies applying to modify their registrations will decline steadily, as few pharmacies will find benefit. Each year it is expected that a number of registrants applying to modify their registrations may drop out for various reasons. The total number of pharmacies in the United States has been declining. Data from the Economic Census indicate that the number of retail pharmacies fell at an annual rate of 1.7 percent from 1998 through 2006.[53] DEA estimates that the number of online pharmacy registrants will decline at a slightly faster rate, because some pharmacies will drop their online pharmacy registrations but stay in business as retail pharmacies. DEA estimates an annual attrition rate of 2.0 percent for online pharmacies. The table below shows the estimated number of online pharmacy registrations and registrants in operation, year by year.

TABLE 3—ONLINE PHARMACY REGISTRANTS

	Registrations	Registrants in operation
Year 1	250	250
Year 2	30	275
Year 3	25	295
Year 4	20	309
Year 5	20	322
Year 6	10	326
Year 7	10	329
Year 8	10	333
Year 9	9	335
Year 10	8	337
Year 11	7	337
Year 12	6	336
Year 13	5	334
Year 14	5	333
Year 15	5	331

To obtain undiscounted costs, year by year, the unit cost estimates—$201.92 for initial start-up, $256.59 for ongoing costs—are applied, respectively, to the number of online pharmacy registrations and the number of operating registrants in each year. The results are shown in the following table.

TABLE 4—UNDISCOUNTED TOTAL COSTS

	Initial	Ongoing	Total
Year 1	$50,480	$64,147	$114,628
Year 2	6,058	70,562	76,620
Year 3	5,048	75,566	80,614
Year 4	4,038	79,186	83,225
Year 5	4,038	82,734	86,773
Year 6	2,019	83,646	85,665
Year 7	2,019	84,538	86,558
Year 8	2,019	85,414	87,433
Year 9	1,817	86,015	87,832
Year 10	1,615	86,347	87,962
Year 11	1,413	86,416	87,830
Year 12	1,212	86,227	87,439
Year 13	1,010	85,786	86,795
Year 14	1,010	85,353	86,363
Year 15	1,010	84,929	85,939

Table 5 shows the present value and annualized cost at 7.0 percent and 3.0 percent discount rates, over fifteen years.

TABLE 5—PRESENT VALUE AND ANNUALIZED COSTS

	7.0 Percent	3.0 Percent
Year 1	$114,628	$114,628
Year 2	71,607	74,388
Year 3	70,411	75,986
Year 4	67,936	76,162
Year 5	66,198	77,096
Year 6	61,078	73,895
Year 7	57,677	72,491
Year 8	54,449	71,091

[53] Economic Census, Statistics of U.S. Businesses, 2006, available at *http://www.census.gov/epcd/susb/latest/us/US44.HTM#N446.*

TABLE 5—PRESENT VALUE AND ANNUALIZED COSTS—Continued

	7.0 Percent	3.0 Percent
Year 9	51,119	69,335
Year 10	47,846	67,416
Year 11	44,648	65,354
Year 12	41,542	63,168
Year 13	38,538	60,877
Year 14	35,837	58,809
Year 15	33,328	56,816
Total	856,843	1,077,511
Annualized	94,077	90,259

The costs are relatively modest; the annualized sum of the present values is less than $100,000 at both discount rates. Further, Table 4 shows that the undiscounted annual cost never exceeds $100,000 after the first year with its relatively large number of registrations.

Benefits. The Ryan Haight Online Pharmacy Consumer Protection Act is designed to save lives by reducing deaths from drug overdoses and otherwise lessen the detrimental consequences of pharmaceutical controlled substance abuse by restricting the ability of rogue Internet pharmacies to illegally divert dangerous controlled substance prescription drugs to millions of people, including teens, without valid prescriptions issued under a legitimate physician's care.[54] The regulations promulgated based on this legislation will address the ''wide-open channel of distribution'' that currently exists for prescription controlled substances sold over the Internet, which represents an ''easy availability [that] has enormous implications for public health, particularly the health of our children.[55] A key provision of this law, the requirement for practitioners to conduct at least one in-person medical evaluation of the patient before they prescribe a prescription for a controlled substance, is a major step toward combating the use of the Internet to facilitate illegal sales of pharmaceutical controlled substances. Also, requiring online pharmacies to post the required site disclosure information, certifications, and other information on their homepage provides consumers with enhanced tools to determine the legitimacy of the online pharmacy.

C. Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The RFA applies to a rule that is published by the agency as a notice of proposed rulemaking. As explained above, the Ryan Haight Act expressly contemplates that DEA will issue interim rules under the ''good cause'' provision of the APA as the agency deems necessary to implement the Act prior to its effective date (April 13, 2009). Thus, Congress has expressly granted DEA authority to issue regulations to implement the Act that become effective immediately without the requirement of first seeking public comment through a notice of proposed rulemaking. Consequently, the requirements of the RFA do not apply to this rule.

It also should be noted that only a limited portion of the regulatory text being issued here is subject to modification following the comment period as the bulk of the regulatory text is taken verbatim from, and mandated by, the Ryan Haight Act. DEA is seeking public comment with respect to those parts of the regulatory text about which the agency has discretion.

Although the RFA does not apply to this Interim Final Rule, DEA has reviewed the potential impacts. The rule is likely to affect a substantial number of small entities, but DEA does not believe that it will have a significant economic impact on small entities.

DEA is uncertain which pharmacies will apply to modify their registrations to that of online pharmacies. While it is possible that such applicants will be a mixture of independent pharmacies and chains, DEA believes it unlikely that many chain pharmacies will fall within the definition of an online pharmacy and thereby need to apply for the modified registration. As discussed previously, the Ryan Haight Act contains several exceptions to the definition of ''online pharmacy'' including the exception set forth in 21 U.S.C. 802(52)(B)(viii) that excludes from the definition of an online pharmacy those DEA-registered pharmacies ''whose dispensing of controlled substances via the Internet consists solely of * * * (I) refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph [21 U.S.C. 802(55)] or (II) filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph [21 U.S.C. 802(56)].'' Also, the regulations being issued here exempt from the definition of online pharmacy any registered pharmacy ''whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of * * * filling prescriptions that were electronically prescribed in a manner authorized by this chapter and otherwise in compliance with the Act.'' Given these exceptions to the definition of an online pharmacy, DEA anticipates that the overwhelming majority of pharmacies in the United States, if they follow their current practices, will not, as of April 13, 2009, fall within the definition of an online pharmacy.

Further, as DEA stated previously, as long as the pharmacist meets his corresponding responsibility to take reasonable steps under the circumstances of the dispensing of any particular prescription to ensure that the prescription was issued in accordance with the requirements of the Ryan Haight Act (as well as all other applicable requirements of the CSA and DEA regulations), the pharmacist will not be held strictly liable for filling a prescription that he could not reasonably have known was issued by means of the Internet. Thus, it is absolutely unnecessary for a pharmacy to apply for a modification of its DEA registration authorizing it to operate as an online pharmacy for the sole purpose of ensuring that it does not—despite the exercise of sound professional judgment—inadvertently fill a prescription that was issued by means of the Internet.

The small-business size standard for retail pharmacies is annual revenue of $7.0 million.[56] From the 2002 Economic Census, there are data on revenue of pharmacies by revenue class. The class with the lowest average revenue is pharmacies with sales of less than $250,000 per year. Average revenue for this group is $132,000. Table 6 shows Small Business Administration standards for these and larger firms that dispense controlled substances.

[54] Office of National Drug Control Policy, Press Release, March 1, 2008, available at *http://www.ondcp.gov/pda/030108.html.*

[55] S. Rep. No. 110–521, at 68 (2008).

[56] Small Business Administration, Table of Small Business Size Standards, August 22, 2008.

TABLE 6—SBA DEFINITIONS OF SMALL ENTITIES

Industry description	NAICS code	Small business definition (sales in $)
Pharmacies and Drug Stores	446110	7,000,000
Supermarkets and Other Grocery Stores	445110	27,000,000
Discount Department Stores	452112	27,000,000
Warehouse Clubs and Supercenters	452910	25,000,000
Mail Order Houses	454113	25,000,000

DEA estimates the annual cost of compliance with the Interim Final Rule for an individual pharmacy is the annualized sum of the present value of a 15-year stream of ongoing costs and the initial start-up cost. Table 7 shows these values for 7.0 percent and 3.0 percent discount rates. The result is annualized cost of about $275. Even for the smallest pharmacies, that is not a significant economic impact.[57]

TABLE 7—ANNUALIZED COST FOR AN ONLINE PHARMACY

	7.0 Percent	3.0 Percent
Annual Ongoing Cost	$256.59	$256.59
PV of Ongoing Cost	2,337.00	3,063.15
Initial Cost	201.92	201.92
Sum of PV and Initial Cost	2,538.92	3,265.07
Annualized Cost	278.76	273.50

D. Paperwork Reduction Act

The Ryan Haight Act requires pharmacies that dispense controlled substances by means of the Internet to obtain a modification of their existing DEA registration to that of an online pharmacy (21 U.S.C. 823(f), 21 CFR 1301.11). To address this, DEA is revising its existing information collection, ''Application for Registration (DEA Form 224), Application for Registration Renewal (DEA Form 224a), Affidavit for Chain Renewal (DEA Form 224b)'' [information collection 1117–0014] to add an Application for Modification of Registration for Online Pharmacies (DEA Form 224c). This form will be completed online by pharmacies requesting to modify their registrations to that of an online pharmacy.

Application for modification of registration—The application for modification of registration will require an online pharmacy applicant to provide to DEA certain information, as discussed above. For purposes of this reporting, DEA believes that the Internet Pharmacy Site Disclosure information that applicants must supply will be immediately obtainable with minimal effort. Information such as the pharmacy's name, registration number, and contact information will be populated by DEA on the online form completed by the pharmacy applicant. Contact information for the pharmacist-in-charge should be readily available. State licensure information should be readily available as well.

DEA believes that very few legitimate pharmacies (*i.e.*, those that comply with the law) will be affiliated with more than one Web site. Nor does it seem likely that such pharmacies will have contractual relationships with practitioners to issue prescriptions for controlled substances through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof. Thus, DEA believes that the reporting of this type of information should be minimal, if at all, and will not be burdensome for the vast majority of the limited number of pharmacies likely to apply to modify their registrations.

DEA believes that the certifications required of the online pharmacies are straightforward and can easily be included on pharmacies' Web sites and reported to DEA. DEA has provided examples of those certifications for potential use by pharmacies applying to modify their registrations.

While the new reporting and application requirements will request information not previously requested by DEA (as the Ryan Haight Act mandates), DEA believes that much of the information required to be provided as part of the applications is readily available and retrievable, thus limiting the impact of the burden for completion of this application.

DEA estimates that 250 pharmacies will apply to modify their registrations to that of online pharmacies. DEA estimates that it will take a pharmacy 15 minutes (0.25 hours) to complete an Application for Modification of Registration for Online Pharmacies (DEA Form 224c), and that it will take an online pharmacy 15 minutes (0.25 hours) to renew its online pharmacy registration. DEA notes that the Application for Modification of Registration for Online Pharmacies (DEA Form 224c) is completed and submitted online through the DEA Office of Diversion Control Web site. Because those applying for a modification of registration must already be registered with DEA, the overall number of respondents will not change. To account for the new requirement, the number of respondents using DEA–224a has been reduced by the 250 respondents DEA estimates will apply for a modification using DEA–224c. As a result, the total burden for DEA–224a has been reduced by 16.7 hours. DEA estimates that DEA–224c will have a total of 62.5 burden hours for an overall increase of 46.2 burden hours.

Reports of dispensing of controlled substances by online pharmacies—The Ryan Haight Act requires those pharmacies with modified registrations to report certain information regarding their dispensing of controlled

[57] Economic Census, Establishment and Firm Size, 2002, Table 4.

substances to DEA. Specifically, online pharmacies are required to report to DEA the total quantity of controlled substances that the pharmacy has dispensed during each calendar month by any means, regardless of whether the controlled substances are dispensed by means of the Internet. Reports are required to be filed by every pharmacy that, at any time during a calendar month, holds a modified registration authorizing it to operate as an online pharmacy, regardless of whether the online pharmacy dispenses any controlled substances by means of the Internet during the month. Reports are required when the total quantity of controlled substances dispensed meets or exceeds either 100 or more prescriptions for controlled substances filled, or 5,000 or more dosage units dispensed of all controlled substances combined, in the calendar month for which reporting is required. If a pharmacy fills fewer than 100 prescriptions for controlled substances, and dispenses fewer than 5,000 dosage units of all controlled substances combined, in the calendar month for which reporting is required, a negative response indicating that reporting is not required must be received by DEA. Thus, each online pharmacy will report every month to DEA, either by providing actual dispensing information or by providing a negative response.

DEA believes that, of the limited number of pharmacies expected to be subject to the reporting requirement of the Act, few are likely to submit negative responses. It is reasonable to assume that online pharmacies subject to the reporting requirement will either fill 100 or more prescriptions for controlled substances, or 5,000 or more dosage units of all controlled substances combined, in any calendar month. Therefore, DEA has assumed for purposes of these estimates that all online pharmacies will report dispensing information to DEA.

DEA estimates that 250 online pharmacies will file monthly reports with DEA regarding their dispensing of controlled substances. DEA estimates that it will take each pharmacy 10 minutes to file this report.

The Department of Justice, Drug Enforcement Administration, has submitted the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the review procedures of the Paperwork Reduction Act of 1995. The information collections are published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the required collections of information are encouraged. Your comments on the information collection-related aspects of this rule should address one or more of the following four points:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Recommendations to enhance the quality, utility, and clarity of the information to be collected.
- Recommendations 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, *e.g.*, permitting electronic submission of responses.

Overview of information collection 1117–0014:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:*

Application for Registration (DEA Form 224);

Application for Registration Renewal (DEA Form 224a);

Affidavit for Chain Renewal (DEA Form 224b);

Application for Modification of Registration for Online Pharmacies (DEA Form 224c)

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:

Form Number: DEA Form 224, 224a, 224b, 224c;

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Pharmacies wishing to be online pharmacies must apply to modify their registrations. Such registration is mandatory under the law and needed for control measures over legal handlers of controlled substances and to monitor their activities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond is provided in the table below. Please note that the number of respondents using DEA–224a has been reduced by the 250 respondents that DEA estimates will apply for a modification using DEA–224c. Because those applying for a modification of registration must be currently registered with DEA, the overall number of respondents will not increase. The total response time has increased by 46.2 hours as a result of the 11 additional minutes it is estimated it will take each respondent to complete DEA–224c as compared to DEA–224a.

Form	Completed	Number of respondents	Time per response	Total (in hours)
Application for Registration (DEA–224)	Paper	12,094	0.2 hours (12 minutes)	2,418.8
Application for Registration (DEA–224)	Electronic	59,283	0.13 hours (8 minutes)	7,904.4
Application for Registration Renewal (DEA–224a)	Paper	159,678	0.2 hours (12 minutes)	31,935.6
Application for Registration Renewal (DEA–224a)	Electronic	209,285	0.06 hours (4 minutes)	13,952.3
Affidavit for Chain Renewals (DEA–224b)	Electronic	16	5 hours	80
Application for Modification of Registration for Online Pharmacies (DEA–224c).	Electronic	250	0.25 hours (15 minutes)	62.5

Form	Completed	Number of respondents	Time per response	Total (in hours)
Total		440,606		56,354

(6) An estimate of the total public burden (in hours) associated with the collection: It is estimated that this collection will create a burden of 56,354 annual burden hours.

Overview of new information collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Reports of dispensing of controlled substances by online pharmacies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 332.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-Profit Institutions; State, Local or Tribal Government.

Abstract: The Controlled Substances Act (21 U.S.C. 827(d)(2)) requires online pharmacies to report to DEA the total quantity of controlled substances that the pharmacy has dispensed during each calendar month by any means, regardless of whether the controlled substances are dispensed by means of the Internet. Reports are required to be filed by every pharmacy that, at any time during a calendar month, holds a modified registration authorizing it to operate as an online pharmacy, regardless of whether the online pharmacy dispenses any controlled substances by means of the Internet during the month. Such reporting is mandated by the Ryan Haight Act and permits DEA to monitor the dispensing of controlled substances by online pharmacies.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 250 persons respond to this collection at 0.25 hours per person per month, for a total of 750 hours per year.

(6) An estimate of the total public burden (in hours) associated with the collection: 750 annual burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

E. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

F. Executive Order 13132

This rulemaking does not impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

G. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. Further, as noted above in the Administrative Procedure Act certification, DEA has concluded that ''good cause'' exists to promulgate this rule as an Interim Final Rule effective as set forth in the **DATES** section of the preamble pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3).

List of Subjects

21 CFR Part 1300

Chemicals, Drug traffic control.

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1304

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

■ For the reasons set out above, 21 CFR parts 1300, 1301, 1304, and 1306 are amended as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 is revised to read as follows:

Authority: 21 U.S.C. 802, 821, 829, 871(b), 951, 958(f).

■ 2. Section 1300.04 is added to read as follows:

§ 1300.04 Definitions relating to the dispensing of controlled substances by means of the Internet.

(a) Any term not defined in this part or elsewhere in this chapter shall have the definition set forth in sections 102 and 309 of the Act (21 U.S.C. 802, 829).

(b) The term *covering practitioner* means, with respect to a patient, a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who:

(1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and

(2) Is temporarily unavailable to conduct the evaluation of the patient.

(c) The term *deliver, distribute, or dispense by means of the Internet* refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

(d) The term *filling new prescriptions for controlled substances in Schedule III, IV, or V* means filling a prescription for an individual for a controlled substance in Schedule III, IV, or V, if:

(1) The pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the Internet and pursuant to the valid prescription of a practitioner that meets the applicable

requirements of subsections (b) and (c) of section 309 of the Act (21 U.S.C. 829) and §§ 1306.21 and 1306.22 of this chapter (for purposes of this definition, such a prescription shall be referred to as the ''original prescription'');

(2) The pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in paragraph (d)(1) of this section (*i.e.*, the same controlled substance as described in paragraph (d)(1)); and

(3) The practitioner, acting in the usual course of professional practice, determines there is a legitimate medical purpose for the issuance of the new prescription.

(e) The term *homepage* means the opening or main page or screen of the Web site of an online pharmacy that is viewable on the Internet.

(f) The term *in-person medical evaluation* means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals. Nothing in this paragraph shall be construed to imply that one in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(g) The term *Internet* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(h) The term *online pharmacy* means a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the Internet. The term includes, but is not limited to, a pharmacy that has obtained a modification of its registration pursuant to §§ 1301.13 and 1301.19 of this chapter that currently authorizes it to dispense controlled substances by means of the Internet, regardless of whether the pharmacy is currently dispensing controlled substances by means of the Internet. The term does not include:

(1) Manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 of the Act (21 U.S.C. 823(a), (b), (d), or (e)) (§ 1301.13 of this chapter) who do not dispense controlled substances to an unregistered individual or entity;

(2) Nonpharmacy practitioners who are registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§ 1301.13 of this chapter) and whose activities are authorized by that registration;

(3) Any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§ 1301.13 of this chapter);

(4) A health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self-Determination and Education Assistance Act;

(5) Any agent or employee of any hospital or facility referred to in paragraph (h)(3) or (h)(4) of this section, provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in paragraph (h)(4) of this section, only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such paragraph;

(6) Mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(7) A person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;

(8) A pharmacy registered under section 303(f) of the Act (21 U.S.C. 823(f)) (§ 1301.13 of this chapter) whose dispensing of controlled substances via the Internet consists solely of:

(i) Refilling prescriptions for controlled substances in Schedule III, IV, or V, as defined in paragraph (k) of this section; or

(ii) Filling new prescriptions for controlled substances in Schedule III, IV, or V, as defined in paragraph (d) of this section;

(9)(i) Any registered pharmacy whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of filling prescriptions that were electronically prescribed in a manner authorized by this chapter and otherwise in compliance with the Act.

(ii) A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(9)(i) of this section, it would fall outside the definition of an online pharmacy; or

(10)(i) Any registered pharmacy whose delivery, distribution, or dispensing of controlled substances by means of the Internet consists solely of the transmission of prescription information between a pharmacy and an automated dispensing system located in a long term care facility when the registration of the automated dispensing system is held by that pharmacy as described in §§ 1301.17 and 1301.27 and the pharmacy is otherwise complying with this chapter.

(ii) A registered pharmacy will be deemed to meet this exception if, in view of all of its activities other than those referred to in paragraph (h)(10)(i) of this section, it would fall outside the definition of an online pharmacy.

(i) Effective January 15, 2010, the term *practice of telemedicine* means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), which practice falls within a category listed in the following paragraphs (i)(1) through (7):

(1) *Treatment in a hospital or clinic.* The practice of telemedicine is being conducted while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f) of the Act (21 U.S.C. 823(f)) by a practitioner acting in the usual course of professional practice, who is acting in accordance with applicable State law, and who is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in the State in which the patient is located, unless the practitioner:

(i) Is exempted from such registration in all States under section 302(d) of the Act (21 U.S.C. 822(d); or

(ii) Is an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract, and registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(2) *Treatment in the physical presence of a practitioner.* The practice of telemedicine is being conducted while the patient is being treated by, and in the physical presence of, a practitioner acting in the usual course of professional practice, who is acting in accordance with applicable State law, and who is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in the State in which the patient is located, unless the practitioner:

(i) Is exempted from such registration in all States under section 302(d) of the Act (21 U.S.C. 822(d)); or

(ii) Is an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract, and registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f);

(3) *Indian Health Service or tribal organization.* The practice of telemedicine is being conducted by a practitioner who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act; who is acting within the scope of the employment, contract, or compact; and who is designated as an Internet Eligible Controlled Substances Provider by the Secretary of Health and Human Services under section 311(g)(2) of the Act (21 U.S.C. 831(g)(2));

(4) *Public health emergency declared by the Secretary of Health and Human Services.* The practice of telemedicine is being conducted during a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d), and involves patients located in such areas, and such controlled substances, as the Secretary of Health and Human Services, with the concurrence of the Administrator, designates, provided that such designation shall not be subject to the procedures prescribed by the Administrative Procedure Act (5 U.S.C. 551–559 and 701–706);

(5) *Special registration.* The practice of telemedicine is being conducted by a practitioner who has obtained from the Administrator a special registration under section 311(h) of the Act (21 U.S.C. 831(h));

(6) *Department of Veterans Affairs medical emergency.* The practice of telemedicine is being conducted:

(i) In a medical emergency situation:

(A) That prevents the patient from being in the physical presence of a practitioner registered under section 303(f) of the Act (21 U.S.C. 823(f)) who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and employment and within the scope of the official duties or contract of that employee or contractor;

(B) That prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) of the Act (21 U.S.C. 823(f));

(C) During which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and

(D) That requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii) By a practitioner that:

(A) Is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(B) Is registered under section 303(f) of the Act (21 U.S.C. 823(f)) in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f); and

(C) Issues a controlled substance prescription in this emergency context that is limited to a maximum of a five-day supply which may not be extended or refilled; or

(7) *Other circumstances specified by regulation.* The practice of telemedicine is being conducted under any other circumstances that the Administrator and the Secretary of Health and Human Services have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise consistent with the public health and safety.

(j) *Temporary definition of practice of telemedicine.* Prior to January 15, 2010, or as otherwise specified by regulation prior to that date, instead of the definition in paragraph (i), the term *practice of telemedicine* means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (as that term is defined in section 102 of the Act (21 U.S.C. 802)) (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), if the practitioner is using an interactive telecommunications system that satisfies the requirements of section 410.78(a)(3) of title 42, Code of Federal Regulations.

(k) The term *refilling prescriptions for controlled substances in Schedule III, IV, or V:*

(1) Means the dispensing of a controlled substance in Schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309 of the Act (21 U.S.C. 829) and §§ 1306.21 and 1306.22 of this chapter, as appropriate; and

(2) Does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

(l)(1) The term *valid prescription* means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(i) A practitioner who has conducted at least one in-person medical evaluation of the patient; or

(ii) A covering practitioner.

(2) Nothing in this paragraph (l) shall be construed to imply that one in-person medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 3. The authority citation for part 1301 is revised to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958.

■ 4. Section 1301.11 is revised to read as follows:

§ 1301.11 Persons required to register; requirement of modification of registration authorizing activity as an online pharmacy.

(a) Every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration unless exempted by law or pursuant to §§ 1301.22 through 1301.26. Except as provided in paragraph (b) of this section, only persons actually engaged in such activities are required to obtain a registration; related or affiliated

persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

(b) As provided in sections 303(f) and 401(h) of the Act (21 U.S.C. 823(f) and 841(h)), it is unlawful for any person who falls within the definition of ''online pharmacy'' (as set forth in section 102(52) of the Act (21 U.S.C. 802(52)) and § 1300.04(h) of this chapter) to deliver, distribute, or dispense a controlled substance by means of the Internet if such person is not validly registered with a modification of such registration authorizing such activity (unless such person is exempt from such modified registration requirement under the Act or this chapter). The Act further provides that the Administrator may only issue such modification of registration to a person who is registered as a pharmacy under section 303(f) of the Act (21 U.S.C. 823(f)). Accordingly, any pharmacy registered pursuant to § 1301.13 of this part that falls within the definition of an online pharmacy and proposes to dispense controlled substances by means of the Internet must obtain a modification of its registration authorizing such activity following the submission of an application in accordance with § 1301.19 of this part. This requirement does not apply to a registered pharmacy that does not fall within the definition of an online pharmacy set forth in § 1300.04(h). Under the Act, persons other than registered pharmacies are not eligible to obtain such a modification of registration but remain liable under section 401(h) of the Act (21 U.S.C. 841(h)) if they deliver, distribute, or dispense a controlled substance while acting as an online pharmacy without being validly registered with a modification authorizing such activity.

■ 5. Section 1301.13 is amended by revising paragraph (e)(1)(iv) and (e)(3) to read as follows:

§ 1301.13 Application for registration; time for application; expiration date; registration for independent activities; application forms, fees, contents and signature; coincident activities.

* * * * *

(e) * * *

(1) * * *

Business activity	Controlled substances	DEA application forms	Application fee (dollars)	Registration period (years)	Coincident activities allowed
*	*	*	*	*	* *
(iv) Dispensing or instructing (includes Practitioner, Hospital/Clinic, Retail Pharmacy, Online Pharmacy, Central fill pharmacy, Teaching Institution).	Schedules II–V	New—224 ..... Renewal—224a Online Pharmacy—224c.	551 551	3	May conduct research and instructional activities with those substances for which registration was granted, except that a mid-level practitioner may conduct such research only to the extent expressly authorized under State statute. A pharmacist may manufacture an aqueous or oleaginous solution or solid dosage form containing a narcotic controlled substance in Schedule II–V in a proportion not exceeding 20% of the complete solution, compound or mixture. A retail pharmacy may perform central fill pharmacy activities. An online pharmacy may perform activities of retail pharmacy as well as online pharmacy activities.
*	*	*	*	*	* *

* * * * *

(3) Registrants will receive renewal notifications approximately 60 days prior to the registration expiration date. DEA Forms 224a, 225a, and 363a may be mailed, as applicable, to registrants; if any registered person does not receive such notification within 45 days before the registration expiration date, the registrant must promptly give notice of such fact and may request such forms by writing to the Registration Section, Drug Enforcement Administration.

* * * * *

■ 6. Section 1301.19 is added to read as follows:

§ 1301.19 Special requirements for online pharmacies.

(a) A pharmacy that has been issued a registration under § 1301.13 may request that the Administrator modify its registration to authorize the pharmacy to dispense controlled substances by means of the Internet as an online pharmacy. The Administrator may deny an application for a modification of registration if the Administrator determines that the issuance of a modification would be inconsistent with the public interest. In determining the public interest, the Administrator will consider the factors listed in section 303(f) of the Act (21 U.S.C. 823(f)).

(b) Each online pharmacy shall comply with the requirements of State law concerning licensure of pharmacies in each State from which it, and in each State to which it, delivers, distributes, or dispenses, or offers to deliver, distribute, or dispense controlled substances by means of the Internet.

(c) Application for a modified registration authorizing the dispensing of controlled substances by means of the Internet will be made by an online application process as specified in § 1301.13 of this part. Subsequent online pharmacy registration renewals

will be accomplished by an online process.

(d) A pharmacy that seeks to discontinue its modification of registration authorizing it to dispense controlled substances by means of the Internet as an online pharmacy (but continue its business activity as a non-online pharmacy) shall so notify the Administrator by requesting to modify its registration to reflect the appropriate business activity. Once the registration has been so changed, the pharmacy may no longer dispense controlled substances by means of the Internet. A pharmacy that has so changed its registration status back to that of a non-online pharmacy remains responsible for submitting reports in accordance with § 1304.55 of this chapter with respect to any controlled substances that it dispensed while it was registered with a modification authorizing it to operate as an online pharmacy.

(e) Registrants applying for modified registrations under this section must comply with notification and reporting requirements set forth in §§ 1304.40, 1304.45, 1304.50, and 1304.55 of this chapter.

(f) No person (including a registrant) required to obtain a modification of a registration under §§ 1301.11(b) and 1301.13 of this part authorizing it to operate as an online pharmacy may engage in any activity for which such modification of registration is required until the application for such modified registration is granted and an active Certificate of Registration indicating the modification of the registration has been issued by the Administrator to such person.

■ 7. Section 1301.52 is amended by revising paragraph (a) to read as follows:

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

(a) Except as provided in paragraph (b) of this section, the registration of any person, and any modifications of that registration, shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact.

* * * * *

PART 1304—RECORDS AND REPORTS OF REGISTRANTS

■ 8. The authority citation for part 1304 is revised to read as follows:

Authority: 21 U.S.C. 821, 827, 831, 871(b), 958(e), 965, unless otherwise noted.

■ 9. Section 1304.01 is revised to read as follows:

§ 1304.01 Scope of part 1304.

Inventory and other records and reports required under section 307, section 311, or section 1008(e) of the Act (21 U.S.C. 827, 831, and 958(e)) shall be in accordance with, and contain the information required by, those sections and by the sections of this part.

■ 10. An undesignated heading and §§ 1304.40, 1304.45, 1304.50 and 1304.55 are added to read as follows:

Online Pharmacies

1304.40 Notification by online pharmacies.
1304.45 Internet Web site disclosure requirements.
1304.50 Disclosure requirements for Web sites of nonpharmacy practitioners that dispense controlled substances by means of the Internet.
1304.55 Reports by online pharmacies.

Online Pharmacies

§ 1304.40 Notification by online pharmacies.

(a) Thirty days prior to offering a controlled substance for sale, delivery, distribution, or dispensing by means of the Internet, an online pharmacy shall:

(1) Notify the Administrator of its intent to do so by submitting an application for a modified registration in accordance with §§ 1301.13 and 1301.19 of this chapter, with such application containing the information required by this section; and

(2) Notify the State boards of pharmacy in any States in which the online pharmacy offers to sell, deliver, distribute, or dispense controlled substances.

(b) The following information must be included in the notification submitted under paragraph (a) of this section:

(1) The pharmacy's Internet Pharmacy Site Disclosure information required to be posted on the homepage of the online pharmacy's Internet site under section 311(c) of the Act (21 U.S.C. 831(c)) and § 1304.45 of this part.

(2) Certification that the information disclosed on its Internet site under the Internet Pharmacy Site Disclosure is true and accurate. The statement shall be in a form similar to the following: ''The above-named pharmacy, a DEA registrant, certifies, under penalty of perjury, that the information contained in this statement is true and accurate.''

(3) Each Internet site address utilized by the online pharmacy and a certification that the online pharmacy shall notify the Administrator of any change in any such Internet address at least 30 days in advance. In the event that a pharmacy delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of, more than one Web site, the pharmacy shall provide, for purposes of complying with this paragraph, the Internet site address of each such site.

(4) The DEA registration numbers of:

(i) Every pharmacy that delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of, each Web site referred to in paragraph (b)(3) of this section; and

(ii) Every practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.

(c) An online pharmacy that is in operation at the time Public Law 110–425 becomes effective (April 13, 2009) must make the notifications required in this section on or before May 13, 2009. However, in accordance with section 401(h) of the Act (21 U.S.C. 841(h)), as of April 13, 2009, it is unlawful for any online pharmacy to deliver, distribute, or dispense a controlled substance by means of the Internet unless such online pharmacy is validly registered with a modification of such registration authorizing such activity.

(d) On and after the date an online pharmacy makes the notifications required under this section, each online pharmacy shall display on the homepage of its Internet site, a declaration that it has made such notifications to the Administrator in the following form: ''In accordance with the Controlled Substances Act and the DEA regulations, this online pharmacy has made the notifications to the DEA Administrator required by 21 U.S.C. 831 and 21 CFR 1304.40.''

(e)(1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, if any of the information required to be submitted under this section changes after the online pharmacy submits the notification to the Administrator, the online pharmacy shall notify the Administrator of the updated information no later than 30 days before the change becomes effective via the online process.

(2) If a pharmacy referred to in paragraph (b)(4)(i) of this section ceases to deliver, distribute, or dispense controlled substances pursuant to orders made on, through, or on behalf of, each Web site referred to in paragraph (b)(3) of this section, the online pharmacy shall notify the Administrator no later than 30 days after the change becomes effective via the online process.

(3) If a practitioner referred to in paragraph (b)(4)(ii) of this section ceases to have a contractual relationship with the online pharmacy, the online pharmacy shall notify the Administrator no later than 30 days after the change becomes effective via the online process.

§ 1304.45 Internet Web site disclosure requirements.

(a) Each online pharmacy shall display, at all times and in a visible and clear manner, on its homepage a statement that it complies with the requirements of section 311 of the Act (21 U.S.C. 831) with respect to the delivery or sale or offer for sale of controlled substances. This statement must include the name of the pharmacy as it appears on the DEA Certificate of Registration.

(b) Each online pharmacy shall clearly display the following information on the homepage of each Internet site it operates, or on a page directly linked to the homepage. If the information is displayed on a page directly linked to the homepage, that link on the homepage must be visible and clear. The information must be displayed for each pharmacy that delivers, distributes, or dispenses controlled substances pursuant to orders made on, through, or on behalf of that Web site.

(1) The name and address of the pharmacy as it appears on the pharmacy's DEA Certificate of Registration.

(2) The pharmacy's telephone number and e-mail address.

(3) The name, professional degree, and States of licensure of the pharmacist-in-charge, and a telephone number at which the pharmacist-in-charge can be contacted.

(4) A list of the States in which the pharmacy is licensed to dispense controlled substances.

(5) A certification that the pharmacy is registered under part 1301 of this chapter with a modification of its registration authorizing it to deliver, distribute, or dispense controlled substances by means of the Internet.

(6) The name, address, telephone number, professional degree, and States of licensure with State license number of any practitioner who has a contractual relationship to provide medical evaluations or issue prescriptions for controlled substances, through referrals from the Web site or at the request of the owner or operator of the Web site, or any employee or agent thereof.

(7) The following statement: ''This online pharmacy is obligated to comply fully with the Controlled Substances Act and DEA regulations. As part of this obligation, this online pharmacy has obtained a modified DEA registration authorizing it to operate as an online pharmacy. In addition, this online pharmacy will only dispense a controlled substance to a person who has a valid prescription issued for a legitimate medical purpose based upon a medical relationship with a prescribing practitioner. This includes at least one prior in-person medical evaluation in accordance with section 309 of the Controlled Substances Act (21 U.S.C. 829) or a medical evaluation via telemedicine in accordance with section 102(54) of the Controlled Substances Act (21 U.S.C. 802(54)).''

§ 1304.50 Disclosure requirements for Web sites of nonpharmacy practitioners that dispense controlled substances by means of the Internet.

For a Web site to identify itself as being exempt from the definition of an online pharmacy by virtue of section 102(52)(B)(ii) of the Act (21 U.S.C. 802(52)(B)(ii)) and § 1300.04(h)(2) of this chapter, the Web site shall post in a visible and clear manner on its homepage, or on a page directly linked thereto in which the hyperlink is also visible and clear on the homepage, a list of the DEA-registered nonpharmacy practitioners who are affiliated with the Web site. Any nonpharmacy practitioner affiliated with such a Web site is responsible for compliance with this section. An institutional practitioner that otherwise complies with the requirements of the Act and this chapter will be deemed to meet the requirements of this section if, in lieu of posting the names of each affiliated individual practitioner, it posts its name (as it appears on its Certificate of Registration) in a visible and clear manner on its homepage and in a manner that identifies itself as being responsible for the operation of the Web site.

§ 1304.55 Reports by online pharmacies.

(a) Each online pharmacy shall report to the Administrator the total quantity of each controlled substance that the pharmacy has dispensed each calendar month. The report must include the total quantity of such dispensing by any means, regardless of whether the controlled substances are dispensed by means of the Internet. Thus, such reporting shall include all controlled substances dispensed via Internet transactions, mail-order transactions, face-to-face transactions, or any other means. However, the pharmacy is not required to describe in its report to the Administrator such means of dispensing. Such reporting is required for every calendar month in which the total quantity of controlled substances dispensed by the pharmacy meets or exceeds one of the following thresholds:

(1) 100 or more prescriptions for controlled substances filled; or

(2) 5,000 or more dosage units dispensed of all controlled substances combined.

(b) Each online pharmacy shall report a negative response if, during a given calendar month, its total dispensing of controlled substances falls below both of the thresholds in paragraph (a) of this section.

(c) The reporting requirements of this section apply to every pharmacy that, at any time during a calendar month, holds a modified registration authorizing it to operate as an online pharmacy, regardless of whether the online pharmacy dispenses any controlled substances by means of the Internet during the month.

(d) Reports will be submitted to DEA electronically via online reporting, electronic file upload, or other means as approved by DEA.

(e) Reports shall be filed every month not later than the fifteenth day of the month succeeding the month for which they are submitted.

(f) An online pharmacy filing a report under paragraph (a) of this section shall utilize the National Drug Code number assigned to the product under the National Drug Code System of the Food and Drug Administration, and indicate the total number of dosage units dispensed for each such National Drug Code number.

(g) Records required to be kept under this section must be kept by the registrant for at least two years from the date of such records. The information shall be readily retrievable from the ordinary business records of the registrant and available for inspection and copying by authorized employees of the Administration.

PART 1306—PRESCRIPTIONS

■ 11. The authority citation for part 1306 is revised to read as follows:

Authority: 21 U.S.C. 821, 829, 831, 871(b), unless otherwise noted.

■ 12. Section 1306.09 is added to read as follows:

§ 1306.09 Prescription requirements for online pharmacies.

(a) No controlled substance that is a prescription drug may be delivered, distributed, or dispensed by means of the Internet without a valid prescription.

(b) In accordance with the Act, it is unlawful for any person to knowingly or intentionally fill a prescription for a controlled substance that was issued in a manner that constitutes dispensing by means of the Internet unless such person is a pharmacist who is acting in the usual course of his professional practice and is acting on behalf of a pharmacy whose registration has been modified under sections 1301.13 and 1301.19 of this chapter to authorize it to operate as an online pharmacy.

(c) Any online pharmacy that participates in the transfer between pharmacies of prescription information must do so in accordance with the requirements of §§ 1306.15 and 1306.25 of this part.

Dated: April 1, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–7698 Filed 4–3–09; 8:45 am]

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Federal Register

Monday,
April 6, 2009

Part III

The President

Proclamation 8354—National Cancer Control Month, 2009

Proclamation 8355—National Child Abuse Prevention Month, 2009

Proclamation 8356—National Donate Life Month, 2009

Federal Register
Vol. 74, No. 64
Monday, April 6, 2009

Presidential Documents

Title 3—

The President

Proclamation 8354 of April 1, 2009

National Cancer Control Month, 2009

By the President of the United States of America

A Proclamation

We have achieved remarkable progress in the fight against cancer. Miracles in medical research have helped us understand how to prevent, detect, and treat cancer more effectively, and Americans are now more aware of how to protect themselves from this disease.

Despite this progress, cancer continues to kill more Americans than any other malady but heart disease. Marking National Cancer Control Month, we recommit to the battle against cancer and emphasize the promise of medical research and the healthy steps Americans can take to protect themselves.

To gain new ground in cancer prevention, detection, and treatment, my Administration will continue to press for increased support for research at the National Institutes of Health, the National Cancer Institute, the Centers for Disease Control and Prevention, and academic and other institutions. The Federal Government plays an indispensable role in investing in this research, which will save and improve lives for generations to come.

As researchers work daily to better understand this disease, Americans can take steps to decrease their risk of developing cancer. Individuals of all ages should seek regular and appropriate check-ups. These check-ups should include screening, such as mammograms, the Pap test, and tests for colorectal cancer, all of which can help detect cancer during its early stages.

Healthy personal habits can also reduce the risk of cancer. Smoking accounts for thousands of cancer deaths every year, and quitting—even after many years—can greatly reduce the risk of cancer. Physical inactivity and obesity may cause a substantial proportion of colon, breast, endometrial, kidney, and esophageal cancers in the United States, so maintaining physical activity and a healthy diet can help prevent cancer, among other diseases. Finally, moderating alcohol intake and sun exposure can help protect Americans.

Too many American families have been touched by cancer. As we observe National Cancer Control Month, I call upon all courageous cancer patients and survivors, health care providers, researchers, advocates, and others involved in this struggle to work together in support of our Nation's goal to control, and ultimately defeat, this devastating disease.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2009 as National Cancer Control Month. I encourage citizens, medical institutions, government and social service agencies, businesses, nonprofit organizations, and other interested groups to join in activities that help control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–7923
Filed 4–3–09; 11:15 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8355 of April 1, 2009

National Child Abuse Prevention Month, 2009

By the President of the United States of America

A Proclamation

When the child next door is maltreated, we all suffer. Every American has a stake in the well-being of our Nation's children. They are members of our communities, and they are our future. National Child Abuse Prevention Month provides the opportunity to underscore our commitment to preventing and responding appropriately to child abuse. This month, we emphasize the importance of understanding child abuse and the need for all Americans to help families overcome this devastating problem.

The tragedy of child abuse may afflict American children in different ways. Abuse may occur physically, sexually, and emotionally. Child neglect, another form of child maltreatment, may occur physically and emotionally. Understanding the forms of child abuse is critical to preventing and responding to maltreatment.

A well-informed and strong family is the surest defense against child abuse. To help educate and strengthen families, community members can offer their time and counsel to parents and children who may need assistance. For example, parent support groups provide an organized forum for assistance. More informally, community members may simply offer a helping hand to families under stress. More information about what families and communities can do is available at www.childwelfare.gov/preventing.

Civic organizations and government also have an important role to play. Civic groups offer essential support through education, assistance to those at risk, and treatment for victims. Government at the local, State, and Federal level must provide funding for services, conduct public education projects, and enforce child abuse laws.

As we recognize that we all suffer when our children are abused, that we all benefit from mutual concern and care, and that we all have a responsibility to help, more American children will grow up healthy, happy, and with unlimited potential for success.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2009, as National Child Abuse Prevention Month. I encourage all citizens to help prevent and respond to child abuse by strengthening families and contributing to all children's physical, emotional, and developmental needs.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–7925
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Billing code 3195–W9–P

Presidential Documents

Proclamation 8356 of April 1, 2009

National Donate Life Month, 2009

By the President of the United States of America

A Proclamation

Through organ, tissue, and marrow donation Americans can give the extraordinary gift of life. National Donate Life Month provides an opportunity to honor those who have given of themselves to save lives and to call upon others to participate in this generous effort.

Every day in our Nation and across the world, Americans dedicate themselves to helping those in need. During times of crisis and calm, Americans have looked beyond themselves to aid friends and strangers alike. This spirit of giving represents a hallmark of our national character.

Many Americans have followed this tradition of generosity through organ, tissue, and marrow donation. These selfless individuals have saved lives and strengthened families and communities, and they deserve respect and admiration for their contributions.

I urge all Americans to follow these examples by considering becoming an organ, tissue, or marrow donor. The call for help from those in need of transplants is clear. More donors are needed to meet the needs of those on the national waiting list for life-saving transplants. When considering organ donation, Americans should consult family members to ensure that loved ones are fully aware of the donor's decisions.

Joining the ranks of organ donors is simple. I encourage Americans to learn more about becoming a donor at www.organdonor.gov.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2009 as National Donate Life Month. I call upon health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to join forces to increase the number of organ and tissue donors throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–7926
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